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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-179
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) completed, signed and submitted an Application for Food Stamp benefits (Application) on February 26, 2009. (Ex. 3.0-3.9) The Division of Public Assistance (Division) notified Claimant verbally on March 12, 2009 and in writing on March 13, 2009 it had denied this Application because Claimant's prior felony drug conviction made him permanently ineligible for Food Stamp Program (Program) benefits. (Ex. 4.0; Ex. 5)

Claimant requested a Fair Hearing on March 12, 2009. (Ex. 4.2) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010 and 7 CFR § 273.15.

The Fair Hearing was held on May 5, 2009. Claimant appeared telephonically and testified. [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 Application for Food Stamp Program benefits on grounds that Claimant is ineligible permanently pursuant to Title 7 of the Code of Federal Regulations (CFR) § 273.1(b)(7)(vii) and 7 CFR § 273.11(m)?

FINDINGS OF FACT

The following are the undisputed relevant facts.

1. Claimant completed, signed and submitted an Application for Food Stamp benefits (Application) on February 26, 2009. (Ex. 3.0-3.9) The Division received this application on February 26, 2009. (Ex. 3.0)
2. Claimant appropriately and honestly disclosed in his response to Application question 4 that he had been convicted of a drug-related felony after August 22, 1996. (Ex. 3.1)
3. On March 12, 2009, Claimant met with the Division's Eligibility Technician to review his Application. (Ex. 4.0) On March 12, 2009, the Technician confirmed that Claimant had been charged with a drug-related felony.¹ (Ex. 2.1-2.4) Claimant was advised that he was ineligible for Food Stamp Program benefits due to his prior drug-related felony conviction. (Ex. 4.1)
4. On March 13, 2009, the Division gave written notice to Claimant his February 26, 2009 Food Stamp Application had been denied because of his prior felony drug conviction. (Ex. 5)
5. Claimant requested a Fair Hearing of the denial on grounds that the denial was unfair and was punishment in addition to his sentence. (Ex. 4.2)
6. At the Fair Hearing, the Claimant argued that because he had completed his period of incarceration and his drug treatment program, he had paid his debt to society and should not be punished further for his crime by being denied eligibility for Food Stamp benefits. Claimant asserted that persons newly released from incarceration frequently are jobless, homeless and especially in need of Food Stamps. Claimant also argued he needed Food Stamps because he felt hunger and that it was unfair to deny him Food Stamps because of a crime for which he had fully atoned.

¹ The Division supplied a photocopy of an "Alaska Trial Court Cases" internet document which prominently states that the contents of the document show criminal cases **filed**, and does not show convictions. (Ex. 2.1-2.4) At the top of the first page of this document the following is stated in bold font: "Caution: Do not assume that a defendant was convicted just because a criminal case was filed." At the end the document states: "**Important Note:** These records only indicate that a court case was filed. To find out the actual disposition of the case, you must contact the appropriate court." However, this document is inadequate to prove Claimant has been convicted of a drug-related felony.

To meet the requirements of a conviction under 7 CFR § 273.11(m) and/or 7 CFR § 273.1(b)(7)(vii), the Division must supply evidence in the form of a certified copy of a court judgment showing the conviction for a drug related felony.

7. The Division reiterated that it was bound by federal law and that absent his conviction having been expunged, it had to deem him ineligible for the Food Stamp Program due to his prior drug-related felony conviction.

PRINCIPLES OF LAW

I. Burden of Proof

This case involves Claimant's Application for Food Stamp Program benefits. 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). An Application seeks a change from the status quo.

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A 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). Therefore, the standard of proof in this case is the preponderance of the evidence standard.

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.

Black's Law Dictionary 1064 (5th Ed. 1979)

III. Food Stamp Program

The Food Stamp Program (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 46.010-990.

The federal Food Stamp Program regulations specify certain persons are ineligible for Program benefits. Persons convicted of drug-related felony crimes are ineligible by authority of 7 CFR § 273.1(b)(7)(vi) which states:

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

.....

(vii) Individuals who are ineligible under § 273.11(m) because of a drug-related felony conviction.

The regulation concerning individuals who are ineligible because of a drug-related felony conviction is 7 CFR § 273.11(m) which states:

(m) Individuals convicted of drug-related felonies. An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c)(1) of this section.

ANALYSIS

I. Issue

Was the Division correct to deny Claimant's Application for Food Stamp benefits because he is permanently ineligible for benefits as a result of his prior drug-related felony conviction? In light of the record and Federal regulations, the specific issue to be considered is whether the Division has discretion in the application of 7 CFR § 273.1(b)(7)(vii) and 7 CFR § 273.11(m) such that Claimant could be eligible for Food Stamp Program benefits notwithstanding his drug-related felony conviction.

II. Burden of Proof

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). Because Claimant's Application seeks to change the status quo, Claimant has the burden of proof in this case.

III. Application of 7 CFR § 273.1(b)(7)(E)(vii)

The undisputed fact is that Claimant admits having been convicted of a drug-related felony crime for conduct occurring after August 22, 1996. (Ex. 3.1) Accordingly, regulations 7 CFR § 273.1(b)(7)(vii) and 7 CFR § 273.11(m) pertaining to applicants for Food Stamp Program benefits who are convicted of drug-related felony crimes apply in this case.

These two regulations clearly make all persons convicted of drug-related felony crimes after August 22, 1996 ineligible for Food Stamp Program benefits. Thus, the Division has no flexibility or discretion and must determine that Claimant is not eligible for Food Stamp Program benefits, permanently.

Claimant argues that his permanent disqualification from the Food Stamp Program is unfair, a form of additional punishment for persons who have been fully punished through their criminal sentence, and that the Division should exercise discretion by allowing him to receive Food Stamps. However, the Division is required to follow the federal and state laws. A review of Food Stamp regulation 7 CFR § 273.11(m) identifies only two potential means by which the Division might exercise discretion regarding Claimant's drug-related felony conviction.

First, 7 CFR § 273.11(m) allows the Alaska legislature to exempt persons convicted of drug-related felonies, who are living in Alaska, from the eligibility exclusion completely. Second, 7 CFR § 273.11(m) allows the Alaska legislature to limit the length of the period of ineligibility from the Food Stamp Program for persons convicted of drug-related felony crimes. Neither the Alaska Statutes, (AS 47.25.975 *et. seq.*), nor the Alaska Food Stamp regulations, (7 AAC 46.010 *et. seq.*), contain either of these exceptions. Thus, the Alaska legislature has chosen not to make any exception that would allow persons convicted of drug-related felony crimes to be eligible for any Food Stamp Program benefits.² The Division was correct to deny Claimant's February 26, 2009 Application for Food Stamp benefits.

CONCLUSIONS OF LAW

1. Claimant did not meet his burden of proving by a preponderance of the evidence that the Division erred in applying 7 CFR § 273.11(m) and 7 CFR § 273.1(b)(7)(vii) in determining that Claimant is ineligible permanently from receiving Food Stamp Program benefits and in denying his February 26, 2009 Application.
2. Claimant is not eligible for the Food Stamp Program.

DECISION

Claimant is permanently not eligible for the Food Stamp Program and the Division was correct to deny his February 26, 2009 Application for Program benefits.

² Of course, Claimant may seek to have the State adopt legislation as allowed under 7 CFR § 273.11(m) if he wishes to correct the unfairness he perceives. His argument that persons newly released from incarceration frequently are homeless and jobless and especially in need of Food Stamps may be persuasive to Claimant's Alaskan legislator.

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.


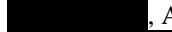
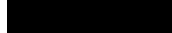
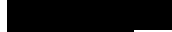
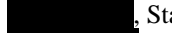
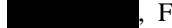
Dated this May _____, 2009

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of May , 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:

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

Al Levitre, Law Office Assistant I