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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-448
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) submitted a recertification application for Food Stamp benefits on June 11, 2009 (Exs. 1, 2.0). On June 24, 2009 the Division of Public Assistance (DPA or Division) held an intake interview with the Claimant's authorized representative (Ex. 3). On June 29, 2009 DPA mailed a notice to the Claimant listing certain additional information that the Claimant was required to provide before DPA could complete the processing of the Claimant's application (Ex. 4). The notice further stated that if the additional information was not received by DPA by July 7, 2009, the Claimant's application might be denied. *Id.*

On July 27, 2009 the Division mailed to the Claimant a notice stating that her application had been denied for failure to provide the required information (Exs. 6, 7). The Claimant requested a fair hearing contesting the denial of her application on August 2, 2009 (Ex. 8.0). This Office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

A hearing was held on October 7, 2009 before Hearing Officer Jay Durych. The Claimant attended in person, represented herself, and testified on her own behalf. [REDACTED] attended the hearing with the Claimant but did not testify. DPA Public Assistance Analyst [REDACTED] attended the hearing in person to represent and testify on behalf of the Division.

The Claimant's Fair Hearing Request dated August 2, 2009 indicated that both the Food Stamp and Medicaid Programs were at issue in this case. However, at the hearing of October 7, 2009, both the

Claimant and the Division's representative indicated that the only program or benefit still at issue was the Claimant's Food Stamp benefits.

All testimony and exhibits offered by the parties were received into evidence. At the end of the hearing, the record was left open to enable the Claimant to re-submit certain documentation which the Claimant asserted had previously been provided to DPA. The Claimant's documents were timely received by this Office on October 9, 2009. The Division's response (in letter form) was timely received by this Office on October 14, 2009. These post-hearing filings were received into evidence and marked as Claimant Exhibits "H" through "T" and as Division Exhibits 23 and 24, respectively. The record was then closed and the case was submitted for decision.

ISSUE

Was the Division correct to deny the Claimant's application for Food Stamp benefits dated June 11, 2009, based on the Claimant's alleged failure to timely provide information and/or documentation requested by the Division for the purpose of determining program eligibility?

FINDINGS OF FACT

The following facts were established by a preponderance of the evidence:

1. The Claimant submitted a written application for Food Stamp and Medicaid benefits on June 11, 2009 (Exs. 1, 2.0).
2. On June 24, 2009 the Division of Public Assistance (DPA or Division) held an intake interview with [REDACTED], the Claimant's authorized representative (Ex. 3.0). The representative told DPA that the Claimant had left the country on June 20, 2009 due to a family emergency, and that the Claimant was expected to return on July 26, 2009. *Id.*
3. On June 29, 2009 DPA mailed a notice to the Claimant listing certain additional information that the Claimant was required to provide before DPA could complete the processing of the Claimant's application (Ex. 4; Ex. F). The notice further stated in relevant part as follows:

Your Food Stamp application was received on June 11, 2009. It is being held because we need more information or proof. Please give us the items listed at the bottom of this notice by July 7, 2009 or your application may be denied.

* * * * *

[Section] 600 is the Food Stamp Manual section supporting this action.

Items needed:

1. Employment information to include: the last day your prior to leaving the country [sic], date and gross amount of all pay received in June, date you are expected to return to work, number of hours you will be working, wages and commissions you will receive.

2. Your travel itinerary showing the date you left Alaska and the date you are to return to Alaska.
3. Most recent Alaska Housing worksheet showing the amount of rent you are expected to pay each month.
4. Current telephone bill in your name.
5. Verification of the source of the deposits in your [REDACTED] Bank Account dated May 6 for \$450.00 and May 13 for \$350.00.

4. Some of the documentation requested by the Division was provided on behalf of the Claimant on July 9, 2009 (Exs. 5.0 – 5.3). The documentation received by the Division consisted of verification of the Claimant's rental obligation, and two paystubs (from May and June 2009) (Exs. 5.0 – 5.3; Division hearing representative's testimony). The Division did not, however, receive the rest of the above listed information and documentation requested in its notice of June 29, 2009 (Division hearing representative's testimony).

5. On July 27, 2009 the Division mailed the Claimant a notice stating that her application had been denied for failure to provide the information requested (Exs. 6, 7). The notice stated in relevant part as follows (Ex. 7):

Your application for Food Stamps received on June 11, 2009 is denied. We asked you to give us information and proofs by July 7, 2009 to determine your eligibility for Food Stamps. We did not receive the items listed at the bottom of this notice.

* * * * *

This action is supported by Food Stamp Manual Chapter 601.

Items we needed but did not get:

1. Employment information to include: the last day your prior to leaving the country [sic], date and gross amount of all pay received in June, date you are expected to return to work, number of hours you will be working, wages and commissions you will receive.
2. Your travel itinerary showing the date you left Alaska and the date you are to return to Alaska.
- [3]. Current telephone bill in your name.
- [4]. Verification of the source of the deposits in your [REDACTED] Bank Account dated May 6 for \$450.00 and May 13 for \$350.00

6. The Claimant requested a hearing contesting the benefit denial on or about August 2, 2009 (Ex. 8.0). The Claimant indicated that she wanted a hearing as to both the Food Stamp and Medicaid Programs. *Id.*

7. At the hearing of October 7, 2009 the Claimant testified in relevant part that:

a. She could not make enough money to cover her bills by working at [REDACTED]. Accordingly, she sought employment in the seafood industry.

b. She was contacted by [REDACTED] Seafoods on or about June 19, 2009 and was advised that they had an opening for her in their [REDACTED] processing plant, but that if the Claimant wanted the job, she would have to arrive in [REDACTED] within two (2) days.

c. She flew to [REDACTED] on June 21, 2009 to work for [REDACTED] Seafoods. She was employed continuously with that company from about June 21, 2009 until about July 25, 2009.

d. Before leaving for [REDACTED] the Claimant arranged to take a leave of absence from [REDACTED]. She tried to obtain a statement from [REDACTED] confirming that she was on a leave of absence. However, she was told that [REDACTED] did not provide such statements.

e. Before she left Anchorage, she knew that she would be working in [REDACTED] until July 25, 2009. However, she did not know how soon she would be able to get back to Anchorage after her employment ended, because during fishing season there is typically a large backlog of persons waiting in [REDACTED] for a flight back to Anchorage.

f. Before she left Anchorage, the Claimant told someone at a DPA office that she would be working out-of-town. The DPA representative told her that DPA did not have an office in [REDACTED], but that the Claimant could authorize a representative to attend an interview and submit documents to the Anchorage DPA office.

g. Before she left Anchorage, the Claimant authorized [REDACTED] to act for her with regard to her Food Stamp recertification application.

h. Before she left Anchorage, the Claimant gave Ms. [REDACTED] all required documentation concerning her earnings and her expenses. This documentation was to have been forwarded to DPA.

i. The Claimant initially stated that she had not retained a copy of the documentation which she gave Ms. [REDACTED] to forward to DPA. The Claimant later clarified that she did have copies of the documents at issue, but that she had not brought these to the hearing.

j. The Claimant does not know why her representative might have told DPA that she was out of the country; she had previously told her representative that she was going to [REDACTED]. Her representative later told her that she never told DPA that she (the Claimant) was out of the country.

k. While the Claimant was in [REDACTED], her representative sent by fax to the Division all of the information and documentation which the Division had requested in its notice dated June 29, 2009.

l. She gave her representative a telephone number in [REDACTED], where she could be reached, in case there were any problems with the application.

m. She called her house every day while she was in [REDACTED].

n. She returned to Anchorage on or about July 29, 2009 and resumed working at [REDACTED].

o. It was only upon her return to Anchorage at the end of July that the Claimant discovered that DPA had denied her recertification application.

p. She was not employed at the time of the hearing because she could not afford to pay for childcare and therefore had to stay home to take care of her children.

8. The Claimant's Fair Hearing Request dated August 2, 2009 indicated that both the Food Stamp and Medicaid Programs were at issue in this case. However, at the hearing of October 7, 2009, both the Claimant and the Division's representative indicated that the only program or benefit still at issue was the Claimant's Food Stamp benefits.

9. The Claimant was not able to specify the date on which her representative had sent by fax the disputed documents to the Division, or to which DPA office the documents had been faxed. However, based on the "Fax Send Report" submitted by the Claimant after the hearing (Ex. J), the Claimant apparently asserts that the documentation requested by the Division was faxed to the Division on June 26, 2009 and consisted of only one (1) page.

10. At the hearing of October 7, 2009 the Division's hearing representative testified that, based on her review of the Division's records, DPA had never received the documentation which the Claimant asserted was faxed to the Division by the Claimant's representative.

11. The Division's hearing representative stated, in an unsworn post-hearing filing, that the receiving fax number listed in Ex. J is not a fax number associated with any Division office.

12. Some of the documents submitted by the Claimant during the hearing on October 7, 2009 (Exhibits A-G), and some of the documents submitted by the Claimant on October 9, 2009 (Exhibits H-T), included some of the documentation / information requested in the Division's notices dated June 29, 2009 and July 27, 2009. However, neither the documents submitted by the Claimant during the hearing on October 7, 2009 (Exhibits A-G), nor the documents submitted by the Claimant on October 9, 2009 (Exhibits H-T), included the following information specifically requested in the Division's notices dated June 29, 2009 and July 27, 2009: (a) "Current telephone bill in your name;" (b) "Verification of the source of the deposits in your [REDACTED] Bank Account dated May 6 for \$450.00 and May 13 for \$350.00."

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves a recertification application for Food Stamp benefits. When a recertification application is denied, the claimant / recipient has the burden of proof¹ by a preponderance of the evidence.²

II. Overview of 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.

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.

III. Food Stamp Program Regulations Pertaining to Verification of Information Provided By Applicants.

Federal Food Stamp Regulation 7 CFR § 273.2(f) provides in relevant part as follows:

(f) Verification. Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification . . .

(1) Mandatory verification. State agencies shall verify the following information prior to certification for households initially applying: (i) Gross nonexempt income (ii) Alien eligibility (iii) Utility expenses (iv) Medical expenses (v) Social security numbers (vi) Residency (vii) Identity (viii) Disability (x)

¹ This case involves an application for renewal of Food Stamp benefits for a new certification period. Because of the manner in which the Food Stamp Program is administered, each recertification application involves a new and independent eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6th Cir. 1983). The Claimant therefore bears the burden of proof in this case.

² Preponderance of the evidence is the standard of proof generally applicable in administrative proceedings. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Accordingly, the “preponderance of the evidence” standard is the standard of proof applicable to this case. 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* at 1064 (West Publishing, 5th Edition, 1979).

Household composition (xi) Students (xii) Legal obligation and actual child support payments

(2) Verification of questionable information.

(i) The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level

* * * * *

(4) Sources of verification--

(i) Documentary evidence. State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size

* * * * *

(5) Responsibility of obtaining verification.

(i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information The State agency must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

* * * * *

(8) Verification subsequent to initial certification.

(i) Recertification—

* * * * *

(D) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

* * * * *

ANALYSIS

I. Introduction.

Based on the Claimant's hearing testimony, it is clear that the Claimant does not dispute that DPA has the authority to request the Claimant's timely submission of evidence relevant to the Claimant's application for Food Stamp benefits. See Findings of Fact, above. In addition, a review of the pertinent federal regulations shows that the Division has the authority to request additional information and documents with regard to an application for Food Stamp benefits. Accordingly, the Division's authority to request the Claimant's timely submission of evidence relevant to the Claimant's application for benefits has been established.

What *is* at issue in this case is what happened during the period that the Claimant's application was pended (i.e. from June 29, 2009 to July 27, 2009). The Claimant asserts that, through her representative Ms. [REDACTED], she timely provided the Division with the documentation which it had requested. The Division asserts that it never received the documentation allegedly faxed to it by the Claimant's representative. This is a purely factual issue on which the Claimant bears the burden of proof (see Principles of Law, above).

II. Analysis of the Parties' Conflicting Factual Assertions.

As stated above, the Claimant asserts that her representative timely submitted all of the documentation requested by the Division. The Division asserts that she did not.

In support of her contention that she timely supplied the Division with all the documentation it requested, the Claimant has submitted the following evidence:

1. Her testimony that, while the Claimant was in [REDACTED], her representative sent by fax to the Division all of the information and documentation which the Division had requested in its notice dated June 29, 2009.
2. The "Fax Send Report" submitted by the Claimant after the hearing, which has been marked as Exhibit "J." This report indicates that on June 26, 2009 one (1) page was sent by fax from the [REDACTED] to the fax number (907) [REDACTED].

In support of its contention that the Claimant did not timely provide it with all of the documentation it requested, the Division submitted the following evidence:

1. The "application pended" notice dated June 29, 2009, which stated that, as of that date, the Division had not received from the Claimant certain specified documentation which the Division needed to complete the processing of the Claimant's application (Ex. 4; Ex. F).
2. The denial notice dated July 27, 2009, which stated that the Claimant's application had been denied for failure to provide the documentation requested (Ex.7).

3. The Division Hearing Representative's testimony that, based on her review of the Division's records, DPA never received the documentation which the Claimant asserted was sent by fax to the Division by the Claimant's representative.

4. The Division Hearing Representative's unsworn written statement that the receiving fax number listed in Ex. J is not a fax number associated with any Division office.

The Division's evidence is more convincing, when compared to the Claimant's evidence, for the following reasons:

1. The Claimant does not assert that *she* sent via fax the documents at issue to the Division. Rather, the Claimant asserts that *her representative* sent by fax the documents at issue to the Division while the Claimant herself was in [REDACTED]. Thus, the Claimant has no first-hand knowledge that the documents at issue were actually sent via fax to the Division. Instead, all she has is her representative's claim that the documents were sent by fax to the Division, without any corroborating details on how or when this was done.

2. The Claimant apparently asserts that the "Fax Send Report" submitted by the Claimant after the hearing (Ex. J) proves that on June 26, 2009 the Claimant's representative sent via fax to the Division the documentation requested by the Division. However, all the Fax Send Report actually proves was that a 1 page fax was successfully sent on June 26, 2009 from the [REDACTED] to the receiving number (907) [REDACTED]. The Claimant has submitted no evidence that (a) the fax was sent to an office of the Division of Public Assistance; or (b) that the one page fax contained some or all of the documentation requested by the Division. Even if the fax was sent to the Division, it seems unlikely that all of the documentation requested by the Division could have been condensed into a one page fax.

3. The record in this case does not indicate that the Claimant's representative was advised, at the time of the June 26, 2009 recertification interview, of the specific additional documentation which the Division would require in order to process the Claimant's application (see Ex. 3.0). The earliest date that this requested list of documentation appears in the record is in the Division's written notice dated *June 29, 2009* (Ex. 4). However, the "Fax Send Report" submitted by the Claimant after the hearing (Ex. J) is dated *June 26, 2009*. Therefore, it is extremely unlikely that the Claimant's representative could have sent via fax the requested documents to the Division *three (3) days before* the notice, listing the required documentation, was even mailed to the Claimant by the Division.

4. Neither the documents submitted by the Claimant during the hearing on October 7, 2009 (Exhibits A-G), nor the documents submitted by the Claimant after the hearing, on October 9, 2009 (Exhibits H-T), included the following information requested in the Division's notices dated June 29, 2009 and July 27, 2009: (a) "Current telephone bill in your name;" (b) "Verification of the source of the deposits in your [REDACTED] Bank Account dated May 6 for \$450.00 and May 13 for \$350.00." See Finding of Fact No. 12, above. If the Claimant's representative had previously assembled and provided this documentation to the Division, the Claimant could presumably have produced this documentation, once again, at or after the hearing.

III. Summary.

In this case the Claimant had the burden of proving, by a preponderance of the evidence, that (through her representative) she timely provided the Division with the documentation which it had requested. The Division's testimony and documentary evidence, asserting that it never received the documentation allegedly sent by fax by the Claimant's representative, was more credible and more convincing than the testimony and documentary evidence to the contrary submitted by the Claimant. Accordingly, the Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, that the Division erred in denying the Claimant's application for Food Stamp benefits dated June 11, 2009, based on the Claimant's failure to timely provide information requested by the Division for the purpose of determining program eligibility.

CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, that she timely provided to the Division the information and/or documentation requested by the Division for the purpose of determining the Claimant's Food Stamp Program eligibility.
2. The Division was therefore correct when it denied the Claimant's recertification application for Food Stamp benefits on July 27, 2009 based on the Claimant's failure to timely provide information and/or documentation requested by the Division for the purpose of determining the Claimant's Food Stamp Program eligibility.

DECISION

The Division was correct when it denied the Claimant's recertification application for Food Stamp benefits on July 27, 2009 based on the Claimant's failure to timely provide information and/or documentation requested by the Division for the purpose of determining the Claimant's Food Stamp Program eligibility.

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 November, 2009.

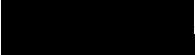
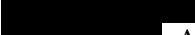
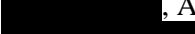
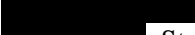
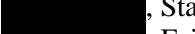

/Signed/

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

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

Claimant – Certified Mail, Return Receipt Requested

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

J. Albert Levitre, Jr.
Law Office Assistant I