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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-88
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Food Stamp benefits for her five person household. (Exs. 1, 2.0) On November 20, 2008, the Claimant notified the Division one of her children had moved out of her household. (Ex. 2.0) On November 21, 2008, the Division sent the Claimant written notice informing her that her Food Stamp benefits would be terminated after the end of November 2008, because her household income was greater than allowed for Food Stamp eligibility. (Ex. 3) The Claimant requested a fair hearing; the Division received her fair hearing request on February 9, 2009. (Ex. 5.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on April 8, 2009 in front of Hearing Office Patricia Huna-Jines. The Claimant attended the hearing telephonically and represented herself. **[REDACTED]** also attended telephonically and assisted the Claimant. **[REDACTED]**, a Public Assistance Analyst with the Division, attended in person and represented the Division.

This case was reassigned to Hearing Officer Larry Pederson, who reviewed the entire hearing record and listened to the entire hearing before issuing this Decision.

ISSUE

Was the Division correct to terminate the Claimant's Food Stamp benefits after the end of November 2008 because her net monthly household income exceeded the Food Stamp program's net monthly income limit for her household size?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant resides in southwestern Alaska. (Ex. 1) She was receiving Food Stamp benefits for her five person household in November 2008. (Ex. 1)
2. The Claimant notified the Division on November 20, 2008 that one of her children had moved out from her household. (Ex. 2.0) This reduced her household size to 4 persons: the Claimant, her father, her brother, and her domestic partner. (Claimant testimony)
3. The Claimant's total gross monthly household income in November 2008 was \$2,543.38. (Exs. 2.4, 2.8 – 2.9) This gross monthly household income consisted of her father's Social Security retirement payment and one other retirement payment. (Exs. 2. 8 – 2.9)
4. The Division calculated that the Claimant's household's net monthly income was \$2,226.38. (Ex. 2.1) It arrived at this figure by taking the household gross monthly income of \$2,543.38, and subtracting a household standard deduction of \$246. It also provided the Claimant's household with a deduction of \$71, because her father had \$106 in monthly medical expenses. (Exs. 2.1 – 2.6)
5. The Claimant did not dispute the Division's calculation of her household income.
6. The Division determined that the Claimant did not have any shelter costs (rent or mortgage, property insurance, property tax, utility bills) other than a standard utility deduction of \$824. (Ex. 2.1)
7. The Division then determined that the Claimant was not eligible to receive a deduction from her net monthly income figure of \$2,236.38 for shelter costs (rent or mortgage, property insurance, property tax, utility bills) because her shelter costs were less than half of her net monthly income. (Ex. 2.1)
8. The Division then terminated the Claimant's Food Stamp benefits after the end of November 2008 because her net monthly household income of \$2,226.38 was greater than the Food Stamp program's net monthly income limit of \$2,209 for her 4 person household. (Ex. 3; ██████ testimony)
9. The Claimant's representative stated the Claimant's household heating fuel bill was between \$930 and \$1,325 monthly. (██████ testimony)
10. The Claimant's representative also stated the Claimant also had other expenses, but did not state what the expenses were or the amounts involved. (██████ testimony)

PRINCIPLES OF LAW

This case involves the termination of Food Stamp benefits by the Division. The Division has the burden of proof¹ by a preponderance of the evidence.²

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 expenses into account. One of the rules is that if a 4 person household makes more than \$2,209 in net income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(2)(ii); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2008 through September 30, 2009).

The Food Stamp program uses a complicated mathematical formula that takes the recipient's household income and expenses into account. The household's monthly **gross** income is totaled and then allowable deductions are taken from it to arrive at the monthly net income. 7 CFR 273.10(e)(1)(i). Social Security income and retirement income are considered unearned income. 7 CFR 273.9(b)(2)(ii). A household whose only income is unearned receives a standard deduction of \$246. 7 CFR 273.9(d)(1); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2008 through September 30, 2009).

The Food Stamp program also allows deductions for "certain dependent care, shelter, child support and medical costs as described in [7 CFR] § 273.9." 7 CFR 273.10(d). Medical costs that exceed \$35 per month for an elderly or disabled member of the household are an allowable deduction. 7 CFR 273.9(d)(3).

Shelter costs (rent or mortgage, property taxes, property insurance, utility bills) are not a dollar for dollar deduction: if the shelter costs are more than half of the adjusted income, the amount the shelter costs exceed one half of the adjusted income is the shelter cost deduction. 7 CFR 273.9(d)(6)(ii). A state must adopt a separate standard utility deduction for households that pay for their heat separately from their rent (or mortgage), i.e. for households whose heat is not included as part of their rent (or mortgage) payment. 7 CFR 273.9(d)(6)(iii)(C).

The State of Alaska has elected to adopt standard utility deductions instead of actual costs. 7 AAC 43.021(a)(23). The standard utility deduction, which includes heating fuel costs, for the southwestern part of Alaska is \$824 per month. *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2008 through September 30, 2009).

¹ "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)

² 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 "[e]vidence 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." Black's Law Dictionary 1064 (5th Ed. 1979)

ANALYSIS

The issue in this case is whether the Division was correct when it terminated the Claimant's Food Stamp benefits because her household's net monthly income was greater than the Food Stamp program's income limit. The Division has the burden of proof by a preponderance of the evidence.

Food Stamp financial eligibility determinations are made by adding up a household's monthly gross income, and then subtracting allowable deductions. 7 CFR 273.10(e)(1)(i). Only those deductions that are listed in the federal regulations are allowed. 7 CFR 273.10(d).

The Division followed the federal regulations in calculating the Claimant's household's monthly net income for Food Stamp eligibility purposes. It is undisputed that the Claimant's gross monthly household income is \$2,543.38. The Division correctly determined the only deductions the Claimant's household was entitled to were the standard deduction of \$246, and a medical deduction of \$71. The Claimant's household monthly net income figure for Food Stamp purposes was \$2,226.38.³

The Division did not provide the Claimant with an additional deduction for her shelter costs. This was because the Division found her only shelter cost was \$824, the standard utility deduction. A household is only allowed an additional deduction for shelter costs if the total shelter costs are more than one half of her net monthly income. 7 CFR 273.9(d)(6)(ii). In order to receive an additional deduction for shelter costs, the Claimant would have to have shelter costs greater than \$1,113.19 (one half of \$2,226.38).

The Claimant's representative stated her monthly heating fuel cost was greater than \$824. He implicitly argued she should receive a larger deduction for utility costs. However, the Division adopted a standard utility deduction by regulation, which was \$824 for ██████████ Alaska, where the Claimant resides. 7 AAC 43.021(a)(23); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2008 through September 30, 2009). Because the Division adopted a standard utility deduction, the Claimant was not able to receive a utility deduction for her actual heating costs.

In addition, the Claimant referred to other unspecified deductions, but failed to present any evidence of any other deductions. The Division was therefore correct to limit the Claimant's monthly income deductions to the standard deduction of \$246 and one medical deduction of \$71. Consequently, the Division was correct when it determined the Claimant's monthly net income was \$2,226.38. Because this amount exceeded the \$2,209 maximum monthly net income limit for a Food Stamp household of four persons, the Claimant's household was not financially eligible for Food Stamp benefits. The Division was therefore correct to terminate the Claimant's Food Stamp benefits after the end of November 2008.

³ The Division's calculations are provided in the Food Stamp Budget Work Sheet located at Exs. 2.1 – 2.2.

CONCLUSIONS OF LAW

1. The Division met its burden by a preponderance of the evidence, and proved the Claimant's household's monthly net income of \$2,226.38 exceeded the Food Stamp program's \$2,209 net monthly income limit for her household of 4 persons, making it ineligible for Food Stamp benefits.
2. The Division was therefore correct to terminate the Claimant's Food Stamp benefits after the month of November 2008.

DECISION

The Division was correct to terminate the Claimant's Food Stamp benefits after the month of November 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, the Claimant must 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

An appeal 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.


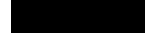
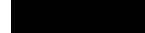
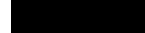
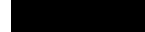
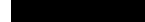
DATED this 20th day of May 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 20th day of May 2009, true and correct copies of the foregoing were sent to:
Claimant by First Class Mail, Certified, Return Receipt Requested.

And to the following by email:

, Fair Hearing Representative
, Director
, Director's Office
, Policy & Program Development
, Policy & Program Development
, Staff Development & Training

Al Levitre, Law Office Assistant I