

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

In the Matter of )  
 )  
C J ) OAH No. 20-0120-ADP  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

C J receives Adult Public Assistance benefits. After his Social Security benefits were increased, his monthly Adult Public Assistance benefits were decreased from \$11 to \$7. Mr. J disagreed with the reduction and requested a hearing to challenge that reduction.

Mr. J's hearing was held on February 24, 2020. Mr. J represented himself and testified on his own behalf. Sally Dial, a Fair Hearing Representative with the Division of Public Assistance (Division) represented the Division and testified on its behalf.

The facts in this case are not disputed. As a purely legal matter, because Mr. J is legally married to and lives with Ms. H, that joint income must be taken into account when Mr. J's monthly Adult Public Assistance is calculated. This means that when Mr. J's and Ms. H's Social Security benefits both increased, his Adult Public Assistance benefits decreased. As a result, the reduction of Mr. J's monthly Adult Public Assistance benefit is upheld.

**II. Facts**

Mr. J is married to F H. They are both disabled, and both receive Adult Public Assistance. They live together with their two grandchildren whom they raise. In calendar year 2019, Mr. J received \$913 per month in federal Social Security benefits. Ms. H received \$771 per month in federal Social Security benefits, which resulted in them receiving a total of \$1,684 in monthly Social Security income.<sup>1</sup>

In calendar year 2019, Mr. J was receiving \$11 per month in Adult Public Assistance benefits. Ms. H was receiving \$10 per month in Adult Public Assistance benefits.<sup>2</sup>

Effective January 1, 2020, Mr. J's monthly Social Security payment increased to \$927. Ms. H's payment increased to \$783. This was a \$26 gain in their monthly joint Social Security

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<sup>1</sup> Mr. J receives federal Social Security Disability Income. Ms. H receives federal Supplemental Security Income; Ex. 2.

<sup>2</sup> Ex. 4.1.

income from \$1,684 to \$1,710.<sup>3</sup> The Division then reduced Mr. J's and Ms. H's Adult Public Assistance monthly benefit to \$13, with \$7 allocated to Mr. J and \$6 to Ms. H. It arrived at this figure by allowing them a deduction of \$20, and then subtracting the result of \$1,690 from the Adult Public Assistance payment standard of \$1,703. It then took the result of \$13, and allocated it between Mr. J and Ms. Grey, reducing their monthly payments to \$7 and \$6, respectively.<sup>4</sup>

Mr. J credibly testified that his and Ms. H's income was inadequate to support them and their two grandchildren. He also described the ongoing financial challenges that they face on a daily basis to keep a roof over their heads, keep food on the table, keep gasoline in the car, and provide for their two grandchildren who live with them.<sup>5</sup>

### **III. Discussion**

#### *A. Adult Public Assistance Benefit Payment Determination*

The Adult Public Assistance program provides financial assistance to aged and disabled individuals. There are a number of factors involved in determining eligibility in addition being either aged or disabled, including financial factors. When determining if an individual is financially eligible, their marital status is a factor. Married persons living together have their joint income counted in determining eligibility.<sup>6</sup>

If an applicant is financially eligible for Adult Public Assistance, the amount of assistance that he or she receives is dependent upon the applicant's income. The applicant's income includes not only his or her own income, but also that of his or her spouse.<sup>7</sup> Both SSDI and SSI payments are countable as income and classified as "unearned income."<sup>8</sup>

An applicant's benefit level is arrived at by taking his or her income, including a spouse's income, deducting \$20,<sup>9</sup> and subtracting the result from the applicable payment standard.<sup>10</sup> The

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<sup>3</sup> Ex. 4.

<sup>4</sup> Ex. 5; Ms. Dial's testimony.

<sup>5</sup> Mr. J's testimony.

<sup>6</sup> "The income and resources of an applicant's spouse who is living with him are considered the income and resources of the applicant." 7 AAC 40.240(a). The term "spouse" is defined in regulation as including "persons who are legally married" as well as unmarried couples, residing together, who hold themselves out as being married. 7 AAC 40.240(b).

<sup>7</sup> 7 AAC 40.240(a); 7 AAC 40.300(a).

<sup>8</sup> 7 AAC 40.300(a)(1) and (3).

<sup>9</sup> The list of applicable deductions ("income exclusions") is contained in 7 AAC 40.320 – 330. For individuals such as Mr. J and Ms. H, whose income consists of Social Security benefits, the only available deduction is a \$20 deduction. 7 AAC 40.320(a)(23). It should be noted that Mr. J and Ms. H receive Temporary Assistance benefits for their two grandchildren. *See* Ex. 2. The Division is not counting that as income for the purposes of calculating Mr. J's Adult Public Assistance benefit amount.

<sup>10</sup> 7 AAC 40.350; 7 AAC 40.370.

payment standard varies depending upon the applicant’s domestic situation. There are six different payment standards set by regulation:

- An eligible individual who lives independently or in an assisted living home;
- An eligible individual who lives in another person’s home and receives “in kind income in the form of both food and shelter;”
- An “eligible couple” either living independently or in an assisted living home;
- An “eligible couple” where they live in another person’s home and both receive “in kind income in the form of both food and shelter;”
- A couple where “only one individual is eligible” who live either independently or in an assisted living home; and
- A couple where “only one individual is eligible” and where they live in another person’s home and both receive “in kind income in the form of both food and shelter.”<sup>11</sup>

The 2020 payment standard for an “eligible couple” living independently, which was the standard utilized by the Division for Mr. J and Ms. H, is \$1,703.<sup>12</sup>

*B. Prior Cases Involving Mr. J’s and Ms. H’s Adult Public Assistance Benefits*

Mr. J and Ms. H have had their Adult Public Assistance benefits reduced several times over the past years based upon a raise in their federal Social Security benefits. They have challenged the reduction on a number of occasions, under a variety of theories. The first such challenge was in 2011, where Mr. J and Ms. H jointly challenged the reduction.<sup>13</sup> Mr. J filed a challenge in 2015.<sup>14</sup> Ms. H and Mr. J both filed separate challenges in 2017.<sup>15</sup> Ms. H filed a subsequent challenge in 2019.<sup>16</sup> The decisions in each of these case upheld the Adult Public Assistance payment reduction. Neither Mr. J nor Ms. H filed an appeal in any of these cases.

*C. Analysis*

Mr. J’s most recent challenge, prior to this case, to a reduction in his Adult Public Assistance benefits due to an increase in Social Security benefits, was in 2017. In that case, he raised an argument that because he receives Social Security Disability Income, that the Adult

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<sup>11</sup> 7 AAC 40.310(a).

<sup>12</sup> 7 AAC 40.310(a)(2) and (c). *Alaska Adult Public Assistance Manual Addendum 1.*

<sup>13</sup> Department of Health and Social Services’ Office of Hearings and Appeals Case No. 11-FH-503.

<sup>14</sup> Office of Administrative Hearings Case No. 15-0662-APA.

<sup>15</sup> Ms. H’s case was Office of Administrative Hearings’ Case No. 17-1328-APA. Mr. J’s case was Office of Administrative Hearings’ Case No. 17-1329-APA.

<sup>16</sup> Office of Administrative Hearings’ Case No. 19-0074-APA.

Public Assistance regulations, which arrive at its “payment standard” by reference to Supplemental Security Income payment standards, were invalid.<sup>17</sup> The decision in that case is not dispositive of this one because Mr. J has presented a new legal argument in this case.

Mr. J did not dispute either the income figures or the limited deduction (\$20) afforded him by the Division. Instead he argued that he and Ms. H should not have their income jointly counted when arriving at their Adult Public Assistance benefit amount. While this is an argument that has been made repeatedly before by Mr. J, he presented a new version of the argument, being that because there is no regulatory definition for the term “couple” or “eligible couple,” that the Division errs when it treats married couples such as he and Mr. H as an “eligible couple” for financial eligibility and benefit determinations. However, by context, given that the regulation setting the payment standard refers to either an “individual” or a “couple,” the term “couple” would refer to a marital couple. Similarly, because the regulation differentiates between an “eligible couple” and a couple “where only one individual is eligible,” the context makes it clear that the term “eligible couple” refers to a marital couple where both are eligible for Adult Public Assistance benefits. This is consistent with another Adult Public Assistance regulation, regarding how benefits are computed which refers to “individuals and couples.”<sup>18</sup>

The Division therefore followed its regulations when it added Mr. J’s and Ms. H’s income together to arrive at their countable income for Adult Public Assistance benefits, and then used that income to determine the monthly benefit amount for an “eligible couple.” Accordingly, the Division’s action reducing Mr. J’s Adult Public Assistance monthly benefit amount to \$7 is upheld.

#### **IV. Conclusion**

The Division’s action reducing Mr. J’s Adult Public Assistance monthly benefit amount to \$7 is upheld.

Dated: March 11, 2020

Signed  
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Lawrence A. Pederson  
Administrative Law Judge

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<sup>17</sup> See Office of Administrative Hearings’ Case No. 17-1329-APA.

<sup>18</sup> 7 AAC 40.370(b).

## 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 25th day of March, 2020.

By: *Signed* \_\_\_\_\_

Name: Andrew M. Lebo

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]