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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-638
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Food Stamp recipient (Ex. 1.0, Ex. 3.5). She submitted a recertification application for Food Stamp Benefits on July 9, 2008 (Ex. 2.0 – 2.5). On September 11, 2008 the Division of Public Assistance (Division) sent the Claimant a notice stating that her recertification application for Food Stamp Benefits was denied (Ex. 5). The Claimant requested a fair hearing on September 8, 2008 (Ex. 4.1). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on October 9, 2008. The Claimant appeared in person and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

ISSUE

Was the Division correct to deny the Claimant's July 9, 2008 Food Stamp recertification application because the Claimant's household's gross income exceeded the Food Stamp Program's gross income limit for a household of four (4) persons?

FINDINGS OF FACT

1. The Claimant has a four-person household (Ex. 4).
2. The Claimant's household receives a total of \$2,580.00 in gross monthly earned income from the Claimant's husband's employment at [REDACTED]. (Ex. 3.3, 3.4, and 3.10).
3. The Claimant's household receives a total of \$1,230.30 in gross monthly unearned income from the Claimant's unemployment benefits and from child support payments (Ex. 2.2, 3.1, and 3.2).
4. The Claimant's household receives a total of \$3,810.30 in gross monthly income (earned plus unearned) (Ex. 3.10).
5. The Alaska Food Stamp Program's gross income limit for a household of four persons, during the period October 1, 2007 through September 30, 2008, was \$2,798.00.¹
6. The Claimant's household's gross income of \$3,810.30 is mathematically greater than the Food Stamp Program's gross income limit for a household of four persons (\$2,798.00) (Ex. 3.10).
7. The Claimant's Food Stamp recertification application was denied based on excess gross income (Ex. 5).
8. The Claimant did not dispute the earned or unearned income figures used or the amount of the deductions allowed by the Division (Ex. 4.1, Claimant hearing testimony). Rather, the Claimant asserted that her household's expenses were high and that these expenses should be considered in determining her household's eligibility for Food Stamp Benefits. *Id.* Specifically, the Claimant asserted that her household's utilities, doctor bills, housing expenses, the cost of repaying an \$8,000.00 loan from the Claimant's mother, and the cost of certain educational testing for one of the Claimant's children, should all be considered in making the Food Stamp eligibility determination. *Id.*
9. The record in this case was held open until the close of business on October 9, 2008 to allow the Claimant to present an exhibit from her landlord regarding rent. She did not submit it.

¹ The version of the Addendum 4 to the Alaska Food Stamp Program Manual submitted by the Division in this case (Ex. 13.0) is the version in effect during the period October 1, 2008 through September 30, 2009. Because this case involves the denial of a recertification request submitted on July 9, 2008, the prior version of Addendum 4 (covering the period October 1, 2007 through September 30, 2008) applies in this case. Although this document was not included in the Office of Hearings and Appeals' case file, the document is a publicly available official State document. Accordingly, judicial notice has been taken of the content of the document consistent with Rules 202c(3) and 202c(5) of the Alaska Rules of Evidence.

PRINCIPLES OF LAW

This case involves the denial of an application for recertification of Food Stamp Benefits. Food stamp recertification applications involve new and independent eligibility determinations, and the claimant therefore has the burden of proof in those proceedings. Banks v. Block, 700 F.2d 292, 296-297 (6th Cir. 1983).

The standard of proof applicable to this case is the “preponderance of the evidence” standard. A.S. 44.62.460(e)(1). This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not. State v. King, 1994 WL 16196208 (Alaska App. 1994).

The Food Stamp Act of 1977 is a federal program. The statutes comprising the Act are codified at 7 U.S.C. 2011 – 2029. The federal regulations promulgated under the Food Stamp Act of 1977 are found primarily at 7 C.F.R. 271 – 274.

The Food Stamp Program is a federal program administered by the states. 7 CFR 271.4(a). The State of Alaska has adopted regulations to implement the federal Food Stamp Program. Those regulations are found at 7 AAC 46.010 - 7 AAC 46.990.

With regard to income eligibility standards, 7 C.F.R. § 273.9(a) provides in relevant part as follows:

Households which do not contain an elderly or disabled member shall meet *both* the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program . . . The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in 42 U.S.C. 9902(2). [Emphasis added].

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows . . . (ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

If a household exceeds the gross income eligibility standards under 7 C.F.R. § 273.9(a), the household’s expenses are legally irrelevant.

The Alaska Food Stamp Manual, Addendum 4 (version effective October 1, 2007 through September 30, 2008) implements 7 C.F.R. § 273.9(a) and calculates the Food Stamp Program gross income limit for a household of four (4) during the period in question as \$2,798.00.

ANALYSIS

The facts in this case are undisputed. The Claimant has not challenged the Division’s calculations, and did not dispute the earned or unearned income figures used or the amount of the deductions allowed by the Division (Ex. 4.1, Claimant hearing testimony). Rather, the Claimant asserted that her household’s expenses were high and that these expenses should be considered in determining her household’s eligibility for Food Stamp Benefits. *Id.* Specifically, the Claimant

asserted that her household's utilities, doctor bills, housing expenses, the cost of repaying an \$8,000.00 loan from the Claimant's mother, and the cost of certain educational testing for one of the Claimant's children, should all be considered in making the Food Stamp eligibility determination. *Id.*

The essence of the Claimant's argument is that the Claimant's household's expenses should be considered in determining eligibility for Food Stamp Benefits. However, the regulations governing Food Stamp Benefit calculations are clear. Pursuant to 7 C.F.R. § 273.9(a), a household² must *first* meet the *gross* income eligibility standards for the Food Stamp Program.³ If a household exceeds the gross income eligibility standards, the household's expenses are legally irrelevant under 7 C.F.R. § 273.9(a).

The Division properly followed the applicable federal and state regulations in calculating the Claimant's household's gross income to determine eligibility for the Food Stamp program. The Division correctly determined that the Claimant's household's gross income for the period in question was \$3,810.30. This exceeded the \$2,798.00 maximum gross income limit for a Food Stamp household of four persons during the period in question. Accordingly, based on gross income, the Claimant's household was not financially eligible for Food Stamp Benefits during the period in question, regardless of the amount of her expenses.

CONCLUSIONS OF LAW

1. The Division correctly calculated that the Claimant's household's gross income for Food Stamp purposes was \$3,810.30.
2. The Claimant's household's gross income of \$3,810.30 exceeded the Food Stamp Program's gross monthly income limit of \$2,798.00 for a household of four (4) persons.
3. As a result, the Claimant's household was not financially eligible to receive Food Stamp Program benefits as of the date of filing of the Claimant's Food Stamp recertification application on July 9, 2008.
4. The Claimant failed to prove, by a preponderance of the evidence, that the Division's denial of the Claimant's July 9, 2008 Food Stamp recertification application, based on excess monthly gross income, was incorrect in any way.

² This regulation is applicable to the Claimant's household because it does not contain an elderly or disabled member.

³ The regulation is clear that a household must meet *both* the net income eligibility standards *and* the gross income eligibility standards for the Food Stamp program. The impact of the word "both" in this regulation is significant in that where (as here) a household exceeds the *gross* income eligibility standards, the household is disqualified from the Food Stamp Program, and it is not necessary for the Division to consider the household's expenses or to determine whether the household meets the *net* income eligibility standards. In other words, if a household exceeds the gross income eligibility standards, the household's expenses are legally irrelevant under 7 C.F.R. § 273.9(a). That is the situation in this case.

DECISION

The Division was correct to deny the Claimant's July 9, 2008 Food Stamp recertification application because her household's gross income exceeded the Food Stamp Program's gross income limit for her household's size.

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 November, 2008.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of November, 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