

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1584 SHESS HB 357 1984

May 27, 1982

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3171.00/month</u>
State Expense	2367.00 X 12 = \$28404.00

II. 68 year old male
Ketchikan, Alaska

Severe emphysema with 5% lung capacity, receives continuous oxygen, slow general deterioration. Bed rest except up for 2 meals per day. Has a very tenacious hold on life, astounds medical staff by his survival day to day.

Recommendation: No change.

Financial Situation

<u>Income</u>	
SSA	\$644.90/month
ALB	250.00/month
Retirement	<u>143.04/month</u>
	1037.94/month

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3171.00/month</u>
State Expense	2204.00 X 12 = \$26,448.00

III. 77 year old male
Kodiak, Alaska

Receives insulin injection daily, unable to do it himself. Blindness necessitates verbal guidance in ambulating (with walker), dressing, bathing, grooming, and eating. Wife visits frequently and takes him home on Sundays. Two youngest sons, aged 17 and 19, are not in school or working, but still live at home with the mother. The younger son may go away to school in the summer or fall. Because all the family is in Kodiak and relatives do have contact with the patient, moving to the Anchorage Pioneer Home would be a hardship.

Recommendation: No change.

May 27, 1982

Financial SituationIncome

Retirement	\$266.00/month
SSI	511.00/month
ALB	250.00/month
	<u>1027.00/month</u>

Expenses

Personal Needs	822.00/mo. (family support)
Nursing Home	<u>3840.00/month</u>

State Expense

3635.00 X 12 = \$43,620.00

- IV. 79 year old female
Fairbanks, Alaska

Condition deteriorating rapidly, total care, unaware of surroundings.

Recommendation: No change.

Financial SituationIncome

SSA	\$440.20/month
Retirement	953.05/month
	<u>1393.26</u>

Expenses

Personal Needs	70.00/month
Nursing Home	<u>2700.00/month</u>

State Expense

1376.74 X 12 = \$16,520.88

- V. 24 year old male
Fairbanks, Alaska

Semi-comatose, tube feeding, recurrent pneumonia. Total care.

Recommendation: No change.

Financial SituationIncome

SSA	\$892.00/month
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May 27, 1982

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>2700.00/month</u>
<u>State Expense</u>	1878.00 X 12 = \$22,536.00

VI. 73 year old female
Anchorage, Alaska

Has never recovered from a series of strokes 1 1/2 years ago. Requires total care including bathing, dressing, and feeding. Mumbles but does not speak. Appears to be confused. Does not walk, spends her time in a reclining wheel chair. Requires 2 person transfer. Medical condition stable. Family visits several times per week.

Recommendation: No change.

Financial Situation

<u>Income</u>	
VA	\$607.00/month
Civil Service Retirement	845.00/month
SSA	302.10/month
Family	750.00/month
	<u>2504.10</u>

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3245.70/month</u>
<u>State Expense</u>	811.60 X 12 = \$9,739.20

VII. 63 year old female
Anchorage, Alaska

Multiple sclerosis, condition stable with gradual deterioration. Only recent change in condition is increased difficulty swallowing. Able to feed herself using adaptive equipment with moderate assistance from staff (cutting food and positioning it). Requires total care--dressing, grocerying, bathing, transferring. Must be turned and positioned every 2 hours to prevent skin breakdown. Mentally alert.

Recommendation: Nursing care unit at Anchorage Pioneer Home when completed.

Financial Situation

May 27, 1982

<u>Income</u>	
SSA	\$ 88.10/month
Retirement (Civil Service)	489.10/month
Retirement (Teachers)	1406.99/month
	<u>1984.19</u>
<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3245.70/month</u>
<u>State Expense</u>	1331.51 X 12 = \$15978.12

VIII.59 year old female
Fairbanks, Alaska

Quadriplegic that is being maintained at home by husband and close friend. No movement except head and eyes, must be constantly cared for.

Recommendation: No Change.

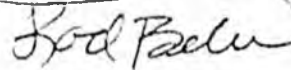
Financial Situation

<u>Income</u>	
SSA	\$670.00/month
Husband/Odd Jobs	500.00/month
	<u>1170.00</u>
<u>Expenses</u>	
Living Costs at Home	1170.00/month
Daily Nursing Services	<u>2000.00/month</u>
<u>State Expense</u>	2000.00 X 12 = \$24000.00

TOTAL STATE EXPENSE FOR GRM EXCEPTIONS \$164,710.20

If I can be of any assistance in determining a method of continuing State support for these individuals please call on me. As you know we feel we have no alternative but to terminate assistance to these individuals in light of the Attorney General's recent opinion.

Sincerely,



Rod Betit,
Director

cc: Helen Beirne
Allen Korhonen
Bob Ogden

MEMORANDUM

State of Alaska *David*

to: Allen Korhonen, Deputy Commissioner
Administrative Management
Department of Health & Social Services

DATE: January 18, 1982

FILE NO: DOCUMENT NO. 127-82

TELEPHONE NO: 465-3355

R. Betit
FROM: Rod Betit, Director
Division of Public Assistance
Department of Health & Social Services

SUBJECT: GRM Exceptions

On December 31, 1981 we agreed to fund the continuation of current GRM Exceptions from monies unspent in the Catastrophic Illness component. The Division intends to follow that course and is moving funds within the BRU to accomplish this. This should relieve the problem for the remainder of FY82.

Subsequent to that December 31 meeting, I also requested my medical staff to re-examine the circumstances around each of the eight remaining GRM Exceptions. A copy of their report is attached for your information.

cc: Bob Ogden

on 4/15/82
As per conversation w/ Rod
Betit, one person has died.
Nancy Grozek

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 25, 1982

Honorable Vic Fischer
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: General Relief Medical
Assistance

Dear Senator Fischer:

You have asked whether general relief medical assistance ^{1/} can be provided on a permanent basis to individuals who are not eligible for assistance under regulations of the Department of Health and Social Services.

Under AS 47.25.120, the department may provide general relief medical assistance "to a needy person who is eligible under the regulations of the department". The only exception to the requirement that eligibility be prescribed by regulation is contained in AS 47.25.250:

Sec. 47.25.250. TEMPORARY RELIEF. When a needy person is not entitled to assistance under AS 47.25.120 - 47.25.-300 and has no relatives in the state liable for his support under AS 47.25.-230 and 47.25.240, the needy person may receive temporary assistance in the form and amount which the department considers necessary. Temporary assistance for needs other than transportation and medical care may not exceed \$80 per person per month.

^{1/} General relief medical assistance is a species of financial assistance provided under authority of AS 47.25.120-47.25.300. See, AS 47.25.300(1).

Honorable Vic Fischer
Senator

May 25, 1982
Page 2

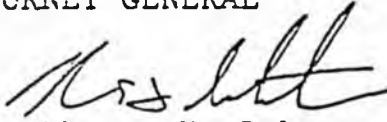
It is noteworthy that this section refers only to the provision of temporary assistance.

The discretion of the Department of Health and Social Services is quite broad with respect to the establishment of eligibility standards. 2/. See, AS 47.05.010(9). However, the department does not have discretion to ignore those standards once they have been established except as necessary to address exigencies of a temporary nature.

If you have further questions in this regard, please do not hesitate to contact this office.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Thomas H. Robertson
Assistant Attorney General

THR:tc

cc: The Honorable Helen D. Beirne
Commissioner, Department of Health
and Social Services

2/ Any distinctions drawn by regulation must comport with the equal protection clauses of the state and federal constitutions. In State v. Erickson, 574 P.2d 1, 12 (Alaska 1978), the Alaska Supreme Court outlined the general approach to be used in analyzing equal protection claims under the more restrictive state law:

Initially, we must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

CHARLIE PARR
ALASKA LEGISLATURE

S.R. Box 50599
Fairbanks, Alaska 99701
(907) 456-5029

Pouch V
Juneau, Alaska 99811
(907) 465-4907

May 6, 1982

MEMORANDUM

TO: All Members of the H.E.S.S. Committee

FROM: Senator Charlie Parr

SUBJECT: HB 357

After listening to the testimony on this bill it seems to me that the department was going beyond the requirements of law when it began giving state payments to the blind, elderly and disabled based on an initial tentative decision and without waiting for federal SSI determination. Such action had not been practiced before and was at least interim help to the people involved. The problem which has arisen is purely because of the link between such aid and medicaid benefits.

Federal policy on both SSI and Medicaid now seems to make this a risky venture for the state because in a period of limited revenues, federal penalties reduce the number of people we can help. We are in a box.

As I see it, we have several possibilities for action on HB 357:

1. Send forward only the full cost of care compromise which was adopted by the providers and the department and let the adult public assistance part of the bill die. This keeps the status quo.
2. Send forward the full cost of care portion plus the clean-up language on adult public assistance. This again keeps the status quo.
3. Agree with the department--give the power to contract with the federal government. Deny benefits until

and if federal determination of eligibility for SSI is given.

4. Agree with legal services. Give the benefits at the time the state determines eligibility and absorb any penalties when the federal government denies benefits.

If you will let me know your preferences as soon as possible, we will try to have a draft bill ready for you at the next meeting.

POSITION PAPER

CS FOR HOUSE BILL NO. 357 (RULES) am

"An Act relating to Adult Public Assistance."

PART I: OVERVIEW:

CSHB 357 is a very important piece of legislation to the Department for two primary reasons:

- (1) CSHB 357 makes long overdue technical changes to the Department's Adult Public Assistance Programs, and clarifies the Legislature's intent relative to administration of these programs. Failure to resolve this issue this session will result in a ruling from the courts where the issue currently rests (Moore V. Beirne).
- (2) CSHB 357 also seeks to repeal provisions of AS 47.40 dealing with reimbursement of residential child care providers in Alaska. The Department's anticipated FY83 funding level for this program category cannot sustain the current level of court ordered placements unless the full cost of care provisions in AS 47.40 are repealed.

Each of these two issues are discussed in greater detail in Part II of this position paper. The Department's position on CSHB 357 is presented in Part III of this paper.

PART II: DETAILED DISCUSSION:

A. Adult Public Assistance Issues:

- (1) Before 1974, Alaska's three adult assistance programs (APA) were state administered but funded equally with federal and state funds. In 1974, SSI, a federally funded and federally administered welfare program, established a nationwide payment level to the needy aged, blind and disabled. Because that payment level was well below the amounts provided by Alaska's programs, the Legislature elected to continue Alaska's programs, supplementing the federal payments with a state funded and state administered supplemental program. The Department has continued to operate the APA programs in that manner for the intervening 8 years. In a majority of cases, if an individual is not found eligible by the federal government, they do not receive a supplemental payment from the State. While these individuals are awaiting an eligibility decision from the federal government, they receive only the State supplemental payment. The federal payment is withheld until a final decision is made. The State has been challenged in court on this issue by Alaska Legal Services (ALS). ALS contends the Legislature intended the Department to pay both the federal and state share of benefits pending a federal eligibility decision. If the Department loses this challenge in court due to an absence of Legislative clarification, the end result will likely be that these individuals will receive neither the state nor the federal part of the benefits pending a federal eligibility decision. This end result would occur as APA funding levels are not sufficient to allow us to substitute state for federal funds to these applicants, nor do we believe the Legislature would wish us to make such expenditures.

A. APA Issues Continued:

CSHB 357 changes statutes to better reflect the existence of the SSI program and the supplemental nature of the state program. Secondly, it significantly shortens the existing statutes by repealing all Aid to the Disabled and Aid to the Blind statutes which simply repeat provisions in the Old Age Assistance statutes. It does this by modifying the Old Age Assistance statutes to include the Blind and Disabled subcategories under the program term "Adult Public Assistance". Finally, it corrects an important drafting error in AS 47.25.960 in which a permanently and totally disabled person was only defined as "a needy recipient of the State who is not eligible for assistance from another public agency or department providing similar services in the State".

- (2) A second APA issue concerns contracting administration of certain Departmental programs to other agencies or persons. CSHB 357 originally contained a provision adding a new Section 47.05.015 entitled CONTRACTS which was deleted by House floor amendment. This new section would have made it clear that the Department was authorized to contract for administration of certain programs. Of particular concern to the Department is the desire to contract for federal administration of the three Adult Public Assistance programs in FY83. Whereas the federal government now completely controls the eligibility rules for these programs, it would be more cost-effective for the federal government to issue a single check to these individuals with the state portion included. Significant administrative savings can be achieved and a high potential for erroneous payments reduced due to the single point of payment control.

B. Repeal of Full Cost of Care:

In addition to the changes in the public assistance statutes, Committee Substitute for House Bill No. 357 (Rules) am includes a repealer for AS 47.40 in Section 20 of the Bill. Chapter 40, Purchase of Services, is commonly referred to as the full cost of care statute. The full cost of care statute, enacted in 1970, was designed to establish the method of calculating how the State would purchase services from the residential child care providers and from foster homes. Section 47.40.040 (Determination of Full Cost of Services) outlines the method the Department must utilize to determine the rates for child care facilities. "Full cost of services shall be determined by the per person, per day costs in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the Department, is being determined."

Each year rates are calculated based on each facility's prior year financial experience. The total allowable cost for operating the facility is divided by the number of days of care provided to children during that year. This figure serves as a base daily rate upon which to increase rates further by an inflation factor. Over the years some major problems have developed with this method of calculating rate structures for the providers. First, when calculating the total cost for the facility in the prior year, no consideration is given to the vacancy rate in the facility.

If the facility is licensed for 10 children, but cares for only 5, the operating cost in the prior year will often include the overhead cost for the entire 10 beds, thereby effectively increasing the rates. In addition, the rate is determined by dividing the overall operating cost by the census and, therefore, a low census will result in a higher rate in the upcoming year.

This vacancy factor also creates problems of cycles of feast and famine for facilities should their occupancy rate rise and fall. In a year where the occupancy is low, the facility may have difficulty managing. However, their rates will increase significantly in the next year. Should their occupancy suddenly increase, the raise in rates will result in the facility receiving more money than is necessary for ongoing operations. Similarly, if occupancy rates were high in the prior year upon which rates for this year were calculated, and the number of children decrease, this year's rate will not adequately cover the operating expenses. In short, the full cost of care system of calculating rates tends to create uncertainty for the facilities and often results in the daily rates the State pays for care not accurately reflecting the cost of actual services provided.

Secondly, because the daily rates the State must pay to facilities this year is based on total expenditures from last year, the facilities have claimed that the State must include in the rate determinations all other income received by the facility, be it private donations, community contributions, and even state and federal sources of funds. This interpretation of the statutes means that the cost to the State can rise dramatically in a cumulative fashion, and that local communities are not encouraged to provide ongoing support for facilities benefiting the community. Donations and community support become not a source of basic continuing resources, but a lever to increase State purchase costs in future years.

The repeal of AS 47.40 would provide the Department with an alternative to the full cost of care method of calculating facility rates. If AS 47.40 is repealed, the Department will utilize the existing State laws and procedures for purchasing these services through contracting. The major benefit for the State would be purchasing services the Department of Health and Social Services needs as outlined in a Request for Proposals as opposed to accepting what is available from child care agencies. The Department would also be able to contract for the number of beds to meet their needs in a given community, thus eliminating the payments for a large number of empty beds.

During the FY83 budget process, the Department's budget has been significantly reduced in the area of residential child care. The House budget reduced this component by 2 million dollars; the Governor's revised budget reduces this component by 1 million dollars; and the Senate version of the FY83 budget also reduces it by 1 million dollars. The Department cannot meet these budget reductions without a significant decrease in placements unless AS 47.40 is repealed or significantly amended. The Department favors the repeal of AS 47.40 enabling the Department to contract with individual providers resulting in a significant cost saving without a reduction in the level of services.

III. DEPARTMENTAL POSITION:

In summary, CSHB 357 has become an extremely critical bill to the Department. The Department strongly supports CSHB 357 but recommends the restoration of the CONTRACTS section, AS 47.05.015 to the bill with the language amendments requested in our April 12, 1982 letter to Representative Adams.

Recommended By: Rod Betit
Rod Betit, Director
Division of Public
Assistance

Date: April 23, 1982

Recommended By: John Pugh
John Pugh, Director
Division of Family and
Youth Services

Date: 4/23/82

Approved By: Helen D. Beirne
Helen D. Beirne
Commissioner
Department of Health and
Social Services

Date: 4/23/82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 357 (Rules) am
Title "An Act relating to Adult Public Assistance."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected _____
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)		-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME		-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

CS for House Bill No. 357 (Rules) am would have not fiscal impact on the Department of Health and Social Services.

IV. DATE 4/23/82 PREPARED BY *John R. Pugh* John R. Pugh, Director
AGENCY Division of Family and Youth Services
Original: Legislative Finance PHONE 465-3170
cc: Budget and Management
Prime Sponsor (First Legislator Named)
35-001 (rev. 12/81)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ODIS MOORE and GLEE OHLSSON,)
on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

vs.)

HILEN D. BEIRNE, in her capacity)
as Commissioner of Health and)
Social Services; and ROD BETIT,)
in his capacity as Director of)
The Division of Public Assistance,)

Defendants.)

RECEIVED

Department of Law

NOV 9 1981

Office of the Attorney General
Juneau, Alaska

RECEIVED
Department of Law
Juneau, Alaska

Civil Action No. 3AN-81-4396

AM NOV 9 1981 PM
7,8,9,10,11,12,1,2,3,4,5,6
A

ORDER STRIKING
AFFIRMATIVE DEFENSES

Plaintiffs having moved that defendants' first, second, third, and fifth affirmative defenses be stricken pursuant to Alaska Civil Rule 12(f) as immaterial, impertinent, or insufficient, arguments of counsel having been heard, and this Court having found that defendants first, second, third, and fifth affirmative defenses are immaterial, impertinent, or insufficient,

IT IS HEREBY ORDERED:

That defendants first, ~~second, third, and fifth~~ affirmative defenses ^{is} ~~be~~ stricken.

DATED this 3 day of November, 1981.

I certify that on 11-3-81
a copy of the above was mailed to each
of the following at their addresses of
record: J. O'Connell, E. P. Kennedy
Secretary M. V. Lee

Daniel A. Moore Jr
JUDGE OF THE SUPERIOR COURT

Secretary to Judge Moore
Plaintiff request to strike Defendants
second, third and fifth affirmative defenses
is denied for the reason that said defenses
raise issues of fact and law, which after discovery
is completed and adequate briefs are submitted
may present issues appropriately decided by
Summary Judgment motions or Trial.

11/3/81

Daniel A. Moore Jr

SEP 28 1981

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
615 "H" STREET, SUITE 100
ANCHORAGE, ALASKA 99501
(907) 272-9431

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ODIS MOORE and GLEE OHLSSON,)
on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

vs.)

HELEN D. BEIRNE, in her capacity)
as Commissioner of Health and)
Social Services; and ROD BETIT,)
in his capacity as Director of)
The Division of Public Assistance,)

Defendants.)

No. 3AN 81-4396 CIV

ANSWER TO FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW the defendants, by and through the Office of the Attorney General, and answers plaintiffs' first amended complaint for declaratory and injunctive relief as follows:

I.

PRELIMINARY STATEMENT

1. Admit the allegations in paragraph 1 with the exception of the allegation that the State of Alaska has failed to fully and properly administer a state program.

2. Admit.

3. Admit.

4. Admit that the division, through the department, has determined that certain disabled adults need \$473.00 per month to live at a standard compatible with health and well-being, and deny each and every other allegation of plaintiffs' paragraph 4.

5. Insofar as plaintiffs' paragraph 5 states allegations against defendants, they are denied.

6. Plaintiffs' paragraph 6 is a statement of the relief they are seeking, and does not need to be answered.

///

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE, BRANCH
225 L STREET, SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: 274-3551

II.

PLAINTIFFS

A. PLAINTIFF ODIS MOORE

7-9. Defendants are without information sufficient to admit or deny these allegations except that supplied by plaintiffs, but see no reason to doubt plaintiffs' allegations.

10. Plaintiffs' paragraph 10 states a conclusion which can only be drawn after final decision by the S.S.I. Agency, and therefore defendants must deny plaintiffs' allegation.

11. Admit that plaintiff Moore presently receives AD assistance, and that that assistance is his only source of income, but denies the amount.

12. Deny that on July 1, 1981, the APD payment standard applicable to certain individuals was raised from \$473.00 to \$526.00 per month.

13. Admit that the calculation standard is correct but denies the amount.

14. Admit that the department has calculated plaintiff's AD benefits in the manner described above, and admit that plaintiff Moore does not now receive SSI benefits, but deny each and every other allegation in plaintiffs' paragraph 14.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit that the hearing authority, in a hearing decision issued April 20, 1981, determined that plaintiff Moore was entitled to continue AD assistance pending the outcome of his SSI appeal, denied his demand that AD benefits be computed on the same basis as an eligible client, and upheld the department's practice of issuing an interim grant based on calculations set forth above. Defendants deny each and every other

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420 E. BIRCH ST., SUITE 100
ALBEMARLE, VIRGINIA 22901
PHONE: 870-3300

allegation of plaintiffs' paragraph 19.

20. Admit.

21. Admit.

22. Admit.

23. Are without information sufficient to admit or deny the allegations of plaintiffs' paragraph 23 and therefore deny same.

24. Are without information sufficient to admit or deny the allegations of plaintiffs' paragraph 24 and therefore deny same.

B. PLAINTIFF GLEE OHLSSON

25-27. Are without information sufficient to admit or deny the allegations of plaintiffs' paragraphs 25 - 27 except for information supplied by plaintiffs, but see no reason to deny plaintiffs' allegations.

28. Plaintiffs' paragraph 28 states a conclusion which can only be drawn after final decision by the S.S.I. Agency, and therefore defendants must deny plaintiffs' allegation.

29. Admit that plaintiff presently receives AD assistance, and that that assistance is his only source of income, but denies the amount.

30. Deny in that on July 1, 1981, the APD payment standards applicable to certain individuals was raised from \$473.00 to \$526.00 per month.

31. Admit that the calculation standard is correct but denies the amount.

32. Admit that the department has calculated plaintiff's AD benefits in the manner described above, and admit that plaintiff Moore does not now receive SSI benefits, but deny each and every other allegation in plaintiffs' paragraph 32.

33. Admit.

34. Are without knowledge sufficient to admit or

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OFFICE OF THE ATTORNEY GENERAL
AGGREGATE BRANCH
520 L. STREET, SUITE 1500
MONTGOMERY, ALABAMA 36102
PHONE 275-2500

deny the allegation of plaintiffs' paragraph 34, and therefore deny same.

35. Admit.

36. Are without knowledge sufficient to admit or deny the allegation of plaintiffs' paragraph 36, and therefore deny same.

37. Admit.

38. Admit.

39. Admit.

40. Admit.

41. Are without knowledge sufficient to admit or deny the allegation of plaintiffs' paragraph 41, and therefore deny same.

42. Deny.

III.

CLASS ACTION ALLEGATIONS

43. Defendants are unable to comment on why plaintiffs brought this action, and therefore deny all the allegations in plaintiffs' paragraph 43.

44. Deny.

45. Deny.

46. Deny.

47. Deny.

48. Deny.

49. Deny.

IV.

DEFENDANTS

50. Admit.

51. Admit.

V.

JURISDICTION

52. A jurisdictional statement is a matter of law and does not need to be answered.

///

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
MAIL ROOM, PHOENIX
420 L. STREET, SUITE 1000
PHOENIX, ARIZONA 85004
PHONE: 276-1233

VI.

STATUTORY AND REGULATORY FRAMEWORK

53. Admit.

54. Admit.

55. Admit.

56. Admit, except that the standards of need were modified effective July 1, 1981. A new memorandum was issued June 5, 1981, implementing modified standards.

57. Deny. Standards of need are as follows:

(a) \$426.00

(b) \$526.00

(c) \$638.00

(d) \$773.00

58. Admit that there are only three regulations currently in effect. The department proposed regulations in August of 1979, but these regulations have not been approved by the Attorney General's Office.

59. Admit.

60. Admit.

61. Admit in that the department is required to cooperate with the federal government under Alaska Statutes, that the Social Security Administration has developed a program to provide for reimbursement to the states for any person who is found eligible by the Social Security Administration, but deny that it is a full reimbursement program for benefits paid, and deny that the department has "refused" to participate in this program.

VII.

PRACTICES COMPLAINED OF

62. Admit.

63. Admit.

64. Admit.

65. Admit.

67. Admit.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE, ALASKA
475 L. STREET, SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: 276-7500

34

68. Admit.

69. Admit.

70. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 70 are admitted. All other allegations are denied.

71. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 71 are admitted. All other allegations are denied.

72. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 72 are admitted. All other allegations are denied.

73. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 73 are admitted. All other allegations are denied.

74. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 74 are admitted. All other allegations are denied.

75. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 75 are admitted. All other allegations are denied.

VIII.

CAUSES OF ACTION

A. First Cause of Action

76.. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

77. Plaintiffs' paragraph 77 states a conclusion of law and need not be answered, and is therefore denied.

///

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B. Second Cause of Action

78. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

79. Plaintiffs' paragraph 79 states a conclusion of law and need not be answered, and is therefore denied.

C. Third Cause of Action

80. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

81. Plaintiffs' paragraph 81 states a conclusion of law and need not be answered, and is therefore denied.

D. Fourth Cause of Action

82. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

83. Plaintiffs' paragraph 83 states a conclusion of law and need not be answered, and is therefore denied.

E. Fifth Cause of Action

84. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

85. Plaintiffs' paragraph 85 states a conclusion of law and need not be answered, and is therefore denied.

F. Sixth Cause of Action

86. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

87. Plaintiffs' paragraph 87 states a conclusion of law and need not be answered, and is therefore denied.

88. Plaintiffs' paragraph 88 states a conclusion of law and need not be answered, and is therefore denied.

G. Seventh Cause of Action

89. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

90. Plaintiffs' paragraph 90 states a conclusion of law and need not be answered, and is therefore denied.

91. Plaintiffs' paragraph 91 states a conclusion of law and need not be answered, and is therefore denied.

H. Eighth Cause of Action

92. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

93. Plaintiffs' paragraph 93 states a conclusion of law and need not be answered, and is therefore denied.

I. Ninth Cause of Action

94. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

95. Plaintiffs' paragraph 95 states a conclusion of law and need not be answered, and is therefore denied.

J. Tenth Cause of Action

96. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

97. Plaintiffs' paragraph 97 states a conclusion of law and need not be answered, and is therefore denied.

98. Plaintiffs' paragraph 98 states a conclusion of law and need not be answered, and is therefore denied.

K. Eleventh Cause of Action

99. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

100. Plaintiffs' paragraph 100 states a conclusion of law and need not be answered, and is therefore denied.

L. Twelfth Cause of Action

101. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

102. Plaintiffs' paragraph 102 states a conclusion of law and need not be answered, and is therefore denied.

IX.

INJUNCTIVE RELIEF

103. Deny.

104. Admit.

Defendants state their

FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief can

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600 S. STATE STREET, SUITE 1700
MONTGOMERY, ALABAMA 36102
(205) 261-2000

be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants are immune from suit pursuant to AS 09.50.250.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs mistake the category of aid for which they are eligible.

FOURTH AFFIRMATIVE DEFENSE

Defendants are in full compliance with the laws of the state and the federal government.

FIFTH AFFIRMATIVE DEFENSE

Defendants have fully implemented the law to the best of their ability in light of the availability of funds.

WHEREFORE, defendants pray for relief as follows:

1. That plaintiffs' complaint be dismissed with prejudice.
2. For costs and attorneys fees in defending this action.
3. For such other relief as this court deems just and fair.

DATED: September 3, 1981

WILSON L. CONDON
ATTORNEY GENERAL

By: Elizabeth Ruge Kennedy
Elizabeth Ruge Kennedy
Assistant Attorney General

The undersigned hereby certifies that on the 3rd day of September, 1981 the attached documents were mailed to the attorneys of record: O'Connell.

Margaret C. Hilkinson

Subscribed and sworn to before me the date last written

Norman M. Proctor

Notary Public
My Commission Expires 7-21-85

RECEIVED
OFFICE OF THE ATTORNEY GENERAL
300 SOUTH BROADWAY
ANCHORAGE, ALASKA 99501
PHONE: 273-3211

ODIS MOORE and GLEE OHLSSON,)
 on behalf of themselves and)
 all others similarly situated,)
)
 Plaintiffs,)
)
 vs.)
)
 HELEN D. BEIRNE, in her capacity)
 as Commissioner of Health and)
 Social Services; and ROD BETIT,)
 in his capacity as Director of)
 The Division of Public Assistance,)
)
 Defendants.)

Civil Action No. 3AN-81-4396

FIRST AMENDED
 COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF

(Alaska Civil Rule 23; Alaska
 Statutes §§ 22, 10, 020;
 44.62.010 et seq. 47.05.010;
 47.25.810; 42 U.S.C. §1983.

COME NOW the plaintiffs, by and through their attorney,
 ALASKA LEGAL SERVICES CORPORATION, and allege as follows:

I.

PRELIMINARY STATEMENT

1. This is an action brought by disabled adults against officials of the State of Alaska for their failure to fully and properly administer a state program critical to the health and welfare of plaintiffs and other eligible disabled adults in this state. The program, Aid to the Permanently and Totally Disabled (hereinafter the AD program), was created to furnish financial assistance to permanently and totally disabled persons who are unable, due to their disability, to otherwise financially support and care for themselves. The AD program is one of the Adult Public Assistance programs administered by the Department pursuant to

LAW OFFICES OF
 ALASKA LEGAL SERVICES CORPORATION
 815 "H" STREET, SUITE 100
 ANCHORAGE, ALASKA 99501
 (907) 272-9431

2. The Department of Health and Social Services (hereinafter the Department) is required to establish standards for determining the amount of assistance which an eligible disabled adult is entitled to receive. The amount of assistance granted is to be determined with regard to the resources and needs of the disabled adult and the conditions existing in each case, and is to be deemed sufficient when, added to all other available income and resources, it provides the disabled adult with a reasonable subsistence compatible with health and well-being.

3. The Division of Public Assistance (hereinafter the Division), the branch of the Department primarily responsible for administration of the AD program, has established standards of need defining the amounts of assistance necessary to provide reasonable subsistence compatible with health and well-being to disabled adults in four categories of household circumstances. If the disabled adult has no other income or resources, the Department is required to provide AD assistance equal to the full applicable standard of need.

4. The Division, and through it the Department, has determined that disabled adults in plaintiffs' circumstances need \$473.00 per month to live at a standard compatible with health and well-being. Despite this determination, Defendants refuse to provide plaintiffs with any more than \$235.00 per month in AD assistance, even though they presently have no other income. Defendants base this refusal on the theory that plaintiffs have applied for and may eventually begin to receive monthly benefits under the federal Supplemental Security Income (hereinafter SSI) program. Despite the fact that plaintiffs do not now receive SSI benefits, and despite the fact that the mere possibility of future SSI benefits is of no use to plaintiffs in attempting to meet current survival needs, defendants calculate the amount of

monthly AD assistance granted by subtracting the estimated amount of future SSI benefits from the applicable standard of need. In effect, defendants pretend that future SSI benefits which a disabled adult may not receive for months or over a year are available to meet current needs. Defendants, by failing to provide plaintiffs with the full amount of AD assistance to which they are entitled, have violated the very purpose of the AD program by denying eligible disabled adults the means to live at a standard compatible with health and well-being.

5. Plaintiffs allege that their rights under state statutes and regulations and under the due process and equal protection clauses of the Alaska and United States Constitution have been violated by this practice.

6. Plaintiffs, individually and on behalf of all others similarly situated, seek a declaration that defendants have a mandatory obligation to administer the AD program in a manner which meets the requirements of state law as well as state and federal constitutional guarantees; injunctive relief compelling defendants to administer the AD program in a manner conforming to state law as well as state and federal constitutional guarantees; and retroactive payments equal to the difference between the amount of AD assistance granted and the amount to which plaintiffs and all others similarly situated were and are entitled.

II.

PLAINTIFFS

A. PLAINTIFF ODIS MOORE

7. Plaintiff ODIS MOORE is a 55 year old man residing in Anchorage, Alaska with his wife and his wife's daughter.

3. Plaintiff MOORE's formal education ended with the second or third grade. He is unable to read or write anything but his name and his wife's name. He has spent his entire working life engaged in occupations demanding arduous physical labor. The bulk of his employment experience has been as an agricultural laborer.

9. In November of 1979 Plaintiff MOORE sustained serious injuries to his left ankle, right shoulder, and hip when he was run over by a tractor. He has not worked since that accident due to his inability to lift, stoop, bend, or walk without experiencing considerable pain. He suffers from post traumatic arthritis and osteoarthritis which is both permanent and progressive and which, combined with his limited education and the non-transferable nature of the work skills he acquired as a heavy laborer, prevent him from obtaining employment and supporting himself.

10. Plaintiff MOORE is in all material respects eligible for state assistance under the AD program.

11. Plaintiff MOORE presently receives AD assistance in the amount of \$235.00 per month. This AD assistance is his only source of income.

12. According to the current standards of need established by the Department pursuant to Alaska Statutes §47.05.010(9), an individual in Plaintiff MOORE's circumstances requires \$473.00 per month to enable him to live at a level of reasonable subsistence compatible with health and well-being.

13. The Department has calculated the amount of AD assistance provided Plaintiff MOORE by subtracting the amount of the monthly SSI payment which it anticipates that he will eventually receive, \$239.00, from the standard of need appropriate for an applicant in his circumstances, \$473.00, and then adding one dollar to result in an AD assistance payment of \$235.00.

14. The Department has calculated Plaintiff MOORE's AD benefits in the manner described in Paragraph 13, above, despite the knowledge that Plaintiff MOORE does not now nor has he ever received SSI benefits.

15. On July 9, 1980, Plaintiff MOORE submitted an application for AD benefits. He had previously applied for SSI benefits on May 27, 1980, and was at the time of his AD application

awaiting an eligibility determination from SSA. The Department made an initial determination that Plaintiff MOORE was eligible for AD assistance and began to provide him with AD benefits computed in the manner described in Paragraph 13, above.

16. SSA made an initial determination that Plaintiff MOORE was not eligible for SSI benefits on July of 1980, and subsequently affirmed its denial in a reconsideration decision issued in October, 1980. Plaintiff MOORE appealed these denials.

17. While Plaintiff MOORE's appeal from SSA's reconsideration decision was pending, the Division notified him that, because he had been determined ineligible for SSI, his AD benefits would be terminated effective December 5, 1980.

18. Plaintiff MOORE requested a fair hearing from the Division to contest termination of his AD benefits. This fair hearing was conducted on February 17, 1981. At the hearing, Plaintiff MOORE challenged not only the proposed termination of his AD benefits, but also the Division's practice of computing his AD benefits as though he were already receiving SSI.

19. In a hearing decision issued April 20, 1981, the Division determined that Plaintiff MOORE was entitled to continued AD assistance pending the outcome of his SSI appeal, and reversed the decision to terminate his AD benefits. However, the hearing authority denied Plaintiff MOORE's demand that his AD benefits be computed on the basis of available income and resources, and upheld the Department's practice of pretending that the prospect of future SSI benefits could somehow supplement Plaintiff MOORE's inadequate AD benefits and assist him in meeting current needs. A copy of the hearing decision issued in Plaintiff MOORE's case is affixed hereto as Exhibit 2.

20. Plaintiff MOORE filed a timely request for review of the April, 1981 fair hearing decision with Defendant Rod Betit,

Director of the Division. In a decision issued May 12, 1981, Defendant Betit affirmed the hearing authority's decision that Plaintiff MOORE was not entitled to any increase in the amount of AD assistance provided him. A copy of Defendant Betit's decision in Plaintiff MOORE's case is affixed hereto as Exhibit 3.

21. Plaintiff MOORE has exhausted his administrative remedies under the AD program.

22. In a decision dated April 30, 1981, an administrative law judge reversed SSA's two prior denials of Plaintiff MOORE's SSI application, and found him eligible for SSI benefits.

23. Although he had been determined eligible for SSI benefits, Plaintiff MOORE still has not received any SSI payments. His sole source of income remains the \$235.00 per month which he receives in AD assistance.

24. As the proximate result of the Department's refusal to provide him with AD assistance equal to the full standard of need for an individual in his circumstances, \$473.00, despite the fact that he has never received so much as one dollar in SSI benefits and has no income other than his AD benefits of \$235.00, Plaintiff MOORE is not presently able nor has he been able since the date of his application for AD benefits to live at a level of reasonable subsistence compatible with health and well-being.

B. PLAINTIFF GLEE OHLSSON

25. Plaintiff GLEE OHLSSON is a 50 year old woman who lives by herself in Anchorage, Alaska.

26. Plaintiff OHLSSON suffers from a manic-depressive personality disorder which subjects her to severe mood swings ranging from elation to severe depression. She also suffers from an organic brain syndrome which impairs her memory functions. In addition to her mental impairments, she also suffers from tendonitis of the right arm and left shoulder, as well as back pain.

27. Before the onset of her mental illness, Plaintiff OHLSSON was employed for twelve years as an elementary school teacher. After being diagnosed as schizophrenic in 1970 she became a housewife, and worked briefly as a secretary/receptionist and again as a library assistant. Her disabilities interfered with her performance in both these positions and caused her to lose both jobs. Because of her mental and physical impairments, she is unable to obtain employment and support herself.

28. Plaintiff OHLSSON is in all material respects eligible for state assistance under the AD program.

29. Plaintiff OHLSSON presently receives AD benefits in the amount of \$235.00 per month. This AD assistance is her only source of income.

30. According to the current standards of need established by the Department pursuant to Alaska Statutes, §47.05.010(9), an individual in Plaintiff OHLSSON's circumstances requires \$473.00 per month to enable her to live at a level of reasonable subsistence compatible with health and well-being.

31. The Department has calculated the amount of AD assistance provided Plaintiff OHLSSON by subtracting the amount of the monthly SSI payment which it anticipates she will eventually receive, \$239.00, from the standard of need appropriate for an individual in her circumstances, \$473.00, and then adding one dollar to result in an AD assistance payment of \$235.00.

32. The Department has calculated Plaintiff OHLSSON's AD benefits in the manner described in Paragraph 31, above, despite the knowledge that Plaintiff OHLSSON does not now nor has she ever received SSI benefits.

33. In September, 1980, Plaintiff OHLSSON submitted an application for assistance under the AD program. Prior to this time, in June of 1980, she had applied for SSI benefits, and was at the time of her AD application awaiting a final eligibility determination from SSA.

34. She is still waiting.

35. The Department made an initial determination that Plaintiff OHLSSON was eligible for AD assistance and began to provide her with AD benefits computed in the manner described in Paragraph 31, above.

36. Plaintiff OHLSSON's SSI application has thus far been denied.. She is still pursuing her administrative avenues of appeal.

37. The Division notified Plaintiff OHLSSON in December, 1980 that her AD benefits would be terminated because she had been determined ineligible for SSI benefits.

38. Plaintiff OHLSSON requested a fair hearing from the Division to contest termination of her AD benefits. The hearing was conducted, and in a hearing decision dated April 8, 1981 the hearing authority reversed the decision to terminate her AD benefits pending the outcome of plaintiff's SSI appeal. A copy of the hearing decision issued in Plaintiff OHLSSON's case is affixed hereto as Exhibit 4.

39. Plaintiff OHLSSON filed a timely appeal to Defendant Betit, Director of the Division, challenging the Division's practice of computing her AD benefits as though she were already receiving SSI.

40. In a decision dated May 4, 1981, Defendant Betit rejected arguments that Plaintiff OHLSSON is entitled to AD assistance in an amount computed with regard only to income and resources actually available to her for the purpose of meeting current needs. A copy of Defendant Betit's decision in Plaintiff OHLSSON's case is affixed hereto as Exhibit 5.

41. Plaintiff OHLSSON has not yet been determined eligible for SSI benefits. Her sole source of income remains the \$235.00 per month which she receives in AD assistance.

42. As the proximate result of the Department's refusal to provide her with AD assistance equal to the full standard of need for an individual in her circumstances, \$473.00, despite

the fact that she has never received so much as one dollar in SSI benefits and has no income other than her AD benefits of \$235.00, Plaintiff OHLSSON is not presently able nor has she been able since the date of her application for AD benefits to live at a level of reasonable subsistence compatible with health and well-being.

III.

CLASS ACTION ALLEGATIONS

43. Plaintiffs bring this action pursuant to Alaska Civil Rule 23 on behalf of themselves and all past, present, and future recipients of AD benefits who have received, receive, or will receive AD assistance in an amount less than that determined necessary to provide them with reasonable subsistence compatible with health and well-being when added to all other available income and resources, because their benefits are calculated as though they were receiving SSI benefits which they do not in fact receive.

44. The class is so numerous that the joinder of all members is impracticable.

45. There are questions of law common to the class.

46. There are questions of fact common to the class.

47. The claims of the representative parties are typical of the claims of the class as a whole in that the Division has computed the amount of AD assistance provided them without regard to available resources and current needs, and has failed to provide assistance in an amount sufficient to provide reasonable subsistence compatible with health and well-being.

48. The representative parties will fairly and adequately protect the interests of the class.

49. The defendants have acted in a manner generally applicable to the class as a whole thereby rendering appropriate final injunctive and declaratory relief.

IV.

DEFENDANTS

50. Defendant Helen Beirne is the Commissioner of Health and Social Services for the Alaska Department of Health and Social Services. In this capacity she is responsible for supervising the operations of the Department, including the Department's Division of Public Assistance. She is sued here in her official capacity.

51. Defendant Rod Betit is the Director of the Division of Public Assistance. As such he is responsible for supervising all of the Division's programs, including the Aid to the Permanently and Totally Disabled Program, and for determining the amount of assistance to be granted a permanently and totally disabled person under the AD program. He is sued here in his official capacity.

V.

JURISDICTION

52. Jurisdiction in this matter is asserted under Alaska Civil Rule 23, Alaska Statutes §22.10.020, and 42 U.S.C. §1983.

VI.

STATUTORY AND REGULATORY FRAMEWORK

53. The Department is required to administer and adopt regulations necessary for administration of the AD program. [Alaska Statute §47.05.010(1), (2).] It is specifically required to establish standards for determining the amount of assistance which an eligible person is entitled to receive under the AD program. That amount of assistance is sufficient when, added to all other income and resources available to an individual, it provides the individual with a reasonable subsistence compatible with health and well-being. [Alaska Statutes §47.05.010(9).]

54. The Department is required to determine the amount of AD assistance to be granted a permanently and totally disabled

person with regard to the resources and needs of the person and the conditions existing in each case. [Alaska Statutes §47.25.310] This section requires that the amount of AD assistance granted be calculated with regard to resources which are actually available to meet current needs.

55. Insofar as is possible, the Department is required to provide eligible disabled individuals with AD assistance sufficient to provide reasonable subsistence compatible with decency and health and according to the standards established by the Department pursuant to Alaska Statutes §47.05.010(9). [Alaska Statutes § 47.25.810] In computing the amount of AD assistance to be granted in a particular instance, the Department may consider what other income and resources are available, but wherever possible the disabled individual is entitled to AD assistance in an amount sufficient to provide reasonable subsistence compatible with decency and health. Put another way, he is entitled to AD assistance sufficient to raise his total available resources to an amount equal to the Department's standard of need for an individual in his circumstances.

56. The standards of need established pursuant to Alaska Statutes §47.05.010(9) and presently in effect were promulgated in a policy memorandum dated April 23, 1980, issued by Defendant Rod Betit, Director of the Division of Public Assistance. The present standards of need became effective July 1, 1980, and prescribe the amount which the Department has determined is necessary to provide AD recipients in four categories of household circumstances with reasonable subsistence compatible with health and well-being. A copy of the April 23, 1980 policy memorandum is affixed hereto as Exhibit 1.

57. The standards of need presently in effect for the AD program are as follows:

Living Arrangement

Standard of Need

(a) Individual with household costs of less than \$35 per month.	\$383.00
(b) Individual with household costs of \$35 or more per month.	\$473.00
(c) Couple with household costs of less than \$35 per month.	\$574.00
(d) Couple with household costs of \$35 or more per month.	\$695.00

58. Despite its statutory obligation to adopt regulations necessary for administration of the AD program [Alaska Statutes §47.05.010(2)] the Department has validly promulgated only three regulations pursuant to the Administrative Procedure Act. [Alaska Statutes §44.62.010 et seq.] These three regulations, found at 7 AAC 40.005 through .100, concern the value and type of property which an AD recipient may possess; age requirements for program participation; and definitions for "Adult Public Assistance", "blindness", and "disability". These are the only validly promulgated regulations governing administration of the AD program.

59. The three regulations referred to in Paragraph 58, above, are manifestly inadequate for the purpose of administering the AD program in that, among other deficiencies, they fail to specify any procedures for determining eligibility or the amount of assistance to which an eligible disabled adult is entitled.

60. Recognizing the inadequacy of present regulations, the Department in August of 1979 submitted proposed regulations governing Adult Public Assistance Programs (of which the AD program is one) to the Attorney General. Although these proposed regulations have not yet been validly promulgated pursuant to the Administrative Procedure Act and are thus of no legal force and effect, the Department conducts its day to day administration of the AD program according to these proposed regulations.

61. The Department is required to cooperate with the federal government in matters of mutual concern pertaining to all forms of public assistance. [Alaska Statutes §47.05.010(5).] In order to assure that potential recipients of SSI would receive full state benefits pending a final determination by the Social Security Administration and to assure that the respective states would be reimbursed for such assistance payments, the Social Security Administration developed a program to provide for such reimbursement to the states. [20 C.F.R. §§416.525 and .1901 et seq.] The Department has refused to participate in this program.

VII.

PRACTICES COMPLAINED OF

62. Section 40.060 of the proposed regulations purports to require each AD applicant who meets SSI income eligibility standards to apply for SSI assistance.

63. The practice of the Department is to make an initial determination regarding AD eligibility based on a physicians statement submitted on a Departmental "AD-2" form, provide AD assistance if the applicant is determined to be an eligible disabled person, and then wait for the federal Social Security Administration (SSA) to determine whether disability exists for SSI purposes.

64. Section 40.370 of the proposed regulations purports to govern computation of the amount of AD assistance to which an eligible disabled person is entitled. The practice of the Department is to compute AD payments according to the procedures contained in this section.

65. According to Section 40.370 of the proposed regulations, the Department calculates the amount of AD assistance provided by subtracting "net countable income" (determined under Section 350 of the proposed regulations) from the appropriate standard of need. The Department then provides one dollar more than the difference between the net countable income and the appropriate standard of need in AD assistance.

66. Section 40.300(c) of the proposed regulations provides as follows:

(c) Eligibility on the basis of income is determined on a monthly basis. Income is counted in the calendar month in which it is actually received or is first available for use. However, net earnings from self-employment will be computed on a yearly basis and then divided by 12 to determine monthly income. Unless otherwise specified in this chapter, a payment, benefit, property, or service is considered as income in the month of receipt, but any portion of such income which is retained in any month subsequent to the month of receipt is then considered as a resource.

67. Section 40.370(b) of the proposed regulations provides as follows:

In the case of eligible individuals who are required to apply for SSI assistance under Sec. 60 of this chapter, during each month in which Adult Public Assistance eligibility is found to exist but SSI has not yet determined eligibility and established a payment amount, the computation of the Adult Public Assistance payment shall include as available income the amount which the division determines the SSI monthly payment for that month would be if SSI had completed its determination.

68. The Department uses the procedure set forth in Section 40.370(b) of the proposed regulations to calculate the amount of AD assistance provided an AD recipient who is awaiting an SSI eligibility determination or payment of SSI benefits from SSA.

69. The Department's methods of computing AD benefits and the effects of those methods are the same regardless of which standard of need is appropriate for the particular household. Only the numbers change.

70. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to provide plaintiffs and others similarly situated with AD assistance sufficient to provide reasonable subsistence compatible with health and well-being when added to all other income and resources available to the disabled individual as required by Alaska Statutes §47.05.010(9).

71. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to compute the amount of AD assistance granted plaintiffs and others similarly situated with regard to their resources and needs and the conditions existing in each case as required by Alaska Statutes §47.25.810.

72. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to provide plaintiffs and others similarly situated with AD assistance sufficient to provide reasonable subsistence compatible with decency and health as required by Alaska Statutes §47.25.810.

73. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to calculate the amount of AD assistance provided to plaintiffs and others similarly situated in the same manner as it calculates the amount of AD assistance provided to all other AD recipients, i.e., with regard to available income and resources.

74. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to calculate the amount of AD assistance provided to plaintiffs and others similarly situated in the same manner as it calculates the amount of AD assistance provided to AD recipients who are awaiting eligibility determinations or benefit payments under programs other than SSI.

75. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department calculates the amount of AD assistance provided plaintiffs and others similarly situated by pretending that SSI benefits which may not be received for months or years are available to meet a disabled adult's current survival needs.

CAUSES OF ACTION

A. First Cause of Action

76. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

77. In failing to determine the amount of AD assistance to be granted plaintiffs and class members with regard to available resources and current needs, defendants have violated Alaska Statutes §47.25.810.

B. Second Cause of Action

78. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

79. In failing to provide plaintiffs and class members with AD benefits sufficient to provide reasonable subsistence compatible with decency and health according to the Division's own standards of assistance, defendants have violated Alaska Statutes §47.25.810.

C. Third Cause of Action

80. Plaintiffs reallege each and every allegation of Paragraphs 1 through 75.

81. In failing to determine the amount of AD assistance to be granted plaintiffs and class members with regard to available income and resources, defendants have violated Alaska Statutes §47.05.010(9).

D. Fourth Cause of Action

82. Plaintiffs reallege each and every allegation of paragraph 1 through 75.

83. In failing to provide plaintiffs and class members with AD benefits sufficient to provide reasonable subsistence compatible with health and well-being, defendants have violated Alaska Statutes §47.05.010(9).

E. Fifth Cause of Action

84. Plaintiffs reallege each and every allegation of paragraph 1 through 75.

85. In failing to promulgate regulations consistent with Alaska Statutes §§47.05.010 and 47.25.810 in that proposed regulations of the Department do not provide plaintiffs and class members' with AD benefits sufficient to provide reasonable subsistence and said proposed regulations fail to determine amounts of assistance to be granted plaintiffs and class members with regard to available income and resources, defendants have violated Alaska Statutes 44.62.030.

F. Sixth Cause of Action

86. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

87. By their actions in refusing to compute the amount of AD assistance granted plaintiffs and class members with regard to available income and resources while computing assistance granted all other AD recipients with regard to available income and resources, defendants have denied plaintiffs and class members equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States.

88. The conduct described in paragraph 87 above entitles plaintiffs and class members to equitable relief under 42 U.S.C. §1983.

G. Seventh Cause of Action

89. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

90. By their actions in refusing to provide plaintiffs and class members with AD assistance sufficient when added to all other income and resources to provide reasonable subsistence compatible with health and well-being, while providing assistance sufficient for that purpose to all other AD recipients, defendants have denied plaintiffs and class members equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

91. The conduct described in paragraph 90 above entitles plaintiffs and class members to equitable relief under 42 U.S.C. §1983.

H. Eighth Cause of Action

92. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

93. By their actions in refusing to provide plaintiffs and class members with AD assistance sufficient when added to all other available income and resources to provide reasonable subsistence compatible with health and well-being, while providing assistance sufficient for that purpose to all other AD recipients, defendants have denied plaintiffs and class members equal protection of the laws in violation of Article 1, Section 1 of the Constitution of Alaska.

I. Ninth Cause of Action

94. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

95. By their actions in refusing to compute the amount of AD assistance granted plaintiffs and class members with regard to available income and resources while computing AD assistance granted all other AD recipients with regard to available resources, defendants have denied plaintiffs and class members equal protection of the law in violation of Article 1, Section 1 of the Constitution of Alaska.

J. Tenth Cause of Action

96. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

97. By their actions in presuming that SSI benefits to which plaintiffs and class members may become entitled and receive in the future are available for use in meeting current needs, defendants have denied plaintiffs and class members due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

98. The conduct described in paragraph 97 above entitles plaintiffs and class members to equitable relief under 42 U.S.C. §1983.

K. Eleventh Cause of Action

99. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

100. By their actions in presuming that SSI benefits to which plaintiffs and class members may become entitled and receive in the future are available for use in meeting current needs, defendants have denied plaintiffs and class members due process of law in violation of Article 1 Section 7 of the Constitution of the State of Alaska.

L. Twelfth Cause of Action

101. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

102. In failing to cooperate with the federal government by refusing to enter into an agreement with the Social Security Administration which would allow for reimbursement to the state for interim assistance payments, defendants have violated Alaska Statutes §47.05.010(5).

IX.

INJUNCTIVE RELIEF

103. Plaintiffs and class members have suffered and continue to suffer grievous and irreparable injury by reason of defendants' unlawful refusal to provide them with AD assistance sufficient according to the Department's own standards of need to enable them to live at a level of reasonable subsistence compatible with health and well-being.

104. Plaintiffs have exhausted their administrative remedies and have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

A. Certify the class in this matter as soon as possible.

B. Reverse defendants' determinations that plaintiffs are not entitled to AD assistance in an amount sufficient to provide them with reasonable subsistence compatible with health and well-being according to the standards of need established by the Department.

C. Enter a declaratory judgment declaring that defendants have a duty pursuant to Alaska Statutes §§47.05.010(9) and 47.25.810 to provide plaintiffs with AD benefits in at least an amount sufficient to meet their reasonable subsistence need and according to the standards of need established by the Department which are unmet by their actually and currently available income and resources.

D. Issue a preliminary and permanent injunction enjoining defendants, their successors in office, agents, employees, all persons acting by through, or under them, and all persons subject to their supervision or acting in concert with them from failing to:

1. Provide plaintiffs with AD benefits in at least an amount sufficient to meet their reasonable subsistence needs according to the standards of need established by the Department which are unmet by their actually and currently available income and resources, retroactively to the date of their applications for AD assistance.

2. Promulgate regulations to provide for AD recipients unmet needs as described in Paragraph D(1), above.

3. Implement state procedures by which plaintiffs can recover AD assistance wrongfully denied them and notify the members of the plaintiff class of such procedures.

E. Award plaintiffs pre-judgment and post-judgment interest.

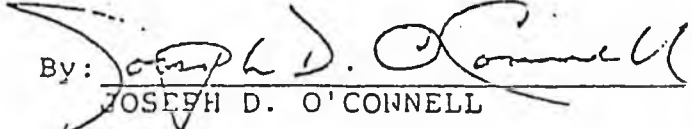
F. Award plaintiffs' costs and attorneys fees.

G. Grant plaintiffs such other further relief as this Court may deem just and equitable.

DATED this 25th day of June, 1981.

Respectfully submitted,

ALASKA LEGAL SERVICES CORPORATION
JOSEPH D. O'CONNELL
DONALD SURGEON
Attorneys for Plaintiffs

By: 
JOSEPH D. O'CONNELL

ATTACHMENTS

- Exhibit #1: April 23, 1980 policy memorandum from Rod Betit, Director of the Division of Public Assistance.
- Exhibit #2: Fair hearing decision for Odis Moore, dated April 20, 1981.
- Exhibit #3: Review of fair hearing decision for Odis Moore, dated May 12, 1981.
- Exhibit #4: Fair hearing decision for Glee Ohlsson, dated April 8, 1981.
- Exhibit #5: Review of fair hearing decision for Glee Ohlsson, dated May 4, 1981.

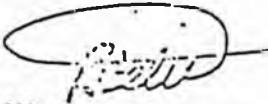
TO All District Offices

DATE: April 23, 1980

FILE NO:

TELEPHONE NO:

SUBJECT: APA Benefit Increases


FROM: Rod Betit
Director

Cash benefits will increase to many recipients of Adult Public Assistance (Old Age Assistance, Aid to the Disabled, and Aid to the Blind) effective July 1, 1980. Also, Federal benefits for SSA and SSI are increasing by 14.5%. The amounts of the increase and procedures for implementing these increases are discussed below:

I. STATE POLICY, EFFECTIVE JULY 1, 1980

Effective July 1, 1980, the assistance standards (eligibility standard) for OAA, AB, and AD programs will increase as follows:

<u>Living Arrangement</u>	<u>Current Assistance Standard</u>	<u>Assistance Standards Effec. 7/1/80</u>
(1) Individual with household costs of less than \$35 per month.	\$ 335.00	\$ 385.00
(2) Individual with household costs of \$35 or more per month.	414.00	475.00
(3) Couple with household costs of \$35 or more per month.	502.00	574.00
(4) Couple with household costs of \$35 or more per month.	608.00	695.00
(5) Individual in nursing home. Note: The Medicaid eligibility standard for nursing home care increases from:	\$ 624.00 to	\$ 714.00

II. PROCEDURES FOR IMPLEMENTATION

1. All APA cases must be pulled and inspected for possible changes. Use latest available APA warrant register (regular and supplemental) to insure that all cases are reviewed and changed as appropriate. Remember also to include all new cases opened effective June 1980.
2. Determine recipient's new state assistance standard from the table under "I. State Policy", above.

3. Determine the recipient's new income to be counted against the state assistance standard. On July 1, 1980, all SSI or SSA payments will increase by approximately 14.3%. If the recipient is SSI-eligible, use the following chart to determine the new SSI level, regardless of whether the SSI recipient also receives SSA. Use the following chart only if the recipient is eligible to receive SSI benefits.

<u>SSI Recipient's Living Arrangements and Income Status</u>	<u>Current SSI Amount</u>	<u>New SSI Amount from which State Grant is Computed</u>
a) Individual/own household/ no income	\$ 208.20	\$ 238.00
b) Individual/own household/ with income	228.20	258.00
c) Couple/own household/ no income	312.30	357.00
d) Couple/own household/ with income	332.30	377.00
e) Individual/another household/ Board & Room/no income	158.80	158.67
f) Individual another household/ Board & Room/with income	158.80	178.67
g) Couple/another household/ Board & Room/no income	208.20	238.00
h) Couple/another household/ Board & Room/with income	228.20	258.00
i) SSI Nursing Home Payment	25.00	25.00

4. If the recipient is not eligible for SSI, but receives Social Security, add 14.3% to his or her gross benefits from these programs. Obtain the new amount by multiplying the current amount by 1.143. For example:

$$\begin{array}{r}
 \$ 232.50 \text{ SSA amount prior to 7/80} \\
 \times \quad 1.143 \\
 \hline
 \$ 265.75 \text{ New Income (round out to nearest dollar, \$266)}
 \end{array}$$

5. Compute the new state grant by subtracting the new gross income amount from the new assistance standard.

For example:

\$ 473.00	New Assistance Standard
265.00	New Income Amount
<u>\$ 208.00</u>	New State Payment

Gross income will continue to be used in computing eligibility and grant amounts for all APA cases.

6. DO NOT SEND GEN #12s TO RECIPIENTS!

Simply ROC that you have done the 7/1 change. This year Central Office will send a card stuffer in each recipient's APA July check that explains in general terms why his or her check increased.

7. These SSA-SSI and State payment increases will also affect certain AFDC, Food Stamp, and GRM cases. Do not forget to adjust these cases. (All other policies relating to APA eligibility continue without change.)

Food Stamp cases fall into one of the following categories for this exercise.

- (a) combined APA/FSP cases; or
- (b) combined AFDC/FSP cases; or
- (c) combined APA/AFDC/FSP cases; or
- (d) pure FSP cases (no AFDC or APA involved).

Districts should adjust only those Food Stamp cases that are combined with either an APA and/or an AFDC case where the payment is being changed. Some pure FSP cases may experience an increase in Social Security payments, but these increases are to be picked up later through the regular change of circumstance notice from the clients.

8. This year the Nursing Home APA/Medicaid recipients must have their personal allowance increased from \$25 (\$20 for grandfathered cases) to \$35.00 for all Medicaid nursing home cases. A letter will be sent soon to each nursing home administrator announcing this change and asking them to inform their patients. Each nursing home income credits form will have to be changed by DOs and ROs for 7/1 Change as necessary the income amounts listed, and do not forget to increase the personal needs allowance deduction.

SSI \$25 personal needs allowance recipients who have less than \$10 in SSI-disregarded other income will have to have an APA grant established in order to bring their total personal needs allowance up to \$35. These recipients are the only ones who should receive a Gen #12 notice.

Examples:

- (a) Client has only \$25 SSI check. Add a \$10 monthly APA grant to the open APA zero-grant BAF. Send a Gen #12.

- (b) Client has \$32.50 SSA just 7/1/80 increase. SSI disregards \$20, leaving \$12.50. SSI pays an additional \$12.50 to bring client to the SSI \$25 personal needs allowance. Do not open an APA grant! Just change the nursing home income credits form. The total income credit is decreased by \$10 and the income by the client is increased by \$10. In this case, of the \$45 total SSI and SSA income, the nursing home applies \$10 against their bill to Medicaid and the clients keeps \$35. DO NOT send a Gen #12.
9. 7/1/80 change BAFs should be submitted on a daily basis. The BAFs submitted with grant adjustments for the 7/1/80 changes must be received by Central Office before the BAF cutoff date for the July Regular Warrant Run. BAFs received in Central Office after the cutoff date will not be processed in time for the July Regular Warrant Run. At this time the exact cutoff date has not been set. We expect it will be June 25th at the earliest.

BAFs submitted because of these program changes should have "7/1/80 Change" entered in the Remarks section at the bottom of the BAF. Remember, any BAF which is submitted for a grant increase effective July 1, but is received after cutoff, will miss the deadline. You will have to submit a "Special Warrant Request" form for the amount of the July increase.

10. Do not forget that AFDC Manual Change #10 limited the maximum amount that can be diverted between AFDC and APA-only cases to \$200. See AFDC Manual Sec. 3211.12d. When you change these diversion cases, the change must comply with this new limit.

IMPORTANT NOTICE

Each year the Social Security Administration increases its payments by the percentage that the national cost of living has gone up during the past year.

Alaska State law requires us to increase your Adult Public Assistance payment by the same percentage. This year the cost of living increase will be 14.3%.

This means your July Adult Public Assistance check will be approximately 14.3% larger than it was in June.

Because we have to calculate the increase in each person's Adult Public Assistance check by hand, there is a chance we won't be able to adjust everyone's check for July. If the check you get with this notice is the same amount that it was in June, do not worry. We will increase the amount of your August check and we will send you an extra check later for what we owe you for July. If you don't see an increase by your August check, then you should contact your fee agent or eligibility worker, and we will look into the problem right away.

cc: Region X SSI

GL/ae

April 29, 1980

(907) 465-3347

Edis Moore
1200 Columbine #29
Building "E"
Anchorage, Alaska 99504

Dear Mr. Moore:

This letter is directed to you with respect to your Aid to the Disabled fair hearing held on February 11, 1981. I have been designated the Fair Hearing Authority for your fair hearing and I shall render the final decision on your complaint on behalf of the Department of Health and Social Services, Division of Public Assistance.

I. ISSUES LEADING TO THIS APPEAL

My review of the Fair Hearing Officer's report, your testimony, and all of the support documents and evidence presented during the course of the hearing indicated the following circumstances in your case:

You applied for Aid to the Disabled on July 9, 1980, shortly after applying for SSI assistance from the Social Security Administration. Your AD assistance, opened on "presumptive" basis, was closed based on your Social Security /SSI denial of your disability. You requested a "reconsideration" from SSI, which was denied, and you subsequently requested a formal hearing from them. This hearing is pending. You also requested a hearing from this Division concerning your AD closure.

II. DISCUSSION/FINDINGS

The State of Alaska Aid to the Disabled program is primarily a program that is supplemental to the federal SSI assistance program. In order to determine who is "permanently and totally disabled" as required by Alaska Statute (AS 47.25.790), we use the same legal and regulatory definition of disability as Social Security (from Sec. 1614 of the Social Security Act).

Disability determination is a very complicated process, involving hundreds of dollars and many hours of expert evaluation. Social Security contracts its determinations to experts in Alaska's Division of Vocational Rehabilitation. The "preliminary" determination upon which we opened your Aid to the Disabled case is not a full disability determination. It is a simple device to speed temporary assistance to needy people while the time-consuming actual determination process goes on. The Division of Public Assistance lacks the funds and staff to do full disability determinations; we must therefore follow the decision made by Social Security's contractor.

April 10, 1981

Your representative argued that you meet the requirements of the existing state statutes and regulations defining disability. These differ in some ways from proposed definitions in proposed statutes and regulations, which she argued you also meet. I find the evidence supports the former claim: You are disabled under existing state statutes and regulations. I make no finding on the latter claim, for no finding is necessary having a positive finding on the former. (I note, however, that the evidence presented is ample to show disability exists in the objective "laboratory findings and measurements" were presented to demonstrate disability according to SSA/SSI criteria. I would recommend obtaining more ample measurements for presentation during your SSI hearing.)

Finding that the evidence supports that you are disabled under existing state regulations and law, by means of a copy of this letter I am instructing the Hearing Officer to see to it that your "presumptive" AD case is reopened in its original monthly payment amount, and that cash and medical benefits be given you retroactively to the effective date of your AD closure, if necessary. This assistance is to continue until the decision on your SSI hearing is made.

Regarding the amount of retroactive and continuing AD payments, I note that AS 47.25.010, as amended, specifies only a maximum payment level, leaving considerable discretion to the Department. Further, the existence of the essentially "supplemental" AD program cannot and should not relieve the Social Security Administration of its duty and obligation to make prompt decisions and conduct timely appeals hearings. My decision compels the presumption that your appeals decision will be in your favor and SSI will shortly issue you retroactive benefits. Rather than compel you to repay the Division or suspend your AD eligibility when that occurs, I believe it is reasonable to order that the amount of AD assistance paid to you be that which you would receive were SSI already making payments to you.

IV. FURTHER APPEAL RIGHTS

If for any reason you are not satisfied with this decision you may pursue your complaint by requesting a review by the Director, Division of Public Assistance, Department of Health and Social Services, Pouch # 07, Juneau, Alaska 99911 within 15 days of receipt of this decision. In addition, you are entitled to pursue this matter through the court system.

Sincerely,

Carson Lofides
Fair Hearing Authority

Page 2 Exhibit 2

May 12, 1981

Odis Moore
1200 Columbine #29
Building "E"
Anchorage, Alaska 99504

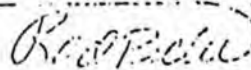
Dear Mr. Moore:

This is in reply to your appeal of a fair hearing decision rendered by Mr. Gordon Landes on April 20, 1981.

Following review of Mr. Landes' decision and the memorandum of appeal submitted by Alaska Legal Services, I conclude that Mr. Landes' decision extended the only relief available to you under the Alaska Adult Public Assistance Program. I find that the Division is not able to make any further adjustments in the amount of assistance available to you.

This decision exhausts the administrative remedies available to you. Should you desire further review of this issue, your next level of appeal is through the Alaska Court System.

Sincerely,



Rod Betit
Director

cc: Gordon Landes - Fair Hearing Authority
Joseph O'Connell - Alaska Legal Services ✓
Judie Walker

Ms. Gine Ohlsson
8001 Euben #16
Anchorage, Alaska 99504

Dear Ms. Ohlsson:

This letter is directed to you with respect to your Aid to the Disabled fair hearing held on February 6, 1981. I have been designated the Fair Hearing Authority for your fair hearing and I shall render the final decision on your complaint on behalf of the Department of Health and Social Services, Division of Public Assistance.

I. ISSUES LEADING TO THIS APPEAL

My review of the Fair Hearing Officer's report, your testimony, and of all the support documents and evidence presented during the course of the hearing indicated the following circumstances in your case:

You were receiving Aid to the Disabled based upon a "presumptive" decision that you were disabled, while your disability application for SSI was pending with the Social Security Administration. SSA denied your application, and it later denied your August, 1980 reconsideration. Your AD benefits were stopped effective January 1, 1981, based on these SSA denials of your disability. You requested a hearing from SSA and a hearing from the Division.

II DISCUSSION

Your representative raised two basic issues: (1) Are you in fact disabled according to AD and SSI criteria?; and (2) is a "preliminary negative decision" by SSI binding on the Aid to the Disabled program?

Regarding the latter question, I note that it is true that the regulations linking the AD decision to the SSA/SSI decision are not yet effective. Nevertheless, there are no other regulations that are effective. Also, the Division lacks the staff and funds to do full-fledged disability determinations independent of (and duplicative of) the Social Security Administration, and, finally, the AD program is clearly "supplemental" in intent and design; it is not a program which can or should be totally independent of SSA's programs.

This, while your representative's argument is correct, I have no choice but to restrict it from an operational perspective; absent changes of a magnitude not within my ability or authority to compel to occur, there is no alternative to continuing the present program policies.

April 7, 1981

I find that your representative errs in considering the initial denial of your SSI application to be a "preliminary" decision. Like virtually any application decision in any program, it is indeed a "final" decision, made with a full consideration of all available evidence. It is final unless or until it is reversed by a subsequent reconsideration or hearing process, and as a final decision it must be acted upon, even though it may be subject to review at some later time.

To return to the first issue--that of whether or not you are disabled-- I find that the evidence introduced by your representative is sufficient to demonstrate that you fit the common understanding of the term "permanently and totally disabled" (AS 47.25.720). (This term is not defined in Alaska Statute as yet; in the interim, we are using the definition of disability in Sec. 1614 of the Social Security Act.) Indeed, from the evidence it seems possible to me that your appeal to the Social Security Administration will be successful.

Given this judgement, and given the fact that the AD regulations are only pending, I find that I have the latitude to grant you a continuation of state-only Aid to the Disabled assistance until the Social Security Administration renders a decision on your SSA hearing.

III FINDINGS

By means of a copy of this letter, I am instructing Pat Anson, Hearing Officer, to see that your AD case is reopened or continued pending a decision on your SSA hearing.

IV. FURTHER APPEAL RIGHTS

If for any reason you are not satisfied with this decision you may pursue your complaint by requesting a review by the Director, Division of Public Assistance, Department of Health and Social Services, Pouch H-07, Juneau, Alaska 99811 within 15 days of receipt of this decision. In addition, you are entitled to pursue this matter through the court system.

Sincerely,

Gordon G. Landes
Fair Hearing Authority

cc: Pat Anson, FHO
Ina Arnold, SR
Duane Sipary, ALSC Anchorage

DEPARTMENT OF REVENUE AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

FOURTH FLOOR
JUNEAU, ALASKA 99801
PHONE: (907) 465-3355

May 4, 1981

Ms. Glee Ohlsson
8001 Duben, #16
Anchorage, Alaska 99504

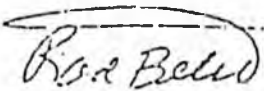
Dear Ms. Ohlsson:

This is in reply to your appeal of a fair hearing decision rendered by Mr. Gordon Landes on April 8, 1981.

Following review of Mr. Landes' decision and the memorandum of appeal submitted by Alaska Legal Services, I conclude that Mr. Landes' decision extended the only relief available to you under the Alaska Adult Public Assistance Program. I find that the Division is not able to make any further adjustments in the amount of assistance available to you.

This decision exhausts the administrative remedies available to you. Should you desire further review of this issue, your next level of appeal is through the Alaska Court System.

Sincerely,


Rod Betit
Director

cc: Gordon Landes - Fair Hearing Authority
✓ Duane Sipary - Alaska Legal Services

Full Cost of Care

AS 47.40 the "Full Cost of Care" statute relates to the payment mechanism for homes for children in custody of the state. Because of the statute, inequities in rates for children's homes have arisen. Funding for FY'83 is inadequate to continue the provisions of AS 47.40, and because the issue is complicated the House repealed the statute.

The Senate HESS Committee, after several hearings, felt there was validity to paying rates relative to true cost, rather than simply going to contracting. Therefore SCS for CS HB 357 reflects a compromise which suspends AS 47.40 through 1984 for a study of methods to redetermine the rates while freezing rates for 1983 and adding a 5% increase in 1984. Costs related to the study will be absorbed by the Division of Family and Youth Services.

Adult Public Assistance

The original purpose of HB 357 was to clean-up language in the statutes relating to Old Age Assistance, Aid to the Blind and Aid to the Permanently and Totally Disabled. Essentially, this bill combines the three programs into one - Adult Public Assistance.

During hearings in the Senate HESS Committee, the subject of interim payments of the state Adult Public Assistance Supplement for those awaiting SSI disability determination was raised. Those applying for SSI wait from 6 months to 2 years for final determination, and the state has been making interim payments of the state supplement and admitting those people to the medicaid program. As this situation has created an error payment problem for the medicaid program and has been dealt with by regulation rather than legislative action, the Senate HESS Committee decided to mandate state supplement payments during the period of determination without medicaid benefits. (sections 9 and 13 of Bill) This would leave that population (about 500 people) without medical coverage other than emergency coverage through the GRM program, but would provide them with some financial assistance.

CSHB 357 (Rules) am

Senate HESS Committee changes to CSHB 357 (Rules) am relating to Adult Public Assistance:

Deleted policy statements relating to Federal government - Sections 5 and 16.

Page 2, lines 17-18 - delete "... and who has been determined eligible under regulations adopted by the department" to reduce the amount of agency discretion.

Page 3, line 11 - added language to allow a person in an institution to apply for APA in anticipation of leaving to avoid a payment lag.

Page 4, lines 14-15 - delete "as in its opinion is justified"

Page 4, line 8 - deleted language for agency review of files every 3 months, as it seemed this short time period was an unreasonable expectation.

Page 5, lines 4-6 - Changed language to indicate that a hearing will be conducted according to department regulations.

Page 5, line 11 - changed " more than one month" to future months, to encourage advance payments rather than delayed payments.

Page 5, lines 20-24 - changed language so that department would document investigations and continue APA payments pending a hearing decision.

Page 6, line 6 - changed "may" to "shall"

Page 6, line 27 - added language to allow a person receiving APA to leave the state temporarily for medical treatment.

Page 8, lines 20-21 - deleted "or a regulation adopted under any of thoses sections" subject to a class B misdemeanor.

The Committee added new sections 10 and 14 to the bill to guarantee interim payments of state APA supplement to those awaiting SSI disability determination (a process which takes from 6 months to 2 years) while not granting medicaid coverage during that period since mistaken eligibility might endanger the allowed medicaid penalty. Upon SSI approval, the applicant will receive retroactive medicaid eligibility prior to application date. The applicant could receive emergency medical care through the GRM program during the interim.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Notice is hereby given that the Alaska Department of Health and Social Services, under the authority vested by AS 47.05.010, proposes to adopt and repeal regulations in Title 7 of the Alaska Administrative Code to implement AS 47.25.430 - 47.25.970, as follows:

The Department of Health and Social Services proposes to repeal 7AAC 40.05, 40.15, and 40.100, which define the eligibility factors of age and property retention and provide definitions for the Adult Public Assistance program (Old Age Assistance, Aid to the Disabled, and Aid to the Blind).

The Department of Health and Social Services proposes to adopt regulations which define the conditions of participation in the Adult Public Assistance program in Alaska. This includes provisions relating to the application process, factors of eligibility, computation and payment of benefits, recipient responsibilities, and conditions of continuing eligibility. The subject matter of the regulations which are proposed for repeal is ~~also~~ addressed, with changes, in these proposed regulations.

These regulations were originally proposed in February, 1979, and public hearings were held in Anchorage, Juneau and Fairbanks during March, 1979. Since that time, they have been modified to reflect public comments, changes in benefits levels, and changes in federal regulations governing the Medicaid and Supplemental Security Income Programs. Because of the length of time this revision process has required and because some of the changes made in the regulations are significant the Department urges all interested parties to review the revised regulations and offer comments upon them.

If these regulations were to be adopted substantially as proposed, they would result in no benefits or administrative expenditures beyond those already anticipated for Fiscal Year 1982. The Department foresees no need for an increased appropriation as a result of these proposals.

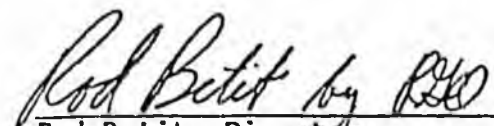
Copies of the proposed regulations may be obtained by writing to: Director, Division of Public Assistance, Pouch H-07, Juneau, Alaska 99811, or by calling (907) 465-3347.

Any person may present written statements or arguments relative to the actions proposed at Room 318, Alaska Office Building, Juneau, Alaska before 4:30 pm on Friday, July 10, 1981. Written comments may be mailed to Division of Public Assistance, Attention: APA Program Officer, Pouch H-07, Juneau, Alaska 99811. Questions and oral comments may be addressed by telephone to Gordon Landes, Public Assistance Program Officer, Division of Public Assistance, (907) 4653347.

The Department of Health and Social Services, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Dated

5/28/81


Rod Betit, Director
Division of Public Assistance

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811
PHONE:

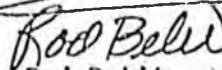
Dear Interested Party:

Enclosed for your review is a copy of proposed regulations concerning Alaska's "Adult Public Assistance" programs: Old Age Assistance, Aid to the Blind, and Aid to the Disabled. We invite your comments on these regulations.

Since you have shown an interest in these programs, we'd also like to call your attention to the introduction this year of House Bill No. 357, "An Act relating to adult public assistance." This bill, introduced by the Rules Committee, by request of the Governor, is our attempt to bring the Adult Public Assistance programs' three separate sets of statutes together into one section, and to amend these very old laws to better reflect the way the current programs have actually operated since the start of the federal Supplemental Security Income program. We intended this bill to be a "housekeeping measure" only, not one that would affect current recipients or make any major program changes.

At this point HB 357 does not appear likely to be acted upon during this Legislative session, so time is available for you to obtain a copy, review it, and offer your comments to your Legislator before the 1982 session. If you send him or her specific suggestions on additions and corrections to the bill, we'd appreciate receiving a courtesy copy of your input.

Sincerely,



Rod Betit
Director

Enclosure

CHAPTER 40
ADULT PUBLIC ASSISTANCE

Section

- 450. Report of change
- 460. Redeterminations
- 470. Suspension and termination
- 480. Social Security and SSI overpayments
- 490. Repayment of overpayments
- 500. Correction of underpayments
- 900. Definitions

7AAC 40.005. PROPERTY RETENTION. Repealed , 1979.

7AAC 40.015. AGE. Repealed , 1979.

7AAC 40.020. INTRODUCTION. The provisions of this chapter apply to the Old Age Assistance, Aid to the Blind, and Aid to the Disabled subprograms within the Adult Public Assistance Program. The Adult Public Assistance Program provides regular monthly cash assistance to eligible aged, blind, or disabled persons who:

(1) receive, or are eligible to receive, monthly Supplemental Security Income (SSI) Assistance from the Bureau of Supplemental Security Income, Social Security Administration, U.S. Department of Health, Education and Welfare; or

(2) would qualify to receive SSI assistance in all respects except that their countable monthly income is greater than the SSI income limits but is less than the Adult Public Assistance limits; or

(3) validly received Adult Public Assistance in December, 1973, and have continuously met the Adult Public Assistance eligibility requirements in effect during December, 1973.

(Eff. / /79, Register .)

Authority: AS 47.05.010
AS 47.25.430
AS 47.25.620
AS 47.25.790

Revisor
Skayd

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the purchase of social services by
7 the state; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 47.40.010(a) is repealed and reenacted to read:

10 (a) When the department purchases services for persons for whom
11 the state has assumed responsibility under the laws of the state, the
12 department shall

13 (1) adopt regulations establishing the levels of care to be
14 provided;

15 (2) contract for the delivery of services at each level of
16 care to be provided;

17 (3) place persons for whom the state has assumed responsi-
18 bility at appropriate levels of care in light of individual needs.

19 * Sec. 2. AS 47.40.020 is amended to read:

20 . Sec. 47.40.020. LICENSING AND SUPERVISION. A person [ANYONE]
21 providing services which are purchased by the department under this
22 chapter shall [, IF REQUIRED BY THE DEPARTMENT,] be licensed and super-
23 vised in the same manner as boarding homes, foster homes and other
24 institutions as provided for in AS 47.35.010 - 47.35.080.

25 * Sec. 3. AS 47.40.030 is repealed and reenacted to read:

26 Sec. 47.40.030. REQUIRED ACCOUNTING PROCEDURES. (a) A person who
27 solicits or receives payment for services, other than foster home care,
28 X under this chapter shall

29 (1) meet generally accepted accounting principles; and

1 (2) upon request of the department, produce for inspection
2 and copying all fiscal information, books, records, and accounts relat-
3 ing to the cost of providing services.

4 (b) Information acquired by the department under (a) of this
5 section is public information unless its disclosure is prohibited by
6 law.

7 * Sec. 4. AS 47.40 is amended by adding new sections to read:

8 Sec. 47.40.041. CREATION OF RESIDENTIAL CHILD CARE SERVICES COM-
9 MITTEE. (a) There is created a Residential Child Care Services Com-
10 mittee for the purpose of establishing cost of care rates for each level
11 of child care services established by the department.

12 (b) The committee consists of five members appointed by the gover-
13 nor. Two members of the committee shall be appointed from among owners,
14 operators and employees of residential child care facilities, two mem-
15 bers shall be employees of the department, and one member shall be a
16 member of the legislature.

17 (c) The term of each member of the committee is three years.

18 (d) Members of the committee serve without compensation but are
19 entitled to per diem and travel expenses authorized by law for boards
20 and commissions.

21 Sec. 47.40.043. DETERMINATION OF RATES OF PAYMENT FOR RESIDENTIAL
22 CHILD CARE SERVICES. (a) ~~The Residential Child Care Services Committee~~
23 shall establish a daily rate for the cost of each level of residential
24 child care services. The committee shall review available audits of
25 residential child care facilities and hold public hearings in estab-
26 lishing a daily rate under this subsection.

27 (b) A daily rate established by the committee is the maximum
28 amount the department may pay for a particular level of service. The
29 committee may adjust a daily rate based on regional variations in the

1 cost of living in the state.

2 (c) Each daily rate shall be separately recalculated every two
3 years during the first session of each legislature. In each year in
4 which there is no recalculation, the committee may adjust each daily
5 rate for inflation by a uniform percentage.

6 (d) Public hearings concerning recalculation or adjustments of
7 daily rates shall be held in February each year.

8 (e) In determining daily rates for each level of service under
9 this section the following factors may not be included:

- 10 thi (1) expenses, including salaries and fees, incurred in rais-
- 11 i money for the operation of a residential child care facility;
- 12 ing (2) expenses incurred for education or religious training of
- 13 children residing at a residential child care facility; and
- 14 (3) expenses for services that exceed or do not meet the
- 15 requirements of the department.

16 (f) This section does not apply to the provision of foster home
17 care.

18 Sec. 47.40.045. NEGOTIATION OF CONTRACTS. (a) The department
19 shall, as often as it considers necessary, enter into negotiations for
20 the purchase of services under this chapter.

21 (b) This section does not apply to the provision of foster home
22 care.

23 Sec. 47.40.047. FOSTER HOME CARE RATES. The department shall
24 establish foster home care rates by regulation under AS 47.40.075.

25 * Sec. 5. AS 47.40 is amended by adding a new section to read:

26 Sec. 47.40.075. REGULATIONS. The department may adopt regulations
27 necessary to carry out this chapter.

28 * Sec. 6. AS 47.40.080 is repealed and reenacted to read:

29 Sec. 47.40.080. DEFINITIONS. In this chapter

1 (1) "committee" means the Residential Child Care Services
2 Committee;

3 (2) "department" means the Department of Health and Social
4 Services;

5 (3) "services" means care provided in a foster home or resi-
6 dential child care facility, but does not include medical care or any
7 service for which the manner or rate of payment is otherwise prescribed
8 by law.

9 * Sec. 7. AS 47.05.010(14), AS 47.40.040, and 47.40.010 are repealed.

10 * Sec. 8. This Act takes effect July 1, 1982.

11 *needs def. of capital + ed.*

Sofa
4/13/82*Proofed*
4-13A M E N D M E N T

Offered in the HOUSE

By Buchholdt

TO: CSHB 357(Fin)

Page 1, line 6, after "assistance";

Insert "; and providing for an effective date"

Page 10, after line 3:

Insert the following new material:

- * Sec. 21. AS 47.40.010(a) ^{after} (4) ₁ repealed and reenacted to read:
 (3) place persons for whom the state has assumed responsibility at appropriate levels of care in light of individual needs.
- * Sec. 22. AS 47.40.020 is amended to read:
 Sec. 47.40.020. LICENSING AND SUPERVISION. A person [ANYONE] providing services which are purchased by the department under this chapter shall [, IF REQUIRED BY THE DEPARTMENT,] be licensed and supervised in the same manner as boarding homes, foster homes and other institutions as provided for in AS 47.35.010 - 47.35.080.
- * Sec. 23. AS 47.40.030 is repealed and reenacted to read:
 Sec. 47.40.030. REQUIRED ACCOUNTING PROCEDURES. (a) A person who solicits or receives payment for services, other than foster home care, under this chapter shall
- (1) meet generally accepted accounting principles; and
 - (2) upon request of the department, produce for inspection

*These amended
versions of full
cost of care
were considered
in the house*

and copying all fiscal information, books, records, and accounts relating to the cost of providing services.

(b) Information acquired by the department under (a) of this section is public information unless its disclosure is prohibited by law.

* Sec. 24. AS 47.40.040 is repealed and reenacted to read:

Sec. 47.40.040. DETERMINATION OF FULL COST OF SERVICES. (a) In this chapter, "full cost" of services shall be determined by the per person, per day cost in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined.

(b) In determining daily rates for each level of service under this section the following factors may not be included:

(1) expenses, including salaries and fees, incurred in raising money for the operation of a residential child care facility;

(2) money expended for construction, major equipment, and other capital expenditures;

(3) program and administrative expenses provided by private contributions, grants, and other public or private funding sources not provided under this chapter;

(4) expenses incurred for education or religious training of children residing at a residential child care facility; and

(5) expenses for services that exceed or do not meet the requirements of the department.

(c) This section does not apply to the provision of foster home care.

* Sec. 25. AS 47.40 is amended by adding a new section to read:

Sec. 47.40.047. FOSTER HOME CARE RATES. The department shall establish foster home care rates by regulation under AS 47.40.075.

* Sec. 26. AS 47.40 is amended by adding a new section to read:

Sec. 47.40.075. REGULATIONS. The department may adopt regulations necessary to carry out this chapter.

* Sec. 27. AS 47.40.080 is repealed and reenacted to read:

Sec. 47.40.080. DEFINITIONS. In this chapter

(1) "capital expenditures" means money expended for construction, renovation, or equipment purchases over \$25,000 in value;

(2) "department" means the Department of Health and Social Services;

(3) "education" means formal schooling at the pre-elementary, elementary, or secondary level which is generally provided by public or private schools but does not include tutoring, music, art lessons, or other supplementary programs that are determined to be important for a child's development;

(4) "services" means care provided in a foster home or residential child care facility, but does not include medical care or any service for which the manner or rate of payment is otherwise prescribed by law.

* Sec. 28. CREATION OF RESIDENTIAL CHILD CARE SERVICES COMMITTEE. (a)

Notwithstanding AS 47.40.040, there is created a Residential Child Care

4(?)

Services Committee for the purpose of establishing for the 198~~4~~ fiscal year cost of care rates per person per day for each level of child care services established by the Department of Health and Social Services. The committee shall review available audits of residential child care facilities and hold public hearings in establishing daily rates under this section.

(b) The Residential Child Care Services Committee consists of five members appointed by the commissioner of health and social services. Two members of the committee shall be appointed from among owners, operators, and employees of residential child care facilities, two members shall be employees of the Department of Health and Social Services and one member shall be a member of the legislature.

(c) Members of the Residential Child Care Services Committee serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions.

(d) The Residential Child Care Services Committee shall report its findings to the Department of Health and Social Services by January 1, 1983.

Page 10, line 4:

Change "Sec. 21" to "Sec. 29"

Page 10, line 5:

Delete "AS 47.40" and insert "AS 47.40.050" in its place

Page 10, after line 5:

Insert the following new material:

* Sec. 30. This Act takes effect July 1, 1982.

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FROM: THE ALASKA ASSOCIATION OF HOMES FOR CHILDREN
TO: THE SENATE H.E.S.S. COMMITTEE
RE: THE REPEAL OF AS 47.40 PER HB 357 WITH ATTACHED CONTRACTING
PROVISIONS.

1. Repeal of AS 47.40 shall be effective as of July 1, 1983.
2. Contracts for Residential Child Care services shall be negotiated for two (2) year periods beginning July 1, 1983.
3. Contracts shall be for a designated number of beds as opposed to a per diem rate.
4. Contracts shall continue with the same provider except for termination for cause. "Termination for cause" shall be considered to be the loss of State licensure or noncompliance with contract stipulations.
5. Contracts shall be awarded only to those institutions who, within two (2) years after initial contract, have received accreditation from the nationally recognized accrediting agency stipulated in the regulations.
"Institutions" shall be defined as any provider licensed to care for ten (10) or more children in a residential setting.

FROM: THE ALASKA ASSOCIATION OF HOMES FOR CHILDREN

TO: THE SENATE H.E.S.S. COMMITTEE

RE: ARGUMENTS FOR THE REPEAL OF AS 47.40 PER HB 357 WITH
ATTACHED CONTRACTING PROVISIONS

1. Delay of effective date until July 1, 1983
 - A. Delaying the effective date of the repeal of AS 47.40 provides the time necessary to responsibly prepare for the resulting administrative, programmatic and financial adjustments.
 - B. This allows for the Department of Health and Social Services to promulgate carefully enunciated regulations.
2. Two year Contracts
 - A. This provides continuity for children in placement and staff.
 - B. This provides opportunity for capital, program, and financial planning.
 - C. Yearly renegotiations would cause excessive administration costs for both the Providers and the State.
 - D. Institutional licensing is done biannually.
3. Contracting for the designated number of beds.
 - A. This provides for steady and prospective financial management for the State and the Providers.
 - B. This insures that each year's unit rate is based upon the State's prospective census estimates. Currently new rates are determined solely by prior expenditures divided by census. Therefore, forcing the State to compensate the Provider for beds they purchased last year as well as beds they did not.
4. Continuation of Providers
 - A. It is not in the best interest of the child to be regulated to the status of a negotiable commodity.
 - B. The established practice for residential services has set this precedent.
5. Accreditation of Providers
 - A. Provides a measure of objectivity when reconciling financial constraints with the program needs of the child.
 - B. This insures that the contracts denied are done so for cause rather than due to personality conflicts between contractor and provider, or personal bias regarding treatment modalities.

COMPROMISE LANGUAGE TO
CS FOR HOUSE BILL NO. 357 (RULES) am
REGARDING FULL COST OF CARE STATUTE

For An Act entitled: "An Act relating to public assistance; and providing for an effective date."

*Sec. 19. AS 47.40.040(b) is amended by adding a new subsection to read:

(6) costs of services funded by sources other than the department, including, but not limited to, donations, interest, dividends, investment income, and other public sources.

Sec. 20. AS 47.25.480, 47.25.510, 47.25.620 - 47.25.710, 47.25.730 - 47.25.880, and 47.25.905 - 47.25.970 [, AND AS 47.40] are repealed.

Sec. 21. This Act takes effect on July 1, 1982.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

June 29, 1981

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811RECEIVED
JUN 29 1981

John O'Meara
Office of Internal Audit
Office of the Governor

Office of the Governor
Division of Internal Audit

Dear Mr. O'Meara:

The following comments refer to the findings in the preliminary report of June 5, 1981, addressing the problem of payment of public assistance funds to ineligible persons:

Page 17 "Quality Control Responsibility".

The Quality Control Unit was housed in the Commissioner's Office prior to 1979. As the audit report states on page 18-B, the unit was reassigned to the Division of Public Assistance in 1979 and a number of actions were immediately taken by the Division to reduce the level of error in Alaska's programs. The Division error reduction strategy was based on the following three stages; 1) isolating the primary causes of error in the programs, 2) moving quickly to implement corrective action designed to correct these problems and 3) monitoring the corrective actions at appropriate intervals to determine their effectiveness.

The audit report states that the Division has made significant progress in isolating the reasons for error and implementing actions to correct these errors. However, the audit recommends that greater emphasis be placed on monitoring.

The Division agrees with the recommendation to expand monitoring efforts now that initial corrective actions have been in place long enough to have potentially reduced errors. However, full scale monitoring prior to this time would not have been beneficial as there was insufficient data from which to judge the effectiveness of any specific corrective action.

In summary, the Division feels it has acted quickly and responsibly to implement an effective quality control/corrective action program since assuming this unit in 1979. Further monitoring has and will continue to be a major element of the Division's efforts.

Page 20 "Collection Efforts Have Limited Success".

The audit report is generally accurate in its conclusion that very little recovery of program benefits is actually realized on a monthly basis. However, the Department believes this poor showing stems primarily from Federal regulations which prohibit the State from imposing mandatory repayment on Foodstamp and AFDC households.

John O'Meara

-2-

The States must advise recipients that repayment is voluntary for all non-fraud claims. Given this requirement coupled with these families' income situation, it is not surprising that less than 1% of all outstanding collectibles are recovered in any particular month. Officials from this Department and from the Governor's Office have met with officials from the U.S. Department of Agriculture on the issue. Changes were included in President Reagan's FY 82 legislative proposals to make repayment of non-fraud losses in Foodstamps mandatory effective October 1, 1981. With this change in Federal rules, the State will see a dramatic increase in recovery of Foodstamp losses.

At page 21 the audit report finds inadequate the Fiscal Section's follow-up efforts on cases for which the section assumed collection responsibility in July, 1980. These cases involve payback agreements arising from fraud investigations. The Fiscal Section concurs, in principle, with this finding, and is instituting procedures which will produce automatic mail follow-up, in an attempt to obtain repayment. The section points out the following:

1. The section was assigned the collection responsibility without funds or staff to carry it out. Work on collection activity must be done by staff who are authorized to accomplish other, higher priority tasks.
2. Efforts beyond mail follow-up are not feasible, as funds for such action are not available. Offset of collection fees or expenses against receipts is not allowed.
3. To expect substantial success in collecting on these cases may be unrealistic from a universe of people without much money to pay.

Page 5 and 28 "More Effective Fraud Controls are Needed".

So much as reads "...Because the Department does not consider fraud control a priority effort the Fraud Unit does not receive the resources needed to operate effectively..." would be more apt if it read "Because the Department prioritizes its resources to: (1) cope with rising caseloads, (2) assure timely delivery of eligibility and payment services, (3) provide effective quality controls to minimize underpayments and overpayments through error, and (4) provide fraud control, the fraud unit falls in last priority to receive the resources needed to operate effectively..."

Page 28 The "...federal report [showing that] a minimum of 10 per cent of the public assistance cases are fraudulent on a national average..." has not been made available to DHSS. Inquiry with respect to the "Federal report" revealed that the Chief Investigator made reference to it to State Internal Audit staff, but has been unable to produce a copy of the report as of June 19, 1981. Further discussion between staff members of this department and State Internal Audit left the issue of percentage of fraud in public assistance as unsubstantiated and, unless the "Federal report" referred to is located, the statement concerning the percentage of fraud would be deleted.

John O'Meara

-3-

Page 35 "Fraudulently Received Payments are seldom recovered".

The Chief Fraud Investigator states that of the 17 cases closed by "payback" 13 have, in fact, signed "payback" agreements. Of the remaining four cases, two were concluded by recovery action, one by lump sum payment and one by negotiation by the Fairbanks Attorney General's Office. Consequently, "payback" agreements were not necessary in those cases.

Page 38 "Recommendations".

The following actions will be taken or are already underway to make the Fraud Investigation Unit more effective:

On July 1, 1981 the Unit will be assigned under the line and technical supervision of the South Central Region Deputy Commissioner. This re-assignment will provide for on-site supervision of Fraud Investigation Unit staff and activities and permit direct application of management expertise that is unavailable in the Unit.

An incremental increase will be requested in the DHSS FY 83 Policy Budget for one investigator and one part-time clerk typist for NRO, one investigator and one part-time clerk typist for SERO, and one additional investigator for SCRO.

The monthly and quarterly reports submitted by the Chief Fraud Investigator will be expanded upon to better depict the effectiveness of public assistance fraud control.

The Deputy Commissioner, Southcentral Region will direct the Fraud Investigation Unit in the preparation of its plan for more effectively controlling and deterring public assistance fraud.

Sincerely,



Helen D. Beirne, Commissioner

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811

PHONE: (907) 465-3355

DOCUMENT NO. 139-82

April 12, 1982

The Honorable Albert Adams
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

During testimony before House Finance on Wednesday, April 17, I recommended several modifications to Section 6 of CSHB357 (Finance) which were not adopted prior to passage of the bill from the committee. The changes needed are as follows:

- Page 2, Line 12 - Delete wording "Unless otherwise provided by law,".
- Page 2, Line 13 - Delete word "local" preceding "government".
- Page 2, Line 23 - Add wording "with a person or local government" immediately after the phrase "under this section".

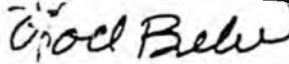
Department of Law legal counsel advises me that these changes are crucial for these reasons:

- (1) Line 12: Make it clear that the Department can enter into service delivery contracts. The wording "unless otherwise provided by law" sets up a potential catch 22 where the Department might be prevented from contracting due to the specificity of language found elsewhere in the present statutes calling for the Department to perform certain functions.
- (2) Line 13: Make it clear that the Department may contract with federal agencies to deliver departmental services. Current wording of CSHB357 restricts this flexibility to local governments only. Of particular concern is our intent to transfer the Adult Public Assistance programs to the federal government during FY83.
- (3) Line 23: Make it clear the Department may contract directly with the federal government to deliver departmental services without publishing a request for proposals. Where the Department might exercise this option, "Request for Proposals" would be inappropriate because there is only one federal government. Appropriate federal and state staff would simply negotiate the terms of any such contractual arrangement under the legal guidance of the Department of Law.

April 12, 1982

The Department of Health and Social Services and the Department of Law continue to support the need for the above referenced changes. Any assistance you may be able to offer in this regard will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rod Betit", written over a horizontal line.

Rod Betit
Director

cc: Thomas H. Robertson,
Assistant Attorney General

Allen Korhonen,
Deputy Commissioner

Alice Farnan

practical means of supervision of the broad delegation of legislative powers required by the complexities of modern society, should not be hastily voided.

I conclude that the legislature's annulment of the cash prize regulation, pursuant to AS 44.62.320(a), does not violate the principle of separation of powers, does not provide a means by which the legislature can enact laws without passage of a bill, and does not unconstitutionally encroach on the power of the executive.



ALASKA CHILDREN'S SERVICES,
INC., Appellant,

v.

Francis S. L. WILLIAMSON, Commissioner,
Department of Health and Social
Services, and State of Alaska, Appellee.

No. 4155.

Supreme Court of Alaska.

Feb. 21, 1980.

Nonprofit corporation owning or operating residential child care facilities brought suit challenging ruling of Department of Administration that Department of Health and Social Services was not required to reimburse corporation for amounts by which actual cost increases in providing child care had exceeded predicted increases. The State of Alaska Superior Court, Third Judicial District, J. Justin Ripley, J., affirmed the ruling below, and corporation appealed. The Supreme Court, Connor, J., held that: (1) under statute providing that Department of Health and Social Services pay private, nonprofit corporation for child care services for children who have become wards of the state for expenses related

sometimes, recommend statutory action by the legislature.

directly to "full cost" of services and that "full cost" shall be determined by per person, per day cost in preceding fiscal year plus a proportionate share of anticipated living and staff salary increment increases for upcoming fiscal year, corporation was not entitled to reimbursement for amounts by which actual cost increases exceeded predicted increases, and (2) statute did not deprive corporation of due process or deny it equal protection.

Affirmed.

1. Statutes \Leftrightarrow 223.2(1)

Two statutes enacted at same time and dealing with same subject matter are in pari materia and should be construed so as to be consistent with one another and in such manner as to give maximum effect to each.

2. Infants \Leftrightarrow 19.4

Under statute providing that Department of Health and Social Services pay private, nonprofit corporation for child care services for children who have become wards of the state for expenses related directly to "full cost" of services and that "full cost" shall be determined by per person, per day cost in preceding fiscal year plus a proportionate share of anticipated living and staff salary increment increases for upcoming fiscal year, such nonprofit corporation was not entitled to reimbursement for amounts by which actual cost increases exceeded predicted increases. AS 47.40.010(a)(3), 47.40.040(a).

3. Constitutional Law \Leftrightarrow 242.3(2), 278.7(1)
Infants \Leftrightarrow 12

Statute providing that Department of Health and Social Services pay private, nonprofit corporation for child care services for children who have become wards of the state for expenses related directly to "full cost" of services and that "full cost" shall be determined by per person, per day cost in preceding fiscal year plus a proportionate share of anticipated living and staff salary

For a discussion of federal laws on the subject, see note 8 *supra*.

increment increases for upcoming fiscal year did not deprive such a nonprofit corporation of due process and equal protection even though statute allowed DHSS to pay for only predicted cost increases when actual cost increases had been much greater. AS 47.40.010(a)(3), 47.40.040(a); U.S.C.A. Const. Amend. 14.

Charles K. Cranston, Gallagher, Cranston, Snow, Walters & Dahl, Anchorage, for appellant.

Thomas H. Robertson, Asst. Atty. Gen., Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER, BURKE and MATTHEWS, JJ.

OPINION

CONNOR, Justice.

This case presents issues of statutory interpretation.

Appellant Alaska Children's Services, Inc. (hereinafter ACS) is a private, non-profit corporation¹ that owns or operates residential child care facilities in Anchorage and

1. ACS's letterhead indicates that it was founded jointly by the American Baptist, American Lutheran, and the United Methodist Churches.

2. The full text of AS 47.40.010 provides:

Purchase of Services (a) When the department [DHSS] purchases services for persons for whom the state has assumed responsibility under the laws of the state, the department shall

(1) adopt regulations establishing the levels of care to be provided,

(2) determine the rates of payment for the full cost of services required,

(3) pay all expenses related directly to the full cost of services at the levels of care required;

(4) make the placement of persons in accordance with the levels of care provided for in the regulations.

(b) Services of jails and other penal institutions may not be included in services purchased by the state in this chapter.

3. AS 47.40.040 reads in full:

Determination of full cost of services (a) In this chapter, "full cost" of services shall be determined by the per person, per day cost in

Unalaska. Since 1971, ACS has provided full-time child care services for children who have become wards of the state by "agreement" with the Department of Health and Social Services (hereinafter DHSS). There has been no written contract between these parties. Rather, a working relationship developed that purported to follow statutory and administrative guidelines for state placement and support of these children.

The controversy that has arisen concerns the amount the state must pay ACS for its child care services. The focus is upon two related statutes. The first, AS 47.40.010(a)(3),² states that when the DHSS purchases services for persons for whom the state has assumed responsibility, it shall "pay all expenses related directly to the full cost of services at the levels of care required." The second statute, AS 47.40.040(a),³ provides that the "full cost" of services shall be determined by the per person, per day cost⁴ in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases" for the upcoming fiscal year.

DHSS has been paying ACS in accordance with this second statute; that is, pay-

the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined. Child care costs for foster homes shall be computed in the same manner as for child care and nursing home institutions except that no salary costs may be considered.

(b) Full cost of services does not include the following:

(1) expenses, including salaries and fees, incurred in raising funds;

(2) funds expended for construction, major equipment and other capital expenditures;

(3) depreciation and replacement costs of, and costs of additions to, major property and equipment;

(4) religious training and education; and

(5) services provided which are substandard to, or exceed, the requirements of the department.

4. The per person, per day cost in each institution is referred to as the "unit cost."

ment has been determined by calculating the "unit cost"⁵ in the past year for each institution and adding to this a percentage based upon the rise in costs predicted at the beginning of each fiscal year. ACS claims this has been insufficient because actual cost increases have generally been much greater⁶ than the predicted increases, and that therefore the DHSS has not in fact paid "all expenses related directly to the full cost of services" as required by AS 47.40.010(a)(3). As a result, according to ACS, it lost over \$200,000 in variable costs⁷ by providing child care services for the state between 1971 and 1976. This case arose from ACS's attempts to secure reimbursement from the state for these extra expenses and for an additional \$350,000. The latter figure represents alleged depreciation of its facilities and equipment stemming from the care of state-placed children between 1971 and 1976 and variable costs for child care provided after 1976.

No findings of fact have yet been made as to the correctness of ACS's cost figures or accounting methods, since that issue was preempted by the decision below. It is clear, however, that ACS is not seeking payment for any extravagances or other expenses that were not necessary to maintain those standards of care which have been established by statute or DHSS regulations.

The record reflects that for a number of years prior to 1976 ACS had informally attempted to get full reimbursement from the DHSS on the basis of its actual costs as established by year-end audits. Some lobbying efforts were undertaken in the legislature, and the executive director of ACS, John Garvin, wrote numerous letters to DHSS officials explaining its position. These efforts proved unsuccessful and, as a result, on October 19, 1976, ACS filed suit against the Commissioner of DHSS, Francis

Williamson, seeking reimbursement for all of its actual, permissible expenses allegedly incurred in providing child care for the state from 1971 to 1976. The suit was subsequently held in abeyance by stipulation and order dated January 10, 1977, to allow ACS to pursue its administrative remedies.

ACS then formally applied to Commissioner Williamson for relief, claiming that AS 47.40.010 required DHSS to reimburse it for all expenses actually incurred in providing child care services for the state at acceptable standards. ACS contended that year-end audits done by both state and private agencies demonstrated that it had not been paid for all such expenses, and that therefore "cost-settling" was required between the state and the provider.

Commissioner Williamson rejected these arguments, holding that ACS was entitled only to payments calculated on the basis of AS 47.40.010(a). Since that statute specifically provided for the method of calculating the "full cost" of services, the DHSS was bound to authorize payments only for those amounts predicted at the beginning of each fiscal year.

ACS appealed the Commissioner's decision to the Department of Administration, and a hearing was held on June 23, 1977. ACS presented its facts and figures, and urged that the two statutes, when read together, required cost-settling. On July 20, 1977, the Department of Administration ruled against ACS, holding that the statutes had been properly construed by DHSS. The decision was subsequently appealed to the superior court and, following briefing and argument, it summarily affirmed the ruling below by order on June 14, 1978. The appeal to this court followed.

5. See fn. 4, *supra*.

6. In one year, 1974, ACS admits to have actually made a profit of about \$6,800 on providing care for state-placed children. For other years, however, its figures show it suffered rather substantial losses.

7. "Variable costs" in this sense refers to those costs relating to daily maintenance, such as food, clothing, medical expenses, wages, etc. As will be noted *infra*, the actual "variability" of these costs is relatively limited by the prescribed standards of care which such child care institutions are required to provide.

[1] The two statutes at issue here were enacted at the same time and deal with the same subject matter. They are *in pari materia* and should be construed so as to be consistent with one another and in such a manner as to give maximum effect to each. D. Sands, *Sutherland Statutory Construction*, § 51.03 (4th ed. 1973).

[2] Although ACS does not claim that these statutes, on their face, give rise to any ambiguity, its argument implies that a type of functional ambiguity arises whenever predicted cost increases do not equal actual cost increases. When this occurs, according to ACS, the method for determining payment under AS 47.40.040(a) does not satisfy the requirement of AS 47.40.010(a)(3), which requires the DHSS to "pay all expenses related directly to the full cost of services at the levels of care required." [emphasis added] In support of this argument, ACS contends that the legislature recognized the need to furnish providers with operating capital during the year, rather than paying them a lump sum at the end of the year. As a result, ACS claims the legislature enacted AS 47.40.040(a) as a means for providing current payments that follow a formula intended to reimburse providers for their full costs, as required by AS 47.40.010(a)(3). While those payments may satisfy the requirements of AS 47.40.010(a)(3) in years when the cost increases are correctly predicted, in years where actual cost increases exceed the predicted increases the promise of the statute is unfulfilled. Therefore, according to ACS, cost-settling must be done at the end of each fiscal year in order to give full effect to both statutes.

The state responds that the wording of the statutes is clear and, regardless of the actual operational effect of AS 47.40.010(a), ACS is entitled to payment only for ex-

8. By contrast, cost settling is expressly permitted as to providers of medical care. AS 47.07.070. This undercuts the ACS argument that the legislature intended retroactive cost settling under AS 47.40.010 and AS 47.40.040.

9. There are several rational reasons for treating institutions providing child care differently from those providing medical care:

penses which have been estimated pursuant to the statute.

AS 47.40.010(a)(3) states that "all" the expenses to be paid must relate to the "full cost" of services. AS 47.40.040(a) sets forth how the "full costs" of services are to be determined by the DHSS. There is nothing provisional about the manner in which "full cost" of services must be determined under the statute. The statute evinces a legislative intention to place in the hands of administrative officials the task of predicting cost increases each year. Whether they do this well or poorly, there is nothing in the statutory language which permits cost-settling at the end of each year. While we think it unfortunate that ACS, which must observe high standards of child care, must lose money in some years when the costs exceed the predicted amounts, we can find no basis for reading the statute in the manner urged by ACS. The remedy lies with the legislative branch of government, not the courts. We hold that the superior court correctly construed the statute. Accordingly, there was no error.

[3] ACS asserts that the statute, as here construed, deprives ACS of due process and denies to it the equal protection of the laws. We are unpersuaded. First, the analogy to the regulation of public utility rates is incomplete, for there are many aspects of ACS's activities which do not compare with that of a public utility. Most prominently, ACS is free to decline to provide child care services for the state. Second, as to equal protection, ACS has not convinced us that the different statutory treatment given to providers of medical services does not bear a fair and substantial relationship to a legitimate government objective.⁹ See *State v. Erickson*, 574 P.2d 1, 12 (Alaska 1978).

AFFIRMED.

(1) The need for medical care is more immediate than the need for child care. Cost settlement is, therefore, justified as a means of attracting medical providers and insuring that needy Alaskans will have immediate access to necessary medical care.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 11, 1982

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

Hon. Mike Beirne, Chairman
Health, Education, & Social
Services Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 357 (adult public assistance)
Our file no.: J77-095-81

Dear Mike:

Your committee's assistant, Barbara Wilkins, met with Director of Public Assistance Rod Betit and me this morning regarding possible amendments to this bill. We tentatively agreed upon the following:

Page 2, lines 15 and 16:

Delete "the conditions in the state" and insert in its place "appropriations made by law [THE CONDITIONS IN THE STATE]."

Page 3, lines 12--15:

Delete all material and insert the following in its place: "who is [(1)] a patient in a public or private institution for [TUBERCULOSIS OR] mental diseases [, OR (2) DIAGNOSED AS HAVING TUBERCULOSIS OR PSYCHOSIS AND IS A PATIENT IN A MEDICAL INSTITUTION AS A RESULT OF THE DIAGNOSIS]."

Page 4, lines 24 and 25

Put a period after "applicant" on line 24 and delete the rest of the sentence.

Page 10, line 6:

Delete "tuberculosis or" and insert "[TUBERCULOSIS OR]" in its place.

As I mentioned to Barbara, I would like to have Assistant Attorney General Rick Robertson review these amendments before firmly committing the Department of Law to

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them. In addition, Gordon Landes, in the Division of Public Assistance, should have a look at them.

An alternative to the third amendment, above, would be to insert after "important" something like "as soon as reasonably possible." This would convey the idea that promptness is important, while not tying the department to an arbitrarily set time limit that might be impossible to meet in some instances.


I should add that none of us at this morning's meeting was certain about why the current statutes contain special exclusions of institutions for tuberculosis or mental disease. Rod suggested that, at the time our statute was enacted, it probably tracked the relevant federal law. It no longer appears to do so. See, for example, 42 U.S.C., sec. 1382, especially sec. 1382(e). We may well want to make a further or different change in HB 357's AS 47.25.430(c) and 47.25.615(7).

Thanks for your consideration of this matter.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

AHP:gr

cc: Rod Betit, Director
Division of Public Assistance
Department of Health & Social
Services

Keith Specking
Legislative Assistant
Governor's Office

Thomas H. Robertson
Assistant Attorney General
Juneau

AGREEMENT

AGREEMENT made _____ 19____ between

PRESBYTERIAN HOSPITALITY HOUSE,
INC. (PHH) an Alaska non-profit
corporation, hereinafter referred
to as PHH,

and

_____ and _____,
hereinafter referred to as Specialized Foster
Parents (SFP),

I.

PURPOSE OF AGREEMENT

The purpose of this agreement is to enable PHH and SFP to coordinate efforts under a program known as EXTENDED SUPERVISION PROGRAM (ESP). ESP is designed to assist youths ranging in ages from eight (8) years of age to and including eighteen (18) years of age, who have been participants in PHH's residential program.

The further purpose of this agreement is to provide the child, placed with SFP by PHH, with adequate care and guidance to promote the moral, emotional, mental, and physical welfare of the child and the best interests of the community. The intention is to prepare the child for a return home or movement to a lower level of care, in accordance with the placement plan developed for the child by PHH and the Division of Family and Youth Services.

II.

ANNUAL FOSTER HOME LICENSE

SFP shall apply for and receive an annual license from the State of Alaska Department of Health and Social Services, Division of Family and Youth Services, in accordance with the Foster Homes Licensing Provisions 7AAC 50.310-620. While conducting its own interviews, PHH may act as an agent for the Division. In such cases the required State forms shall be used, and the completed study will be submitted for licensing approval to the Regional Manager of the Division.

Prior to placement of a child, SFP must possess a current license and be in compliance with the above named provisions. If SFP's license is revoked for cause, this agreement terminates by operation of law.