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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-864  
 )  
 Claimant. ) Division Case No. ██████████  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) completed, signed and submitted an Eligibility Review Form on October 22, 2008 as an application for continued receipt of Food Stamp benefits.<sup>1</sup> (Ex. 2, p. 1) The Division of Public Assistance (Division) denied Claimant's request on November 24, 2008.<sup>2</sup> (██████████ testimony; Ex. 5, p. 1, case note dated November 24, 2008)

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<sup>1</sup> Claimant previously was certified to receive Food Stamps on June 5, 2008. (Ex. 5, p. 7, Case note, recertification) Claimant's Eligibility Review Form submitted in the record by the Division of Public Assistance (Division) has four date stamps on its first page: October 22, 2008, October 23, 2008, November 12, 2008 and November 14, 2008. (Ex. 2, p. 1) This same Form is signed by Claimant and dated "Nov-11-08." (Ex. 2, p. 4) A reasonable understanding of the date discrepancies may be that Claimant intended to submit it when his prior certification for the Food Stamp Program expired or that he made a mistake as to the date when he signed the form. However, these date difference(s) are not important to this Decision.

<sup>2</sup> The Division of Public Assistance submitted to the Office of Hearings and Appeals a packet of approximately 59 pages, not marked as exhibits but referred to as "exhibits" on page 3 of the packet. The identification of exhibits as noted on page 3 of the Division packet does not always relate to the order of the pages in the packet. Therefore, the Hearing Officer has re-numbered and described each exhibit cited.

The Division notified Claimant of its denial on November 25, 2008. (Ex. 5, p. 2, notice dated November 25, 2008) Claimant requested a Fair Hearing on November 28, 2008. (Ex. 5, p. 4) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010.

The Fair Hearing was held on January 27, 2009. Claimant appeared telephonically and testified. Ms. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division.

### ISSUE

Was the Division correct to deny Claimant's request to renew his Food Stamp Program benefits based on his "institutional status"?

### FINDINGS OF FACT

1. Claimant, a [REDACTED] male, re-applied for Food Stamps on October 22, 2008. (Ex. 2, Eligibility Review Form)

2. The Division denied Claimant's renewed application for Food Stamp benefits "based on his institutional status." (Ex. 5, p. 1, case note dated November 24, 2008) Claimant was living at an "institution"<sup>3</sup> called the [REDACTED] assisted living residence ([REDACTED]) which supplied food to its residents. (Ex. 5, p. 1, case note dated November 24, 2008) The Division relied on Food Stamp regulation 7 CFR § 273.1(b)(7)(vi) (Regulation) in denying benefits.

3. Following a telephone call with a representative of [REDACTED], the Division staff person created a case note which stated that at the [REDACTED] residence "all food, health care, and housing is covered under their program." (Ex. 5, p. 1, case note November 24, 2008) This same case note records the Division's determination that Claimant "cannot continue to receive Food Stamp benefits as all food is provided from [REDACTED]." (Id.) The case note title is: "Client in assisted living home – FS denied." (Id.)

4. The Division notified Claimant by letter mailed on November 25, 2008 of its denial of his application for Food Stamps because "[y]ou live in an institution that provides your meals." (Ex. 5, p. 2, case note dated November 25, 2008)

5. Claimant requested a Fair Hearing on November 28, 2008 on grounds that [REDACTED] did not provide him with enough food. (Ex. 5, pp. 3-5, Fair Hearing request form) The following reasons and comments were set forth on the Fair Hearing Request form:

- a) "not receiving enough food;" and "has asked for seconds and has been denied;"

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<sup>3</sup> For purposes of this Decision, the [REDACTED] assisted living facility is the "institution" which is the subject of the regulation(s) discussed herein. The parties do not dispute this, nor that Claimant lives there.

b) his requests for more food are met with responses such as “only have the amount that we give you, looks like you have been putting on weight, save food for everyone else;”

c) “don’t make lunches to go, you have to eat lunch at 12:00- no to go food;”

d) “misses lunch three times a week due to being at Anchorage Superior Court, due to dropping off information to a judge”; and

e) “do not provide milk, soda, and coffee at all during meals.”

6. Claimant testified that he applied for continued Food Stamps so that he can alleviate his constant hunger by supplementing the small meals [REDACTED] provides him and so he can reliably have three meals daily.

7. Claimant’s testimony at the Fair Hearing on January 27, 2009 duplicated and supplemented the reasons for which he requested the Fair Hearing on November 28, 2008. (Compare Ex. 5, p. 4-5) In particular, Claimant testified the meals provided are inadequate:

a) the meal portions are child-sized and too small to alleviate the hunger of an adult; for example, at one dinner only one chicken drumstick was served as the meat portion;

b) no additions or second helpings of food are provided or allowed;

c) coffee, soda, or milk are not provided at meals, only water.

8. Claimant also testified that he was not provided with meals because of the practices of [REDACTED]. In particular, Claimant testified that he was not provided with meals:

a) if he was not present promptly at meal times and that meal times fluctuated randomly;

b) because the staff refused to give him “to go” lunches if he would be away at lunch;

c) because the staff refused to wake him if he was asleep at the time of any meal.

9. Claimant testified he experienced his constant hunger as “torture” and that he “dreads” being late for meals.

10. Claimant also testified that [REDACTED] was both punishing him and trying to stop him from complaining about [REDACTED] by not providing him with meals. In particular, he testified that [REDACTED] formerly gave him “to go” lunches but ceased when it learned Claimant was missing lunches because he went downtown to file papers in Superior Court requesting judicial help with the problems he faced at [REDACTED]. Claimant testified he also had complained to the Better Business Bureau about the lack of food at [REDACTED].
11. Also, Claimant alleged [REDACTED] refusal to provide him with the meal(s) he missed by being absent or late “confined” him to [REDACTED] if he wanted to get three meals a day. Claimant testified that [REDACTED] prohibited him from preparing “even the simplest microwave food” between meal times and this also was designed to keep him at [REDACTED] all day.
12. The Division’s testimony was:

On November 24, 2008, after determining [REDACTED] was living in the assisted living home and confirming all meals and health care were included in his residency, the Agency denied his application for Food Stamp services. Based on the information received, the Agency determined the assisted living home met the criteria of an institution. Individuals living in an institution do not qualify for Food Stamp benefits. Based on the information and evidence presented the agency is requesting its decision be upheld.

### **PRINCIPLES OF LAW**

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). Food Stamp recertification applications involve new and independent eligibility determinations, and the applicant therefore has the burden of proof in those proceedings. *Banks v. Block*, 700 F.2d 292, 296-97 (6<sup>th</sup> Cir. 1983). An application for Food Stamp benefits is a change from the status quo because each application is deemed new and independent. Consequently, an applicant seeking either initial eligibility or recertification eligibility for Food Stamp benefits has the burden of proving he is eligible.

The applicant must prove he is eligible by a preponderance of the evidence. Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

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.

## 1. Rule of Interpretation of Regulations

The Alaska Supreme Court has directed that no clause, sentence or word of a regulation “shall be construed as inoperative or superfluous, void, or insignificant” if an interpretation can be found which will give effect to and preserve all of the words of a regulation.<sup>4</sup> *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1008 (Alaska 2000)<sup>5</sup>

### ANALYSIS

#### I. The Issue

Claimant applied for Food Stamp Program benefits while he was residing at the [REDACTED] assisted living facility ([REDACTED]). The Division denied Claimant eligibility “based on his institutional status.” (Ex. 1, pp. 3-4) Was the Division correct to deny Claimant receipt of Food Stamp Program benefits based on his “institutional status”?

The Division relied on Food Stamp Program regulation 7 CFR § 273.1(b)(7)(vi) (Regulation) as the basis for its denial. This regulation 7 CFR § 273.1(b)(7)(vi) specifies:

(7) Ineligible household members. The following persons are not eligible to participate as separate households or as a member of any household: ...

(vi) Residents of an institution, with some exceptions. Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. (Emphasis added.)

This Regulation establishes the standard by which an applicant for the Food Stamp Program who resides in an institution may be determined to be eligible or not eligible for benefits. The Division relied exclusively on the statement of a [REDACTED] representative that “all food” was “covered” and on that basis deemed Claimant a ‘resident of an

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<sup>4</sup> “We construe a statute so that no part will be inoperative or superfluous, void or insignificant.” quoting at n. 23 *Alascom Inc., v. North Slope Borough, Bd. of Equalization*, 659 P.2d 1175, 1178 n.5 (Alaska 1983) and 2A C. Sands, *Statutes and Statutory Construction*, § 46.06 (4<sup>th</sup> ed.1973)) See also, 2A N. Singer, *Sutherland Statutory Construction and Statutory Interpretation*, § 46:6 at 244-47(6<sup>th</sup> Ed. 2002)

<sup>5</sup> The Alaska Supreme Court expressly has adopted the general rule that regulations are interpreted by the same rules of construction as statutes are interpreted. In *State, Dept. of Highways v. Green*, 586 P.2d 595, 603 at n.24 (Alaska 1978), the Court stated: “[a]dministrative regulations which are legislative in character are interpreted using the same principles applicable to statutes.” The Court then cited 1A C. Sands, *Sutherland Statutory Construction*, § 31.06, at 362 (4<sup>th</sup> ed. 1972).

institution' under the Regulation. Consequently, the Division found Claimant not eligible for the Food Stamp Program.

Claimant contested the Division's denial of eligibility on grounds that the portions of food [REDACTED] provides do not constitute "meals" as contemplated by the Regulation. He asserts that [REDACTED] also fails to provide him with meals regularly and that as a consequence of the inadequate portions and the missed meals, he is hungry all the time. Thus, Claimant asserts that he is not disqualified from receiving Food Stamps under regulation 7 CFR § 273.1(b)(7)(vi), which requires the institution to provide "the majority of (his) meals (over 50 percent of three meals daily)."

Accordingly, the specific issue is:

Was the Division correct in denying Claimant's application for Food Stamp Program benefits on grounds that [REDACTED] provides Claimant with the "majority" of his meals, that is, "over 50 percent of three meals daily."

The fact at issue is whether the quantity of meals provided meets the requirements of the Regulation, making Claimant not eligible for Food Stamps.

## II. The Burden of Proof

Because Claimant is applying for Food Stamp benefits, he has the burden of proving that he meets the eligibility requirements for the Food Stamp Program. Furthermore, Claimant must meet this burden of proof by the preponderance of the evidence. The preponderance of the evidence is evidence which as a whole shows that the fact to be proved is more probable than not. *Black's Law Dictionary* 1064 (5<sup>th</sup> Ed. 1979)

The Regulation disqualifies applicants who reside in institutions that provide "over 50 percent of three meals daily" to their residents. Fifty percent of three meals daily is the equivalent of one and one-half full meals daily. Therefore, to prove he is eligible for Food Stamps, Claimant has the burden of providing facts that prove it is more probable than not that [REDACTED] does not provide him with "over 50 percent of three meals daily" or the equivalent of one and one-half full meals daily.

Otherwise stated, if Claimant proves [REDACTED] provides him with less than 50 percent of three meals per day, he will have met his burden to show that Regulation 7 CFR § 273.1(b)(7)(vi) does not disqualify him from the Food Stamp Program.

## III. Evaluation of the Evidence

### A. Facts

The facts of this case are not disputed except for one: whether the quantity of food [REDACTED] provides to Claimant exceeds one and one-half meals daily. All the evidence provided is credible.<sup>6</sup>

The Division supplied the fact that at [REDACTED], “all food ... is covered.” (Ex. 5, p. 1, case note November 24, 2008) The Division obtained this hearsay evidence during a telephone conversation with a [REDACTED] representative and the Division supplied no additional information in the record concerning the quantity of food provided by [REDACTED]. See Ex. 5, p. 1, case note of November 24, 2008. The Division disqualified Claimant as a resident of an institution under the Regulation because “all food is provided from [REDACTED].” (Id.)

On the other hand, Claimant asserted that all his food needs are not met by [REDACTED]. Claimant provided numerous, specific facts supporting his allegation that [REDACTED] does not meet his minimum food needs. See Findings of Fact numbers 5 through 11. Claimant’s testimony has supplied ample evidence he is dissatisfied with the food provided by [REDACTED].<sup>7</sup> A few facts supplied by Claimant relate to the quantity of food provided by [REDACTED] and these facts must be examined in light of the requirements of the Regulation to see if Claimant has met his burden of proof. This is discussed below.

To meet his burden of proof that he is eligible for Food Stamps, Claimant needs to provide facts that prove it is more likely than not that he does not get more than “50 percent of three meals daily” provided to him.

#### B Requirements of Regulation 7 CFR § 273.1(b)(7)(vi)

The Regulation states:

(vi) Residents of an institution, with some exceptions. Individuals must be considered residents of an institution when the institution provides

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<sup>6</sup> The credibility of each party’s evidence is not an issue in this case. There is no reason to doubt the case note written by the Division staff person. (Ex. 5, p. 1) Claimant’s testimony was extensive and credible. See Findings of Facts numbers 5 through 8. Claimant’s testimony was articulate: he communicated well, did not vacillate or wander in his communicated thoughts, ably answered the questions asked of him, and was competent in presenting his case. In pursuing his Fair Hearing, Claimant was consistent and specific in his allegations that [REDACTED] did not provide him with enough food and that he was denied meals if he was not promptly present at [REDACTED] for meals. (Compare Ex. 5, pp. 3-6 with Claimant’s testimony) Claimant was articulate in stating what he had done to try to remedy his problem, first at [REDACTED] and subsequently by seeking assistance from the Superior Court and Better Business Bureau.

<sup>7</sup> Claimant testified that after being unable to get more food by complaining to [REDACTED], he sought resolution from the Superior Court and the Better Business Bureau. However, Claimant could have contacted the State Long Term Care Ombudsman. That office receives complaints about assisted living facilities and can be contacted at: (907) 334-4480. Claimant also could have contacted the Department of Health and Social Services Assisted Living Facility Manager. She is [REDACTED] and can be reached at 619 E. Ship Creek Ave, Suite #232, Anchorage, Alaska 99501, Phone: (907) [REDACTED], Fax: (907) 269-3646.

them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. (Emphasis added.)

Every word in the regulation must be given effect. A common understanding is given to each word of a regulation, unless the regulation indicates a special meaning. For example, it is reasonable to assume that the word "provides" in the Regulation embodies the concept that the meals will actually be offered and made available to residents.<sup>8</sup> It is also reasonable to further assume that the meals provided also will be eaten. Likewise, the word "meals" is assumed to mean meals of a size sufficient to satisfy the hunger of the person eating the meal.<sup>9</sup>

As stated above, in Alaska no clause, sentence or word "shall be construed as inoperative or superfluous, void, or insignificant" if an interpretation can be found which will give effect to and preserve all of the words of a regulation. *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1008 (Alaska 2000). The Regulation mandates that disqualification from the Food Stamp Program results only when a person residing in an institution is provided with "over 50 percent of three meals daily." Therefore, a Food Stamp applicant may not be disqualified solely because he is a resident of an institution or because the institution where he resides provides food.

Accordingly, those residents of an institution who do not get "over 50 percent of three meals daily," may still be eligible for the Food Stamp Program. To be eligible for Food Stamps, Claimant must prove that he does not receive "over 50 percent of three meals daily." Thus, under the facts here, Claimant must prove that [REDACTED] claim that it provides "all food" to Claimant means that Claimant gets less than "50 percent of three meals daily."

### C. Facts Applied to the Regulation.

Clearly, a certain amount of food must be provided to the Food Stamp applicant residing in an institution before the applicant may be disqualified under the Regulation. It appears the Division denied Claimant's Food Stamp application without applying the whole regulation; that is, without determining if Claimant was provided with "over 50 percent of three meals daily." It is important to remember that the Regulation applies to the

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<sup>8</sup> Here, it is clear that Claimant argues the food he receives is less than what [REDACTED] provides because he misses some meals.

<sup>9</sup> The word "meals" is neither defined nor explained in the relevant regulatory subsections. See 7 CFR §§ 271.2 and 273.1. A common understanding of a "meal" is that it is "the portion of food taken at a particular time to satisfy hunger or appetite." *Webster's 3<sup>rd</sup> New International Dictionary of English Language* 1398 (3<sup>rd</sup> ed. 1993). It is reasonable to assume that Congress and the Department of Agriculture expected that the word "meals" meant food sufficient to satisfy at least the hunger of the individual to whom the meal was provided. to alleviate hunger of low income persons. The purpose of the Food Stamp Program is "[t]o alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet...." 7 CFR § 271.1(a) (quoting Section 2 of the Food Stamp Act of 1977 in part).

individual, not the institution, and that merely because an institution provides food, the remainder of the regulation is not given effect.

None of the facts Claimant supplied were disputed and hence all Claimant's facts are accepted as true. Most of the facts Claimant put into evidence do not relate to the quantity of food provided by [REDACTED] at meals and instead concern practices of [REDACTED] which result in Claimant feeling hunger.

Claimant testified that [REDACTED] served three child-sized meals a day and that he was "not receiving enough food." The use of the term child-sized excludes the concept of adult sized portions. Claimant supplied as an example the fact that at one dinner, he received one chicken drumstick for the meat portion of the meal, and that no milk, juice, or coffee was served. But the term "child-sized portion" of food at each of three meals daily fails to prove the quantity of food provided by [REDACTED] is less than 50 percent of an adult meal as contemplated under the Regulation.

For example, if the child is a male teenager the child-sized portion could be quite substantial. Of course, if Claimant intended a 6 or 10-year-old child, the portion would be smaller. If the usual size of the meal provided by [REDACTED] is less than one-half of an adult meal, Claimant may have met his burden of proof by showing that he was provided less than 50 percent of three meals daily. But Claimant did not provide sufficient specific evidence of the quantity of food that was provided by the institution to meet the requirements of the Regulation.

Claimant also testified that he was denied meals on a regular basis because he was absent at meal time or was late arriving for a meal.<sup>10</sup> Claimant testified that he missed at least three lunches each week and other meals on an irregular basis and that [REDACTED] neither provides substitute meals nor holds them for his later consumption. However, the meals Claimant misses are not sufficient in quantity that he gets less than fifty percent of three meals daily.

Finally, Claimant has not shown that the combination of the alleged small meal portions and the missed meals result in him getting less than fifty percent of three meals daily from [REDACTED].

Claimant has not supplied a preponderance of evidence that [REDACTED] does not provide him with over fifty percent of three meals daily as he is required to prove to be eligible for Food Stamps under the Regulation. Thus, Claimant is disqualified from Food Stamp Program benefits by 7 CFR §273.1(b)(7)(vi).

### **CONCLUSIONS OF LAW**

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<sup>10</sup> The reasons for his absence or late arrival are irrelevant under the Regulation.

1. Claimant has not met his burden of proving by a preponderance of the evidence that [REDACTED] assisted living facility does not provide him with the majority of his daily meals, that is over 50 percent of three meals daily.

2. The Division did not err in denying Claimant eligibility for Food Stamps pursuant to 7 CFR § 273.1(b)(7)(vi).

### **DECISION**

Claimant is excluded from eligibility under the Food Stamp Program based on his residence at [REDACTED] assisted living facility.

### **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  
P.O. 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 March \_\_\_\_\_, 2009

\_\_\_\_\_  
Claire Steffens  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on this \_\_\_ day of  
March, 2009 true and correct copies  
of the foregoing were sent to  
Claimant (via U.S.P.S.):

Claimant, Certified Mail, Return Receipt Requested.  
and to other listed persons (via e-mail), as follows:

[REDACTED], Director  
[REDACTED], Administrative Assistant II  
[REDACTED], Policy & Program Development  
[REDACTED], Eligibility Technician I  
[REDACTED], Staff Development & Training  
[REDACTED], Fair Hearing Representative

\_\_\_\_\_  
Al Levitre  
Law Office Assistant I