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

In the Matter of)
)
)
 [REDACTED],)
 Claimant.)
)
 _____)

OHA Case No. 09-FH-61
Division Case No. [REDACTED]

FAIR HEARING DECISION
STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Food Stamp benefits. On December 31, 2008, the Division of Public Assistance (Division) closed her Food Stamp case for failing to file a review form. (Ex. 3). Claimant learned of this closure on January 29, 2009. On January 30, 2009, Claimant requested a fair hearing. This office has jurisdiction of the Claimant's appeal pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on March 25, 2009. Claimant was present in person, representing and testifying on her behalf [REDACTED], a Public Assistance Analyst, was present in person, representing and testifying for the Division. The hearing was continued until April 1, 2009, after it was learned Claimant did not have the Division Position Statement and Exhibits. However, before it was continued, testimony was taken from [REDACTED], Claimant's witness who appeared in person. On March 31, 2009, the hearing was rescheduled for April 9, 2009, at the Claimant's request.

On April 9, 2009, the hearing resumed. Claimant was present telephonically, both testifying and representing herself. [REDACTED] was also present telephonically, and testified on the Claimant's behalf. [REDACTED] was present, testifying and representing the Division. [REDACTED] Eligibility Technician IV, Supervisor with the Division, testified on behalf of the Division.

ISSUE

Was the Division correct to close Claimant's Food Stamp case on December 30, 2008, because Claimant failed to file submit a review form with the Division, as directed by a November 17, 2008 Division notice?

FINDINGS OF FACT

1. Claimant had been a recipient of Food Stamp benefits. (Ex. 1) On November 17, 2008, the Division sent Claimant notice that her Food Stamp certification period would end on the last day of December 2008. (Ex. 2). The notice further stated she was required to submit a review form to the Division by December 15, 2008, or her Food Stamp case would close. (Ex. 2). The review form was enclosed. (Ex. 2).
2. The Division closed Claimant's Food Stamp case on December 31, 2008. (Ex. 3).
3. A January 29, 2009 case note written by Division personnel states that Claimant called the Division and stated a friend had dropped off the review form at the end of December 2008, however she never received her January 2009 Food Stamp benefits. (Ex. 3). After reviewing the casefile, Division personnel told Claimant the review form had not been received, her case had been closed, and she should reapply for benefits. (Ex. 3).
4. On January 30, 2009, Claimant submitted a completed recertification application for Food Stamp benefits and a request for fair hearing. (Ex. 4 - 4.6). On February 3, 2009, the Division approved this recertification application, effective the date of the recertification application, January 30, 2009. (Ex. 5).
5. [REDACTED], the Division Eligibility Technician wrote the following in a note on February 2, 2009: "Client states she dropped off her recertification form on 12/30 or 12/31 and swears she put it in the drop box on the 2nd floor. "" (Ex. 5). [REDACTED] then testified at the hearing that if Claimant would have stated someone dropped off the form, that would have been reflected in the notes. [REDACTED] also testified if Claimant had said she made sure it was dropped off, she would have been asked how she made sure of that.
6. During the hearing Claimant testified a friend turned in her review form on December 30, 2008. Her friend, [REDACTED], also testified at the fair hearing. [REDACTED] stated he went to the Division office and put the review form in a slot on the second floor. A gentleman working at the far computer told him that he was putting the document in the proper box. (Testimony of [REDACTED]).
7. Claimant testified at the fair hearing that she was in the car when her friend dropped off the review form. She further stated left the car and was walking up the steps when her friend returned from dropping off the form.

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). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986).

“Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493) Alaska 2003).

Food sStamp recertification applications involve new and independent eligibility determinations, and the cClaimant therefore has the burden of proof in those proceedings. *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

Federal Regulation 7 CFR 273.14(a) sets forth the Division’s authority on processing recertification applications. That regulation states the following:¹

[N]o household may participate beyond the expiration of the certification period assigned in accordance with 273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

ANALYSIS

The issue in this case is whether the Division was correct to close Claimant’s Food Stamp case on December 30, 2008, because she failed to filesubmit a review form withto the Division. Because a recertification for Food Stamp benefits is a start of a new benefit period,

¹ Federal regulation 7 CFR 273.14(e)(2) provides households with additional time to submit a recertification application. Subsection (e) is titled “Delayed processing” and states in pertinent part:

Notwithstanding the State’s right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month’s benefits for the initial month of the new certification period. If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, the State agency shall reopen the case and provide benefits retroactive to the date the household takes the required action.

and not a continuation, the Claimant is changing the status quo. Therefore, Claimant has the burden of proof by a preponderance of the evidence.

The issue in this case is purely one of credibility – whether Claimant submitted to the Division the review form.. Claimant and her friend testified the reduring the hearing the review form was delivered to the Division on December 30, 2009, prior to the termination of her benefits. They both testified the Claimant’s friend dropped off the form. They appear credible, however, there testimony is self servingHowever, this testimony is self serving and is not consistent with other evidence as discussed below..

HoweverIn contrast, ██████████, an Eligibility Technician employed by the Division, testified Claimant told him on February 2, 2009 she turned in the form to the Division. ██████████ testified, via his case notes in the file, that Claimant personally put the form in the drop box. ██████████ testimony , which is inconsistent with Claimant’s testimony and her friend’s testimony during the hearing.. ██████████ has no reason to tell anything but the truth. He was also credible. Ultimately, the Division was not able to locate a review form. and also credible.

Claimant has the burden of proof in this case. This means Claimant must prove that her and her friend’s testimonies are probably more true than the evidence presented by the Division. The Claimant has failed to meet her burden by a preponderance of the evidence. The Division does not have the review form. In addition, Claimant’s testimony that her friend dropped off the review form, is inconsistent with what she told ██████████ on February 2, 2009 – that she personally dropped off the form. Accordingly, the Division was correct to believe Claimant did not submit a review form to the Division in December 2008 and therefore acted properly in closing Claimant’s Food Stamp case December 30, 2008.

CONCLUSIONS OF LAW

The Claimant failed to prove by a preponderance of the evidence that the Division erred in closing her Food Stamp case effective December 30, 2008 because she failed to file submit a review form with the Division.

DECISION

The Division ‘s decision to close Claimant’s Food Stamp case effective December 30, 2008 is affirmed.

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, the Claimant must send a written request directly to:

Director of the Division of Public Assistance

Department of Health and Social Services
P.O. Box 110640
Juneau, Alaska 99811-0640

An appeal request must be sent within fifteen (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 June, 2009.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this __ day of June, 2009, true and correct copies of the foregoing document were sent to the Claimant via certified mail, return receipt requested, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.

██████████, Director
██████████, Policy & Program Development
██████████, Staff Development & Training
Office of Fair Hearing Representative
██████████, Administrative Assistant II
██████████, Eligibility Technician I

Al Levitre
Law Office Assistant I