

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )  
 )  
 M R ) OAH No. 12-0294-CMB  
 ) DPA Case No.  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The household of M R has been receiving Alaska Temporary Assistance Program (ATAP), Food Stamp, and Family Medicaid benefits. Effective in August 2012 the Division of Public Assistance (DPA or Division) reduced the household’s ATAP benefits to zero as a penalty for the household's alleged failure to comply with their Family Self-Sufficiency Plan or FSSP.<sup>1</sup>

Ms. R and Mr. L requested a fair hearing with respect to all three categories of benefits, apparently believing that all of their benefits had been terminated.<sup>2</sup> However, the parties agreed at the hearing that only the ATAP benefits were affected by the penalty,<sup>3</sup> and the hearing went forward as to those benefits alone.

The hearing took place on August 31, 2012. The evidentiary record consists of the testimony taken during the hearing<sup>4</sup> and DPA exhibits 1 - 13.<sup>5</sup> Based on this evidence, the imposition of a noncompliance penalty is appropriate. However, DPA appears to have miscalculated the amount of the penalty, and the agency must be directed to recalculate the penalty and the resulting net benefit payable to the household.

**II. Facts**

The five-person R-L household began receiving ATAP benefits in April 2012.<sup>6</sup> Ms. R is employed; Mr. L was unemployed until just before the hearing.

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<sup>1</sup> Exs. 2.15, 2.34.  
<sup>2</sup> Ex. 2.16.  
<sup>3</sup> See Ex. 1; remarks of Mr. L, hearing recording at 7:10.  
<sup>4</sup> Mr. L testified on his own behalf. Department of Labor Work Services Supervisor Sheila Baker testified as the sole witness for DPA.  
<sup>5</sup> All of these exhibits were admitted without objection. Mr. L noted for the record that he disagreed with the facts stated in some of the exhibits.  
<sup>6</sup> Exs. 1, 2.21.

Mr. L has a college degree in computer programming and would like full-time work in that field.<sup>7</sup> However, he lacks work experience. In order to build skills, on April 16, 2012 he began a three-month unpaid placement through ATAP's Business Work Experience (BWE) program.<sup>8</sup> He was placed with No Name as an accounting clerk.<sup>9</sup> He worked in this position until June 27, 2012 when he apparently had back trouble that kept him out of work for about ten days. After his back pain resolved, Mr. L did not return to No Name because, he reasoned, his assignment there would be ending on July 16, 2012 anyway.<sup>10</sup>

While he was working at No Name, Mr. L received a job offer from the No Name School District (NNSD) to work part-time as a substitute teacher's aide.<sup>11</sup> The offer was extended in May, with work to commence on August 23, 2012.<sup>12</sup> Mr. L began working for NNSD on August 23, 2012.<sup>13</sup>

During the interval between the NNSD offer and its start date, Mr. L remained interested in paid employment during the summer. The summer work he was interested in was not related to his field of training. The summer employment he hoped to get was cannery/fish processing work.<sup>14</sup>

As part of the ATAP program, on June 16, 2012 Mr. L signed an FSSP, designed to help him find work and end the need for government support.<sup>15</sup> A requirement of the FSSP was that Mr. L "[c]ontinue to meet [his job development counselor] as needed to submit job search logs and do debriefings."<sup>16</sup> Among other things, the FSSP also required him to "look for paying job opportunities with No Name, and apply when position opens."<sup>17</sup> The FSSP did not specify any particular type of work to be sought at No Name.

There is a factual dispute regarding an offer of paid employment from No Name. H S D, Mr. L's ATAP job development counselor, recorded in her notes that Mr. L was offered a paid "housekeeping" position with No Name in June, but that he turned it down

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<sup>7</sup> L testimony; Ex. 2.2 (interview notes).

<sup>8</sup> *Id.*; Baker testimony; Ex. 2.1.

<sup>9</sup> L testimony.

<sup>10</sup> *Id.*

<sup>11</sup> L testimony.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*; Ex. 2.8.

<sup>15</sup> Ex. 2.4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

because he wished to continue pursuing fish processing work.<sup>18</sup> Mr. L firmly denies that he was offered a housekeeping position, observing that, in any event, if he wanted to do housekeeping work he “would just walk to any motel and get a housekeeping job” rather than commute to No Name.<sup>19</sup> No Name itself does not confirm an offer of a housekeeping position; instead, in response to an apparent inquiry just before the hearing, the company indicated that it “could have been able to pay [Mr. L] as a Detailer [but he] expressed disinterest in becoming a Detailer and [no] further discussion about it took place.”<sup>20</sup> This suggests some sort of informal discussion that might have led to a firm offer of detailing (not housekeeping) work had it been explored further, but supports Mr. L’s recollection that he was never actually offered a paying job of any kind by No Name.

In any event, Ms. D believed the Mr. L had been offered and had rejected housekeeping work. She and Mr. L had an “argument” (Mr. L’s term) on or about July 2, 2012 in connection with this supposed offer and refusal.<sup>21</sup> The tenor of Mr. L’s testimony about this period indicates he was somewhat angry and frustrated about his interaction with Ms. D. The case notes show, and Mr. L does not deny, that Ms. D attempted to meet with Mr. L about another job referral on July 13, 2012, that Mr. L called to reschedule the appointment, and that he then failed to appear at the rescheduled time.<sup>22</sup> At that point, Ms. D recommended a penalty. On July 20, 2012 the Division issued a notice to Ms. R that the household’s ATAP benefit would be reduced to zero as a penalty for noncompliance with the FSSP.

In determining that the household’s benefit should be reduced to zero, DPA applied a monthly penalty amount of \$674.00.<sup>23</sup> This was calculated by taking the statutory penalty percentage (40%, as provided in AS 47.27.085(a)(1)) and multiplying it by a “need standard” of \$1,685.00.<sup>24</sup>

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<sup>18</sup> Exs. 2.7 – 2.8.

<sup>19</sup> L testimony, hearing recording at 35:40.

<sup>20</sup> Ex. 2.9A. Note the use of the word “could” rather than “would.”

<sup>21</sup> L testimony, hearing recording at 47:00; Ex. 2.9.

<sup>22</sup> Exs. 2.9, 2.10, 2.11.

<sup>23</sup> Ex. 2.31. The Division calculated the Par household's income for August 2012, upon which the penalty was to be based, as \$1,560.82 (gross earned income), \$945.25 (ATAP countable income), and \$722.00 (adjusted need). *Id.*

<sup>24</sup> *Id.* \$1,685.00 is the “need standard” shown on the calculation; 40% is the “penalty percent”; and \$674.00 is the “penalty amount.” One can infer the agency’s method of calculation because  $\$1,685.00 \times 0.4 = \$674.00$ .

### III. Discussion

#### A. Imposition of Penalty

ATAP is a program created by the Alaska Statutes.<sup>25</sup> Alaska Statute 47.27.030, titled “Family self-sufficiency services,” provides in relevant part as follows:

(a) A participant in the Alaska temporary assistance program shall cooperate with the department, or its designee, to develop and sign a family self-sufficiency plan . . . .

In addition, Alaska law provides that ATAP participants must:

. . . participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self-sufficiency services . . . unless the participant is exempt from the work participation requirements under one or more of the exemptions . . . .<sup>[26]</sup>

As indicated above, Alaska Statute 47.27.085 and regulation 7 AAC 45.257(d) provide that a penalty, in the form of a reduction in the amount of ATAP benefits, will be imposed on an ATAP participant who, without good cause, fails to comply with a provision of the FSSP or fails to participate in assigned work activities.<sup>27</sup>

In this case, the FSSP required Mr. L to “look for paying job opportunities with No Name, and apply when position opens.”<sup>28</sup> The evidence presented at hearing does not clearly support a conclusion that Mr. L violated this aspect of the FSSP. However, the FSSP also obligated him to “[c]ontinue to meet [his job development counselor] as needed to submit job search logs and do debriefings.”<sup>29</sup> The evidence is undisputed that Mr. L, perhaps due to his frustration with Ms. D’s misunderstanding about the supposed housekeeping position, failed to meet with Ms. D on July 13, 2012 to debrief regarding a different job referral. This was a violation of the FSSP.

A penalty must be imposed unless there was good cause for failing to meet a requirement of the FSSP. Mr. L has not sought to establish good cause for his failure to meet with Ms. D on July 13, 2012.

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<sup>25</sup> See AS 47.05.010(1); AS 47.27.005 – AS 47.27.990.

<sup>26</sup> AS 47.27.035(a).

<sup>27</sup> See also 7 AAC 45.980.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

### B. Amount of Penalty

According to Alaska Statute 47.27.085, the beginning penalty for failure to comply with an FSSP is “40 percent of the maximum cash assistance that would be payable under AS 47.27.025 for a family of the same size.”<sup>30</sup> The maximum cash assistance that would be payable under AS 47.27.025 for a family that, like this one, has three dependent children, would under no circumstances be higher than \$1,025.00.<sup>31</sup> Forty percent of \$1,025.00 is \$410.00. Thus, \$410.00 is the highest penalty that could be calculated under the law for a case like this. The actual penalty amount could also be lower, depending on this family’s particular circumstances.

In this case the Division applied a penalty of \$674.00, which resulted in an adjusted need amount lower than the family’s countable income.<sup>32</sup> The most likely explanation for this is that the DPA eligibility technician entered \$1,685.00 (the family’s need standard)<sup>33</sup> as the number to be multiplied by 40 percent to arrive at the penalty amount.<sup>34</sup> However, there is no legal basis to calculate the penalty that way because, as stated above, the penalty is based upon the maximum potential benefit amount for a household, not the need standard for the household. Accordingly, the Division must recalculate the penalty in accordance with AS 47.27.085 and then adjust the family’s benefit calculation accordingly.

### IV. Conclusion and Order

The Division demonstrated at the hearing that Mr. L, a member of the R household, failed to comply with a term of his FSSP. Mr. L failed to demonstrate that he is exempt from or unable to comply with the plan’s requirement. The imposition of a 40 percent penalty under AS 47.27.085(a)(1), effective August, 2012, is upheld.

DPA shall recalculate the penalty amount in compliance with AS 47.27.085(a)(1). DPA shall apply the recalculated penalty and adjust the ATAP benefit payable to the R-L household retroactive to the date of imposition of the penalty. Notice of the recalculated benefit amount shall be given to the household. The recalculation will be subject to administrative appeal.

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<sup>30</sup> AS 47.27.085(a)(1).

<sup>31</sup> \$821.00 for the first child, plus \$102 for each additional child. See AS 47.27.025(b)(2).

<sup>32</sup> See Ex. 2.31.

<sup>33</sup> The 2012 need standard for a family consisting of two parents and three children is \$1,685.00. 7 AAC 45.520(a)(1); *Alaska Temporary Assistance Manual* Addendum 2. The need standard is used, in part, to determine financial eligibility based on income. 7 AAC 45.470.

<sup>34</sup> *Id.* \$1,685.00 is the “need standard” shown on the calculation; 40 is the “penalty percent”; and \$674.00 is the “penalty amount.” One can infer the agency’s method of calculation because  $\$1,685.00 \times 0.4 = \$674.00$ .

Dated this 26th day of September, 2012.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

## **Adoption**

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5<sup>th</sup> day of October, 2012.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]