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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-222  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Food Stamp on March 12, 2009. (Ex. 1 & 2) On April 1, 2009, the Division of Public Assistance (Division) sent the Claimant written notification his Food Stamp application was denied because he had a 2001 felony drug conviction. (Ex. 4) On April 10, 2009, the Claimant requested a fair hearing. Pursuant to the Claimant's request, a hearing was held on May 20, 2009. The Claimant attended the hearing telephonically, representing and testifying on his own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended in person, representing and testifying for the Division.

**ISSUE**

Was the Division correct to deny Claimant's March 12, 2009 Food Stamp Application because of a felony drug conviction?

**FINDINGS OF FACT**

1. Claimant submitted an Application for Food Stamp benefits to the Division on March 12, 2009. (Ex. 2.0) The Claimant had signed the Application on March 11, 2009, and declared he was the only member of his household. (Ex. 2.0 – 2.7).
2. On April 1, 2009, the Division sent the Claimant a denial notice, stating: "You have a 2001 drug felony conviction and an SIS from 2005. However, per the food stamp manual, the

conviction [sic] is not expunged, only set aside. At this time, you are permanently ineligible [sic] for food stamps.”

3. On May 2, 2001, the Claimant committed the crime of Misconduct Involving Controlled Substance 4<sup>th</sup> Degree, in violation of AS 11.71.040(a)(2). (Ex. 5.2) On January 25, 2005, Judge [REDACTED] ordered the conviction of that crime be set-aside, stating: “Judgment of conviction is hereby set aside, and that a copy of this Order shall serve as defendant’s certificate pursuant to AS 12.55.085(e).” (Ex. 5.2)

4. Claimant does not deny being convicted of a drug-related felony. (Testimony at hearing) He merely believes the conviction is set aside. (Testimony at hearing)

### **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 Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for determining whether individuals qualify for Food Stamp benefits. “Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction” may not receive Food Stamp benefits. 7 CFR 273.1(b)(7)(vii). 7 CFR 273.11(m) defines what constitutes a drug-related felony:

(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 . . . 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 the length of the period provided under such legislation. In eligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996.

7 CFR 273.11(m) (underlining is added to emphasize the required elements).

An individual commits the crime of misconduct involving a controlled substance in the fourth degree under AS 11.71.040 if he or she possess any amount of a schedule IA or IIA controlled substance. This is a class C felony. AS 11.71.040(d).

The Alaska Supreme Court recently dealt with the effect of a set aside conviction in a civil setting, where it ruled that a licensing board could use the set aside conviction to justify denial of a professional license. *State, Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*, 169 P.3d 595 (Alaska 2007). The Alaska Court stated that the setting aside of a conviction “does not erase the fact of conviction.” *State* at 599. It further stated that regardless of the setting aside of the conviction, the applicant was a “person who ‘has been convicted’ of a criminal offense.” *State* at 600.

### **ANALYSIS**

Claimant applied for Food Stamp benefits. Because Claimant is the party wishing to change the status quo, he has the burden of proof by a preponderance of the evidence.

The issue is whether the Division was correct to deny Claimant’s Food Stamp Application because of a drug-related felony conviction. There are no disputed facts with regard to this issue. The Claimant was convicted of the crime of Misconduct Involving a Controlled Substance in the fourth degree in violation of AS 11.71.040(a)(2). The crime occurred on [REDACTED]. This crime is a felony involving possession of a controlled substance. AS 11.71.040(d).

Federal regulations 7 CFR 273.1(b)(7)(vii) and 7 CFR 273.11(m) provide that individual are permanently disqualified from receiving Food Stamp benefits if they are convicted of a “drug-related felony” for behavior that occurred after August 22, 1996.

7 CFR 273.11(m) defines a “drug-related felony” conviction as a felony conviction which contains as an element “the possession, use, or distribution of a controlled substance.” The Claimant’s conviction falls within this definition. He was convicted of a felony consisting of possession of any amount of schedule IA or IIA controlled substance and he committed this crime after August 22, 1996. Therefore, because the Claimant was convicted of a drug-related felony as defined in 7 CFR 273.11(m), he is not eligible for Food Stamp benefits. The fact Claimant’s conviction was set aside does not erase the conviction. *State, Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*, 169 P.3d 595, 600 (Alaska 2007).

The Division was therefore correct when it applied the Food Stamp regulations, 7 CFR 273.1(b)(7)(vii) and 7 CFR 273.11(m), to deny the Claimant’s application for Food Stamp benefits.

### **CONCLUSIONS OF LAW**

The Claimant failed to meet his burden of proof by a preponderance of the evidence, and therefore, the Division was correct when it denied Claimant’s March 12, 2009 Food Stamp Application because he had been convicted of a drug related felony.

**DECISION**

The Division's denial of Claimant's March 12, 2009 Food Stamp Application 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  
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 \_\_\_ day of May, 2009.

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Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_ day of May, 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.

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

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Al Levitre  
Law Office Assistant I