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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-545
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) was a Food Stamp recipient. (Ex. 1.0). On August 4, 2008, the Division of Public Assistance (Division) sent the Claimant notice her Food Stamp benefits would be reduced, effective September 1, 2008, because she was receiving unemployment benefits. (Ex. 2.1) The Claimant requested a fair hearing on August 7, 2008. (Ex. 7) This office has jurisdiction pursuant to 7 AAC 49.010.

The hearing was held on September 9, 2008. The Claimant appeared in person and represented herself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division.

**ISSUE**

Did the Division properly recalculate Claimant's Food Stamp benefits, effective September 1, 2008, when it counted the unemployment income as income?

**FINDINGS OF FACT**

1. On May 14, 2008, the Claimant applied for Food Stamp benefits. She was approved for \$198.00 of Food Stamp benefits effective May 14, 2008. (Ex. 1). Her benefit amount was based on no income, despite the fact the Claimant had acknowledged she was applying for unemployment income. When the Division sent her notice of the benefit approval, it notified her she only needed to report income if that income exceeded \$1384.00. (Testimony of the Claimant and ██████████).

2. The Claimant began receiving unemployment benefits on May 27, 2008, in the amount of \$160.00 per week. (Ex. 2 & 2.2).
3. The Division performed a supervisory review of the Claimant's case on July 29, 2008. During that review, the Division supervisor included the unemployment income in the Food Stamp calculations. Based on this inclusion, Claimant's Food Stamp benefits were reduced to \$107.00, effective September 1, 2008.
4. On August 4, 2008, the Division sent the Claimant notice her Food Stamp benefits were reduced effective September 2008 because of her unemployment income. (Ex. 2.1).
5. On August 8, 2008, the Claimant requested a fair hearing. She argues her Food Stamp benefits should only be reduced if her income exceeds \$1384.00. The Claimant did not challenge the Division's calculations.
6. The recoument of past Food Stamp benefits is not an issue in this case.

### **PRINCIPLES OF LAW**

This case involves a continuation of Food Stamp benefits. Since the Division is requesting a change in the status quo, the Division has the burden of proof<sup>1</sup> by a preponderance of the evidence.<sup>2</sup>

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for calculating the amount of a recipient's monthly Food Stamp benefit.

The Food Stamp program uses a complicated 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). Income from unemployment benefits is considered income and counted in the Food Stamp benefit calculations. 7 CFR 273.9(b)(2)(ii).

The Federal regulations further state: "The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. If the

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<sup>1</sup> "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)

<sup>2</sup> *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

new circumstance is expected to continue for at least a month beyond the month in which the change is reported, the State agency shall act on the change.” 7 CFR 273.12(c).

### **ANALYSIS**

The Claimant has not challenged the Division’s calculations. What she does challenge is the inclusion of the unemployment income in those calculations in the middle of a benefit period. The Code of Federal Regulations is very clear. Unemployment income is to be considered as unearned income. Unearned income must be considered in determining the amount of Food Stamp benefits. 7 CFR 273.9(b)(2)(ii). In addition, any time a Division learns of a change in income, it must act promptly. 7 CFR 273.12(c).

The Division followed the federal regulations in including as income what the Claimant received from unemployment benefits. When the Division supervisory review revealed the unemployment income, it acted promptly. Therefore, the Division correctly recalculated Claimant’s household net income for Food Stamp benefits and properly determined her benefits effective September 1, 2008.

### **CONCLUSIONS OF LAW**

The Division correctly included Claimant’s monthly unemployment earnings when it recalculated the Claimant’s Food Stamp benefits, thereby reducing benefits effective September 1, 2008.

### **DECISION**

The Division was correct to lower Claimant’s Food Stamp benefits to \$107.00 per month effective September 1, 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 October, 2008.

Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_ day of  
October, 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