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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. 09-FH-53  
 )  
 Claimant. ) D.P.A. Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Food Stamp and Medicaid benefits on or about December 8, 2008 (Exs. 2.0 through 3.0). The State of Alaska Division of Public Assistance (DPA or Division) determined that the Claimant was over-income for the Food Stamp and Medicaid programs on or about January 21, 2009 (Ex. 4.0) and denied her application on or about January 30, 2009 (Ex. 5). The Claimant immediately requested a fair hearing on the denial of her December 8, 2008 Food Stamp and Medicaid applications (Ex. 6).

A hearing was held on February 24, 2009 before Hearing Officer Claire Steffens.<sup>11</sup> The Claimant appeared telephonically, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended in person to represent and testify on behalf of the Division. At the hearing, the Claimant withdrew her fair hearing request as to the Medicaid program, leaving only the Food Stamp program application at issue. This office has jurisdiction pursuant to 7 AAC 49.010.

**ISSUE**

Was the Division correct to deny the Claimant's December 8, 2008 application for Food Stamp benefits because inclusion of payments from two trust funds caused the Claimant's household's

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<sup>1</sup> Following the completion of the hearing, this case was reassigned to Hearing Officer Jay Durych to prepare and issue this decision. Mr. Durych reviewed the entire record, including the digital recording of the hearing and the case file, prior to the issuance of this decision.

average gross monthly income to exceed the Food Stamp Program's gross monthly income limit for a household of three (3) persons? <sup>2</sup>

### FINDINGS OF FACT

1. The Claimant completed and signed an application for Food Stamp and Medicaid benefits on or about December 2, 2008 (Exs. 2.0 - 2.9). This application was submitted to and/or received by the Division on or about December 8, 2008 (Ex. 3.0). In this application the Claimant disclosed she has a three person household, consisting of herself, her husband, and her ten year old son (Exs. 2.1, 3.0).
2. The Claimant's applications for Food Stamp and Medicaid benefits were denied based on excess gross income on or about January 21, 2009 (Exs. 4.0, 4.3, 5). On or about January 29, 2009 the Claimant requested a Fair Hearing (Ex.6).
3. As of June 16, 2008 the Claimant owed a principal balance of \$39,409.30 on a student loan from [REDACTED] (Ex. G, received from Claimant at hearing).
4. The Claimant's household received an average of \$2,095.32 in gross monthly earned income from the Claimant's employment at [REDACTED] in [REDACTED], Alaska during the months of October 2008 – December 2008 (Exs. 3.1, 4.1, 4.3, 4.6, and 4.9 – 4.12).
5. The Claimant's husband was employed by [REDACTED], but his employment was terminated on or about November 26, 2008 (Exs. 3.1, 4.0). He did not receive unemployment insurance benefits subsequent to the termination of his employment (Ex. 3.1; Claimant hearing testimony). His income (earned or unearned) was not considered in determining the Claimant's household's eligibility for Food Stamp benefits (Division position statement; hearing testimony of [REDACTED]).
6. The Claimant's household receives a total of \$2,500.00 in annual unearned income from the [REDACTED] (Exs. 4.17 – 4.20; Claimant hearing testimony). The Claimant has "the authority to delegate [the trust fund] money where it needs to go" (Claimant hearing testimony).
7. The Claimant's household receives another \$2,500.00 in annual unearned income from the [REDACTED] (Exs. 4.13 – 4.16; Claimant hearing testimony). The Claimant also has "the authority to delegate [this trust fund] money where it needs to go" (Claimant hearing testimony).
8. If the Claimant's household's \$5,000.00 in unearned annual income from the two trusts referenced in Paragraphs 6 and 7, above is annualized (divided equally among the 12 months of the year), it results in \$416.67 in gross monthly unearned income (Exs. 4.0, 4.1).

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<sup>2</sup> Prior to the hearing, the Division's denial of the Claimant's application for Medicaid benefits was also at issue. However, during the hearing, the Claimant withdrew her fair hearing request with regard to her application for Medicaid benefits, leaving her household's eligibility for Food Stamp benefits as the sole remaining issue.

9. If the Claimant's household's average gross monthly earned income of \$2,095.32 (see Paragraph 4, above) is added to the Claimant's household's average gross monthly unearned income of \$416.67 (see Paragraph 8, above), the resulting gross monthly income (earned plus unearned) equals \$2,511.98 (Exs. 4.1, 4.3).

10. The Alaska Food Stamp Program's gross monthly income limit for a household of three persons, during the period October 1, 2008 through September 30, 2009, was \$2,384.00 (Ex. 10.0).

11. The Claimant's household's gross monthly income (\$2,511.98) is mathematically greater, by \$127.98, than the Food Stamp Program's gross monthly income limit of \$2,384.00 for a household of three persons.

12. During the hearing of February 24, 2009 the Claimant faxed 13 pages of exhibits to the Office of Hearings and Appeals (OHA). These exhibits were described on the record by the Hearing Officer. The Claimant agreed that the documents received by the Hearing Officer were the same documents that she had faxed. These documents were admitted into evidence, marked as Exhibits A through M, and reviewed during the preparation of this decision.

13. During the hearing of February 24, 2009 the Claimant withdrew her fair hearing request as to the Medicaid program, leaving only the Food Stamp program application at issue.

14. During the hearing of February 24, 2009 the Claimant testified as follows:

a. The Claimant borrowed \$9,000.00 from the two trust funds in 2005 or 2006, and another \$5,000.00 in 2007, for a total of \$14,000.00 for those years.

b. The Trust funds will pay out no more than \$5,000.00 per year. If the Beneficiary has a loan outstanding with the Trust, the sums which would otherwise be disbursed to, or on behalf of, the Beneficiary must be applied first to pay-off any outstanding loans. Thus, depending on the amount of previous loans from the Trust to a Beneficiary, there might be no funds available to be paid to, or on behalf of, a beneficiary in a subsequent year.

c. The money disbursed from the trust funds is currently going directly into the Claimant's savings account to pay her [REDACTED] student loan. The Claimant has not received a payment from the trust fund (all of the trust fund distributions have been paid directly to [REDACTED]) for approximately 5 years.

d. The Claimant cannot access those funds in the trust account which are not being paid monthly to [REDACTED]. The Claimant placed these restrictions on the trust fund specifically to provide for her son's ([REDACTED]) future college tuition.

e. ██████ asked the Claimant “You have the authority to delegate that [trust fund] money where it needs to go, is that correct?” The Claimant answered “yes”.

f. The Claimant requested that the Division consider the monthly payments that she is required to make on her student loan in determining her household’s eligibility for the Food Stamp program.

15. At the hearing of February 24, 2009 the Division’s hearing representative testified as to the method used by the Division to calculate the Claimant’s household’s gross monthly income.

16. The Division representative’s hearing testimony was credible.

17. Much of the Claimant’s hearing testimony was credible. However, the Claimant’s hearing testimony referenced in Paragraph 14b, above conflicted with the Claimant’s hearing testimony referenced in Paragraphs 14d and 14e, above.

## **PRINCIPLES OF LAW**

### I. Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof.<sup>2</sup> In this case, the Claimant has the burden of proof because she is attempting to change the existing status quo by obtaining benefits.

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated.<sup>3</sup> Therefore, “preponderance of the evidence” is the standard of proof applicable to this case. 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.<sup>4</sup>

### II. The Food Stamp Program.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 CFR Sections 271-274.

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<sup>2</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>3</sup> *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>4</sup> *Black’s Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

The Food Stamp Program has been delegated to the states for administration. 7 CFR Section 271.4. The Department of Health and Social Services administers the Food Stamp program in Alaska, and has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 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].*

7 C.F.R. § 273.9(b) defines income in relevant part as follows:

(b) Definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

\* \* \* \* \*

(2) Unearned income shall include, but not be limited to:

\* \* \* \* \*

(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of § 273.9(c) of this section . . . .

\* \* \* \* \*

(c) Income exclusions. Only the following items shall be excluded from household income and no other income shall be excluded:

\* \* \* \* \*

(vii) Other third-party payments. Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded . . . .

\* \* \* \* \*

It has been stated that Congress intended to cast the broadest possible net in determining what constitutes “income” for Food Stamp eligibility purposes. *Meyer v. Lyng*, 859 F.2d 62 (8<sup>th</sup> Cir. 1988).

The Alaska Food Stamp Manual, Addendum 4 (version effective October 1, 2008 through September 30, 2009) implements 7 C.F.R. § 273.9(a) and calculates the Food Stamp Program gross income limit for a household of three (3) during the period in question as \$2,384.00 (Ex. 10.0).

## **ANALYSIS**

The issue to be determined is whether the Division was correct to deny the Claimant’s December 8, 2008 application for Food Stamp benefits because inclusion of payments from the Claimant’s two trust funds caused the Claimant’s household’s average gross monthly income to exceed the Food Stamp Program’s applicable gross monthly income limit.

### I. Burden of Proof and Standard of Proof.

Because the Claimant is attempting to change the existing status quo by obtaining benefits, the Claimant must prove, by a preponderance of the evidence, that the Division’s decision denying the Claimant’s application for benefits was incorrect. See discussion in Principles of Law, above.

### II. The Arguments of the Parties.

It was not disputed that a total of \$5,000.00 in payments are made annually by the [REDACTED] and the [REDACTED] to [REDACTED] on behalf of the Claimant. This is done to pay the Claimant’s student loans. The Division asserts that these trust disbursements constitute unearned income to the Claimant, and that this unearned income raises the Claimant’s household’s total gross monthly income above the Food Stamp Program’s gross monthly income limit.

The Claimant asserts, however, that (1) these trust disbursements should not be considered in calculating her household’s *gross* income; and/or (2) even if these trust disbursements *are* considered income to her household, the fact that the disbursements are paid directly to [REDACTED] in payment of a debt owed by the Claimant should be considered in determining her household’s *net* income.

The two issues raised by the Claimant are issues of law; there are no material issues of fact in dispute. These two issues will be addressed below in the order stated.<sup>5</sup>

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<sup>5</sup> Issues regarding income averaging and/or the length of the appropriate certification period are sometimes also raised in cases of this type. However, neither the Claimant nor the Division raised these issues in this case. Further, review of the record indicates no obvious errors with regard to these matters. Accordingly, this decision focuses solely on the issues raised by the Claimant.

III. Were the Trust Disbursements Properly Included in the Claimant's Gross Income?

The first issue is whether the Division properly considered the \$5,000.00 in annual trust disbursements to [REDACTED] as unearned income to the Claimant. In that regard, 7 C.F.R. § 273.9(b-c) provides in relevant part as follows:

(b) Definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

\* \* \* \* \*

(c) Income exclusions. Only the following items shall be excluded from household income and no other income shall be excluded:

\* \* \* \* \*

(vii) Other third-party payments. Other third-party payments shall be handled as follows: *moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded . . .* [Emphasis added].

In this case, the two trusts are legally obligated, by their terms, to pay a total of \$5,000.00 per year to, or on behalf of, the Claimant (Exs. 4.13 – 4.20). Accordingly, even if the Claimant has diverted the trust fund payments directly to SallieMae to pay the Claimant's student loan (Claimant hearing testimony), 7 CFR 273.9(c)(vii) still requires that the trust disbursements be counted as income to the Claimant. Thus, the Division was correct in including the \$5,000.00 annual trust distributions as part of the Claimant's gross unearned income pursuant to 7 CFR 273.9(c)(vii).

The next issue is whether the fact that the trust disbursements are paid directly to [REDACTED] in payment of a debt owed by the Claimant should be considered in determining the Claimant's household's *net* income.

IV. Should the Claimant's Student Loan Payments Have Been Considered in Determining the Claimant's Net Income?

The next issue is whether the fact that the trust disbursements at issue are paid directly to [REDACTED] in payment of a debt owed by the Claimant should be considered in determining the Claimant's household's *net* income. The Claimant appears to assert that, if \$5,000.00 in trust disbursements are received as income, but that entire amount is then disbursed to pay a debt, the *net* income from these transactions is zero. This is absolutely true as a matter of abstract mathematics and accounting. However, the pertinent regulation, 7 C.F.R. § 273.9(a), does not allow the Division to proceed to the "netting-out" of income and expenses where, as here, the program's gross income limit has been exceeded. 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].*

Pursuant to 7 C.F.R. § 273.9(a), a household <sup>6</sup> must meet *both* the *gross* income eligibility standards *and* the *net* income eligibility standards for the Food Stamp Program. <sup>7</sup> Thus, if a household exceeds the gross income eligibility standards, the fact that the household may not exceed the net income eligibility standards is legally irrelevant under 7 C.F.R. § 273.9(a).

In this case, the Claimant's household's *gross* monthly income (\$2,511.98) is mathematically greater, by \$127.98, than the Food Stamp Program's *gross* monthly income limit of \$2,384.00 for a household of three persons. Accordingly, pursuant to 7 CFR § 273.9(a), the Claimant's household is financially ineligible for Food Stamp benefits based solely on gross income. Pursuant to the regulation, when a Claimant's household is financially ineligible for Food Stamp benefits based on gross income, the Division is not required to determine whether the Claimant's household would be financially eligible for Food Stamp benefits based on net income.

#### V. Summary.

The Division properly followed the applicable regulations in calculating the Claimant's household's average gross monthly income to determine financial eligibility for the Food Stamp program.

First, because the Claimant's two trusts are legally obligated to pay a total of \$5,000.00 per year to or on behalf of the Claimant, 7 CFR 273.9(c)(vii) requires that the trust disbursements be counted as income to the Claimant, even though the Claimant diverted the trust fund payments directly to ██████████ to pay the Claimant's student loan. Thus, the Division was correct in including the \$5,000.00 annual trust distributions as part of the Claimant's average gross monthly income pursuant to 7 CFR 273.9(c)(vii).

Second, because 7 C.F.R. § 273.9(a) requires that the Claimant's household meet *both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program*, and because (as discussed immediately above) the Claimant's household did not meet

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<sup>6</sup> This regulation is applicable to the Claimant's household because it does not contain an elderly or disabled member.

<sup>7</sup> 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.



the gross income eligibility standard, the Division is not allowed to consider the Claimant's expenses such as student loan payments.

The Division therefore correctly determined that the Claimant's household's gross monthly income for the period in question was \$2,511.98. This exceeded the \$2,384.00 maximum gross monthly income limit for a Food Stamp household of three 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 the Claimant's student loan payments.

### CONCLUSIONS OF LAW

1. The Division proved, by a preponderance of the evidence, that:
  - a. Because the Claimant's two trusts are legally obligated to pay a total of \$5,000.00 per year to or on behalf of the Claimant, 7 CFR 273.9(c)(vii) requires that the trust disbursements be counted as income to the Claimant.
  - b. Because 7 C.F.R. § 273.9(a) requires that the Claimant's household meet *both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program*, and because the Claimant's household did not meet the gross income eligibility standard, the Division was not allowed to consider the Claimant's student loan payments.
  - c. The Division correctly calculated that the Claimant's household's gross monthly income for Food Stamp purposes was \$2,511.98.
  - d. The Claimant's household's gross income of \$2,511.98 exceeded the Food Stamp Program's gross monthly income limit of \$2,384.00 for a household of three (3) persons.
  - e. As a result, the Claimant's household was not financially eligible to receive Food Stamp Program benefits as of December 8, 2008, the date the Claimant signed the application for these benefits.
2. The Claimant failed to carry her burden of proving, by a preponderance of the evidence, that the Division's denial of her December 8, 2008 Food Stamp application was incorrect in any way.

**DECISION**

The Division was correct to deny the Claimant’s December 8, 2008 Food Stamp application because her household’s average gross monthly income exceeded the Program’s applicable gross monthly income limit.

**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 April, 2009.

\_\_\_\_\_  
Jay Durych  
Hearing Authority

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_\_ day of April, 2009, true and correct copies of the foregoing were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list via e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

- \_\_\_\_\_, Director
- \_\_\_\_\_, Policy & Program Development
- \_\_\_\_\_, Staff Development & Training
- \_\_\_\_\_, Administrative Assistant II
- \_\_\_\_\_, Eligibility Technician I
- \_\_\_\_\_, Fair Hearing Representative

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