

L.G. and B.E. work at the same business. Their work hours do not overlap. L.G.’s work shift begins at 5:00 p.m. when B.E.’s work shift ends. They exchange the child in passing when L.G. starts work.³

B.E. is the assistant manager at the business. She works Monday through Friday from 11:00 a.m. to 5:00 p.m. L.G. is the swing shift worker for the business. He works Tuesday through Friday from 5:00 p.m. through 12:00 a.m. He also frequently covers for staff shortages (vacations, sick leave, etc.) in addition to his normal work schedule.⁴ The business normally closes at midnight. However, if it is busy, L.G. has the discretion to extend the hours. He also cleans the business after closing. He lives only a short distance away. On a normal night, he is home by 1:00 a.m. After he returns home from work, he is up for several additional hours. He requested the childcare time to allow him to sleep while B.E. is working.

When L.G. and B.E. had received childcare previously, they were approved for a limited amount based upon them having an overlap on their work hours. Upon its review of the renewal application and the parties’ work hours, the Division denied the application for childcare assistance because L.G.’s and B.E.’s work hours did not overlap and neither being a night shift worker.⁵

III. Discussion

The Department of Health is required by statute to “implement and administer a program to assist in providing day care for the children of low and moderate income families.”⁶ The Division’s childcare program’s regulations provide coverage based upon the “schedule of eligible activities for each parent, the care need of the child, and the child care provider’s hours of operation.”⁷ The relevant eligible activities for this case are “working” and “sleeping up to eight hours before or after parent works a night shift.”⁸ What this means is that childcare assistance is available to parents, in the case of a two parent family such as L.G. and B.E., only when they are simultaneously engaged in eligible activities.

³ Ex. 8.1.

⁴ Exs. 5.3 – 5.4.

⁵ Exs. 10 – 10.1. This January 19, 2023 notice replaced an earlier notice acknowledged by the Division as being defective. *See* Ex. 6 – 6.1.

⁶ AS 47.25.001(a)(1).

⁷ 7 AAC 41.310(a).

⁸ 7 AAC 41.310(b)(1) and (4).

The facts of this case show that L.G. and B.E.’s work hours do not overlap. They therefore are not both engaged in an eligible activity at the same time. On its face, this means that they are not eligible to receive childcare assistance. However, given L.G.’s work hours, it is necessary to determine whether his work hours provide him with eligibility so that he can sleep “before or after [he] works a night shift.” If so, then that would be an eligible activity, which would in its turn grant eligibility for childcare assistance.

The childcare assistance regulations state that “‘night shift’ means employment requiring a minimum of six work and travel hours between 8:00 p.m. and 6:00 a.m.”⁹ It is therefore necessary to determine whether L.G. works a minimum of six hours between 8:00 p.m. and 6:00 a.m. The facts show that he is normally home by 1:00 a.m. when he works. This is five hours of work after 8:00 p.m., not six hours of work occurring after 8:00 p.m. Regardless of the fact that L.G. is understandably awake for several hours after he comes home from work, his work hours do not meet the regulatory definition of night shift work. This means that he is not eligible for childcare assistance while he sleeps.

IV. Conclusion

L.G. and B.E.’s work hours do not overlap. Nor does L.G.’s late night work hours meet the regulatory definition of a “night shift.” As a result, they do not meet the regulatory requirements that would make them eligible for CCAP coverage. Accordingly, the denial of L.G.’s application for childcare assistance is upheld.

Dated: January 31, 2023

Signed

Lawrence A. Pederson
Administrative Law Judge

⁹ 7 AAC 41.990(a)(41).

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 14th day of February, 2023.

By: Signed _____
Name: Lawrence A. Pederson
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.]