

ISSUE

At the commencement of the hearing, the issue presented was:

Was the Division correct to close Claimant's Food Stamp case effective August 1, 2009, for one month because Claimant failed to participate in work activities?

At the hearing, the Claimant did not dispute the Division requirement to attend the work activities, nor did he dispute the fact he failed to do so. Claimant asserts the Division gave inadequate notice regarding his requirement to attend a meeting, and therefore, he should not be penalized for failing to participate.

Therefore, the issue is:

Did Claimant have good cause for not attending the Food Stamp work program meeting, and therefore, should not have his Food Stamp benefits terminated effective August 1, 2009, for one month?

FINDINGS OF FACT

1. On April 17, 2009, Claimant submitted to the Division an application for services. (Ex. 2). During a May 18, 2009 intake interview, the Division determined Claimant was required to participate in a work program. (Ex. 3)
2. On June 24, 2009, the Division sent Claimant a notice that, as a Food Stamp recipient, he was required to attend a Food Stamp Employment and Training Program. The notice further stated Claimant was required to attend a meeting on July 6, 2009, as part of this program. (Ex. 8)
3. Claimant did not attend the July 6, 2009 meeting. (Ex. 9) On July 21, 2009, the Division sent Claimant notice his Food Stamp case was to close for one month effective August 1, 2009, for failing to attend the meeting. (Ex. 11).
4. On August 4, 2009, the Claimant called the Division asking why his Food Stamp benefits were not issued for August 2009. The Division told Claimant that he failed to attend a work program appointment and therefore he received a penalty. The Claimant told the Division he was having trouble with his mail and had filed a formal complaint. (Ex. 12)
5. Claimant had earlier problems receiving mail from the Division:
 - a. A June 5, 2009 case note completed by Division personnel indicates Claimant's Food Stamp card (commonly referred to as a Quest card) was returned as undeliverable. (Ex. 4)

b. A June 22, 2009 case note completed by Division personnel states Claimant's Quest card was returned again. The Division called Claimant and was told there had been mail problems, but that Claimant went to the post office on June 20, 2009, and hoped the issue was resolved. The Division verified Claimant's address and reissued the Food Stamp card. (Ex. 7) There is no evidence the card was returned.

6. Claimant has had subsequent problems with his mail. He asserts he did not receive the August 28, 2009 fair hearing notice for this case and therefore did not attend the original hearing date of September 17, 2009.

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)

The Federal Food Stamp program requires certain Food Stamp recipients to take part in a work program. 7 CFR 273.7.

A nonexempt individual who refuses or fails without good cause, as defined in paragraphs (i)(2) and (i)(3) of this section, to comply with the Food Stamp Program work requirements listed under paragraph (a)(1) of this section is ineligible to participate in the Food Stamp Program, and will be considered an ineligible household member, pursuant to [§ 273.1\(b\)\(7\)](#).

7 CFR 273.7(f)(1).

The applicable section regarding the determination of good cause states:

(1) The State agency is responsible for determining good cause when a food stamp recipient fails or refuses to comply with Food Stamp Program work requirements. Since it is not possible for the Department to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the employer and by the household member involved, in determining whether or not good cause exists.

(2) Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

7 CFR 273.7(i).

The mailbox rule provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time. It is a settled feature of the federal common law. Hagner v. United States, 285 U.S. 427, 430, 52 S.Ct. 417, 76 L.Ed. 861 (1932); Rosenthal v. Walker, 111 U.S. 185, 193, 4 S.Ct. 382, 28 L.Ed. 395 (1884); Lewis v. United States, 144 F.3d 1220, 1222 (9th Cir.1998).

When properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered. Jefferson v. Spenard Builder's Supply, Inc., 366 P. 2d 714, 717 (Alaska 1961); Martens v. Metzgar, 524 P.2d 666 (Alaska 1974).

ANALYSIS

The issue in this case is whether Claimant had good cause for failing to attend the Food Stamp work program meeting, and therefore, should not have his Food Stamp benefits terminated effective August 1, 2009, for one month. Because this case is a termination of ongoing benefits, the Division is changing the status quo. Therefore, the Division has the burden of proof by a preponderance of the evidence.

The parties do not dispute that the Claimant must participate in the Food Stamp work program. On June 24, 2009, the Division sent Claimant a notice that he must attend a work program meeting on July 6, 2009. The Claimant did not attend that meeting.

The Claimant asserts, however, that he was not aware of the meeting because he did not receive notice. A properly and timely mailed document is presumed delivered, however, this presumption is rebuttable. Hagner, 427 U.S. at 430. Claimant rebuts this presumption by claiming he has had problems with his mail and did not receive the notice.

It is well documented that Claimant has had an ongoing problem with his mail. The Division had to mail Claimant's Quest card three times before he actually received it. (Ex. 4 & 7) Great weight is given to this evidence, because it is in Claimant's best interest to obtain that card. Without that card, he could not receive Food Stamp benefits. Claimant also did not receive his fair hearing notice. (September 21, 2009 Order Rescheduling Hearing After Abandonment) When he was made aware of the hearing time, he attended in person. All these difficulties rebut the presumption that Claimant received his notice.

It must be determined whether Claimant's failure to receive notice is good cause for failing to comply with the Food Stamp Program work requirement. Lack of knowledge is certainly

good cause not to attend the work program meeting. Therefore, Claimant had good cause not to attend the meeting. Because Claimant had good cause, Claimant's failure to attend the work program meeting should not preclude him from receiving Food Stamp benefits.

CONCLUSIONS OF LAW

1. The Division failed to prove by a preponderance of the evidence that the Claimant did not have good cause to attend the work program meeting.

2. Because Claimant had good cause for not attending the work program meeting, the Division was incorrect to terminate his Food Stamp benefits effective August 1, 2009.

DECISION

The Division's decision to close Claimant's Food Stamp case effective August 1, 2009 is reversed.

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 17th day of November, 2009.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 17th day of November, 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

Al Levitre
Law Office Assistant I