

May 11, 2014.⁶ During that shift Ms. G began to feel sick. She associated the illness as a response to the espresso machine cleaner, which bothered her since her first shift. Ms. G went to the emergency room on May 13, 2014 for her cough.⁷ Ms. G went to work several days, but continued to feel poorly especially when she had to use the cleaner. Ms. G went back to see the doctor on May 15, 2015.⁸ She let her manager know that she was sick and believed she was allergic to the cleaner. Ms. G called in sick daily after that. On May 22, 2014, Ms. G's manager called and asked if she would be coming in for her shift. Ms. G explained she was still sick and would not be coming in.

Ms. G stated that her manager, T J, informed her "this is not working out and we'll need to let you go." No Names records indicate that Ms. G quit because she was allergic to the cleaner.⁹ Ms. G was offered full-time positions as either a maid or waitress.¹⁰ She did not accept those jobs because of health issues. Both Ms. J and D E, No Name's human resource manager during Ms. G's employment, are no longer employed at No Name.

Ms. G continued to feel poorly. She was diagnosed with persistent pneumonia and was prescribed four courses of antibiotics between May and July 2014.¹¹ A July 29, 2014, Health Status Report Form stated Ms. G's diagnoses as neuropathy, fibromyalgia, and emphysema.¹² The form also indicated that Ms. G could work full time, but that Ms. G would have to be able to get up and move and rest at odd times.¹³ Ms. G stated she could work a desk job, but not a waitress or housekeeper position.

III. Discussion

Because this case involves the reduction of benefits, the Division bears the burden of proof to establish that its imposition of the job quit penalty was correct.¹⁴ The evidence whether Ms. G was fired or quit was contradictory. However, this distinction is not determinative given the specific facts of this case and the Food Stamp and Temporary Assistance regulations.

⁶ G testimony.

⁷ Ex. 3.1.

⁸ Ex. 3.16.

⁹ Neff testimony; C testimony.

¹⁰ G testimony; C testimony.

¹¹ Ex. 3.29.

¹² Ex. 11.2.

¹³ Ex. 11.2.

¹⁴ 7 AAC 49.135.

A. Food Stamp Program

Food Stamps is a federal program administered by the State.¹⁵ The Food Stamp program has a work requirement. A person receiving or applying for Food Stamp benefits is required to be employed, looking for employment, or training for employment, unless that person is exempt from the work requirement.¹⁶ Ms. G is not exempt from the work requirement. As part of the work requirement, a person may “not voluntarily and without good cause quit a job of 30 or more hours a week.”¹⁷ A person who voluntarily and without good cause quits a job with a weekly wage equivalent to 30 hours at the federal minimum wage rate is subject to a penalty that makes him or her not eligible to receive Food Stamp benefits for a specified period of time.¹⁸ However, persons who quit a position that provides weekly earnings of less than what is earned 30 hours per week at a federal minimum wage position are exempt for the job quit penalty provision.¹⁹

Ms. G’s barista position paid \$9.00 per hour, 22.5 hours per week for a weekly wage of \$202.50. A 30 hour per week, federal minimum wage position pays \$217.50.²⁰ Because Ms. G’s barista position paid less than a 30 hour per week minimum wage position, she is exempt from the job quit penalty. As a result, the Division was not justified in imposing a first time job quit penalty against her.

B. Temporary Assistance Program

A family is not eligible for ATAP benefits if the family’s need for benefits “is due to a refusal or voluntary separation from suitable employment” by an adult applicant in the household.²¹ The period of ineligibility varies depending on whether there have been prior refusals or separations.

The record is unclear whether Ms. G was terminated or quit. Regardless of how Ms. G’s separation is labeled, another question must be answered before a job quit penalty can be imposed. That question is whether the family’s need is “due to” the job quit.

Under Department of Health and Social Services regulation 7 AAC 45.970(a), if a job quit occurs within 60 days before submitting an application, there is “a rebuttable presumption”

¹⁵ 7 C.F.R. § 271.4(a).

¹⁶ 7 C.F.R. § 273.7(a)(1).

¹⁷ 7 C.F.R. § 273.7(a)(1)(vii).

¹⁸ 7 C.F.R. § 273.7(j)(2)(i); 7 C.F.R. § 273.7(j)(3)(ii); *Alaska Food Stamp Manual* §602-1I(2)(a).

¹⁹ *Alaska Food Stamp Manual* §602-1I(1)(b).

²⁰ The federal minimum wage is \$7.25 per hour. $7.25 \times 30 = 217.50$. Alaska’s minimum wage is \$7.75 per hour. http://labor.state.ak.us/lss/forms/employee_faq.pdf

²¹ AS 47.27.015(c) (emphasis added).

that the household's need for ATAP benefits is due to the job quit. The presumption can be overcome by contrary evidence.

In this case, Ms. G would have made \$810 per month had she remained employed at No Name as a barista.²² There is no evidence that the household has other income.

To be eligible for ATAP benefits, a household must meet both a gross income test and a net income (need) test.²³ \$810 per month is below the gross income amount for a three person household size, and is also below the net income threshold, even before calculating exclusions.²⁴ The record also shows that Ms. G received ATAP benefits prior to her employment at No Name. Accordingly, the presumption set up by 7 AAC 45.970(a) is rebutted, and this household's need for ATAP benefits is not "due to" Ms. G's job quit.

The record shows that the one month ineligibility period the agency imposed based on this job quit cannot be sustained, because the statutory "due to" criterion has not been met.

C. Work refusal

Based on Ms. G's medical records and testimony, she would not have been able to perform, at least at the time of her separation, the job duties of either a full-time maid or waitress position.²⁵ Therefore, the Division's imposition of a job quit penalty based on work refusal is also unsupported by the record.

IV. Conclusion

Because Ms. G's separation from No Name does not meet either the Food Stamp or ATAP job quit criteria, the Division's decision to impose a first time job quit penalty against Ms. G is reversed.

DATED December 2, 2014.

Signed

Bride Seifert

Administrative Law Judge

²² Alaska Temporary Assistance Manual §775.

²³ 7 AAC 45.470.

²⁴ Ex. 1. The household is composed of Ms. G and two children. See 7 AAC 45.520(a)(1), (b); DHSS Temporary Assistance Need Income and Payment Standards 2014, (http://dpaweb.hss.state.ak.us/manuals/ta/addenda/addendum_2.htm).

²⁵ Under the federal regulations, illness may be good cause to quit or refuse work. See 7 C.F.R. §273.3(i)(1)&(2).

Adoption

The undersigned, by delegation from 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 29th day of December, 2014.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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