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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)	
)	
██████████,)	OHA Case No. 08-FH-271
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a recipient of Adult Public Assistance, Medicaid, and Food Stamp programs. (Ex. 1). On March 17, 2008, Mr. ██████ submitted and signed a Food Stamp recertification application, which he signed on March 15, 2008. On March 24, 2008, the Division of Public Assistance (Division) sent Claimant notice his Food Stamp benefits would remain the same. (Ex. 4). On April 9, 2008, Claimant requested a fair hearing, without giving an issue. (Ex. 5) The Division understood this request to be a request for a hearing on the Adult Public Assistance, Medicaid, and Food Stamp programs and proceeded with this case. (Ex. 5.3). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held July 15, 2008. The Claimant attended the hearing and represented himself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division. ██████████, acted as an interpreter for the Claimant.

On April 25, 2008, the Division submitted to the Office a written Petition to Deny Fair Hearing Request (Petition). The Division argued it did not take any action with regard to the three programs to require a fair hearing. On April 25, 2008, this office gave Claimant until May 12, 2008, to oppose the Division's Petition. The Claimant did not submit a response.

The Division's petition for dismissal was addressed at the July 15, 2008 hearing. After a review of 7 CFR 273.15, the Federal Regulation on Food Stamp hearings, the hearing proceeded on the substantive issue. That regulation states a Claimant has a right to a hearing within the Food Stamp certification period. The petition for a dismissal regarding the Adult Public Assistance and Medicaid programs was not ruled on at that time.

ISSUES

1. Should the Claimant's fair hearing request for Food Stamp, Adult Public Assistance and Medicaid benefits be dismissed?
2. Did the Division properly calculate the Claimant's Food Stamp benefits?

FINDINGS OF FACT

1. The Claimant had been a recipient of the Food Stamp, Adult Public Assistance, and Medicaid programs. (Ex. 1). On March 17, 2008, Claimant submitted a recertification application that was signed on March 15, 2008. He did not provide any financial information on this application. (Ex. 2).
2. Based on verification secured through the Social Security Administration, the Division records, and previously provided household expenses, the Division determined [REDACTED] remained eligible for Food Stamp benefits at the same amount he had received in the previous six months, \$10.00. The Division completed a standard work sheet as required by Federal regulation, in making these calculations. (Ex. 3.4). The Adult Public Assistance and Medicaid benefits remained the same for the Claimant, and the notice did not mention these programs.
3. On April 9, 2008, Claimant requested a fair hearing. He did not give a reason for his request. (Ex. 5.1). On April 25, 2008, the Division submitted a Petition to Deny Fair Hearing Request. The Division argued it did not take any action to require a fair hearing. On April 25, 2008, this office gave Claimant until May 12, 2008 to oppose the Division's Petition. The Claimant did not submit a response.
4. On May 14, 2008, Mr. Tran appeared for the scheduled hearing. He requested a postponement, which was granted. On May 16, 2008, the Division sent Claimant notice a new hearing was scheduled for June 12, 2008, at 9:30 a.m. [REDACTED] failed to appear at that time and initially, the hearing was dismissed due to abandonment. [REDACTED] appeared at this office at 4:30 p.m. on June 12, 2008, because he had misread the notice. [REDACTED] requested a rescheduling of the hearing. On June 18, 2008, this hearing authority found good cause existed for his failure to appear at the hearing scheduled at 9:30 a.m. and rescheduled the hearing for June 12, 2008.

5. The hearing in this case was held on June 12, 2008, at 9:30 a.m. At the hearing, the Division's Petition to Deny Fair Hearing Request was addressed and arguments made. The hearing then proceeded.

6. At the hearing, the Claimant did not provide any evidence, documents or arguments to support an increase or change in any benefits. However, during the hearing, the parties testified Claimant reported a change of expenses to the Division on May 28, 2008, and, based on this report, the Division increased Claimant's benefits effective June of 2008. Despite this change, Claimant still wished to proceed with his April 9, 2008, fair hearing request.

PRINCIPLES OF LAW

A. Alaska Public Assistance and Medicaid.

This case involves the continuation and recertification of Alaska Public Assistance and Medicaid benefits. When a recertification of these benefits is involved, denied, the Division has the burden of proof¹ by a preponderance of the evidence.²

In regard to the Alaska Public Assistance and Medicaid benefits, this case is governed, by the State of Alaska Fair Hearing regulations, 7 AAC 49.020 et. seq. That regulation states:

An opportunity for a hearing must be granted to a client whose

- (1) request for an application is denied;
- (2) claim to financial, food, or medical assistance, contained in his application, is denied or is not acted upon with reasonable promptness;
- (3) receipt of benefits the division intends to modify or terminate; or
- (4) request for a covered Medicaid service is denied.

¹ "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

B. Food Stamps.

This case involves the denial of an application for Food Stamp benefits. When an application is denied, the applicant (Claimant) has the burden of proof by a preponderance of the evidence.

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules regarding fair hearings. It states “at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.” 7 CFR 273.15(g).

The CFR’s also contains the rules for calculating the amount of a recipient’s monthly Food Stamp benefit. The Food Stamp program uses a mathematical formula that takes the recipient’s household income and certain expenses into account. The household’s gross income is totaled and then allowable deductions are taken from it to arrive at the net income. 7 CFR 273.10(e)(1)(i).

ANALYSIS

The first issue is whether or not this case should be heard. The second issue raised by the Claimant is whether the Food Stamps were properly calculated. This discussion will address the Adult Public Assistance and Medicaid benefits separately from the Food Stamp benefits.

A. Adult Public Assistance and Medicaid.

State regulation 7 AAC 49.020 sets forth the circumstances under which the Claimant can request a hearing with regard to the Adult Public Assistance and Medicaid programs. This regulation is very clear and the Claimant does not fall under any circumstances listed in 7 AAC 49.020. His Adult Public Assistance and Medicaid benefits have remained the same. Therefore, with regard to the Adult Public Assistance and Medicaid programs, the Claimant does not have any right to a fair hearing. Accordingly, the Division’s petition is granted and the Claimant’s request for a hearing on his Adult Public Assistance and Medicaid benefits is dismissed with prejudice.

B. Food Stamps.

Pursuant to Federal regulation 7 CFR 273.15 the Claimant has a right to a hearing at any time within a certification period to dispute his current level of benefits. Since Claimant is within a certification period and is disputing his current level of benefits, he has a right to a fair hearing.

The Claimant does not have any arguments, documentation, or evidence for challenging the Division’s calculations. The Division showed it followed the requirements of the Code of Federal Regulations in calculating the Claimant’s Food Stamp benefits. (Ex. 3.4). The Division also considered the Claimant’s financial circumstances when

completing this work sheet. Therefore, the Division correctly calculated Claimant's household's net income for Food Stamp benefits and properly determined his benefits.

CONCLUSIONS OF LAW

1. Pursuant to 7 AAC 49.020, the Claimant does not have a right to a fair hearing on Adult Public Assistance and Medicaid benefits pursuant to his April 9, 2008 hearing request.
2. Pursuant to 7 CFR 273.10(e)(1)(i), the Claimant has a right to a fair hearing regarding his April 9, 2008 Food Stamp benefits hearing request.
3. The Division properly calculated Claimant's Food Stamp benefits.

DECISION

1. The Division's Petition to Deny Fair Hearing Request is granted and the Claimant's April 9, 2008 request for a fair hearing on his Adult Public Assistance and Medicaid benefits fair hearing case is dismissed with prejudice.
2. The Division was correct when it calculated Claimant's Food Stamp benefits in March, 2008.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, The Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.


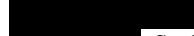
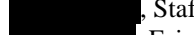

DATED this _____ day of September, 2008.

/Signed/
Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of
September, 2008, true and correct
copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

 Director
 Policy & Program Development
 Staff Development & Training
 Fair Hearing Representative

Al Levitre
Law Office Assistant I