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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-485
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

On July 8, 2009, Ms. [REDACTED], (Claimant) had been receiving Alaska Temporary Assistance, Adult Public Assistance, Medicaid, and Food Stamp benefits since May and June 2009. (Ex. 1) In June 2009, Claimant's living circumstances changed, which caused the Division of Public Assistance (Division) to re-calculate her public assistance benefits. (Ex. 2.0-2.10) As a result of the re-calculation, the Division reduced Claimant's Food Stamp benefits to \$19.00, effective August 2009 and notified Claimant of this decision on July 8, 2009. (Ex. 3) Claimant requested a Fair Hearing on September 7, 2009 concerning the reduction in benefit amount. (Ex. 4.1) Regulation 7 AAC 49.010 provides jurisdiction over the issue in this case.

Claimant's Fair Hearing was held on November 17, 2009. The Claimant appeared telephonically and testified on her behalf. The Division was represented by Ms. [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division.

ISSUE

Was the Division correct to reduce Claimant's Food Stamp benefit for August 2009 to \$19.00?¹

¹ On her Fair Hearing request form, Claimant requested a hearing on each of the following programs: Alaska Temporary Assistance, Adult Public Assistance, Medicaid, and Food Stamps. (Ex. 4.1) The Division requested a denial of the Fair Hearing for all programs other than for the Food Stamp Program for reasons of un-timeliness and lack of issues. (Ex. 5.0) At the hearing, the parties agreed that only the issue

FINDINGS OF FACT

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

1. Claimant was receiving Food Stamp benefits since at least May 2009. (Ex. 1) At the start of her receipt of Food Stamp benefits, her household consisted of herself and her 17-year-old child, and they lived with Claimant's brother in Fairbanks, Alaska. (Claimant's testimony)
2. Claimant receives disability benefits from the Social Security Administration. (Ex. 2.10)
3. On June 29, 2009, Claimant's child left the household. (Ex. 2.0) Also in June 2009, Claimant stopped living with her brother continuously and only lived with him off and on, primarily remaining homeless in Fairbanks, Alaska. (Claimant testimony)
4. On July 7, 2009, the Division re-calculated Claimant's benefits based on the changes in Claimant's circumstances described in finding number 3 above. (Ex. 2.0-2.10)
5. The Division attributed the following as Claimant's monthly income and Claimant's testimony verified the information as correct:

a. Adult Public Assistance:	\$257.00 (Ex. 2.4)
b. Social Security Admin. Disability	<u>\$799.00</u> (Ex. 2.9, 2.10)
 Total monthly income:	 \$ 1,056.00 (Ex. 2.1)

6. The Division used the "Food Stamp Budget Work Sheet for Households with ...Disabled Member" to re-calculate Claimant's Food Stamp benefits for August 2009 as follows: (Ex. 2.1-2.2)
 - a) Claimant's monthly income of \$1,056.00;
 - b) Less the standard deduction of \$246.00;
 - c) A resulting subtotal of \$810.00, which was Claimant's Total Adjusted Income and Monthly Net Income;
 - d) Claimant's household size of 1, coupled with Claimant's urban residence of Fairbanks, applied to the Maximum Food Stamp Allotment (possible) chart, yielded a maximum possible Food Stamp benefit of \$239.00;
 - e) Claimant's Monthly Net Income of \$810.00 was multiplied by .3, resulting in an Adjusted Food Stamp Income of \$243.00;

pertaining to Food Stamp benefits remained unresolved. Therefore, the request to deny a fair hearing for the remaining three programs was granted at the hearing without objection.

f) Claimant had no expenses for shelter, dependent child care, or medical care. Therefore, Claimant was not entitled to a deduction for these kinds of expenses.

g) Claimant's Adjusted Food Stamp Income was subtracted from the \$239 Maximum Food Stamp Allotment, resulting in a negative amount, hence zero;

h) Applying the formula from the Food Stamp Budget Work Sheet, Claimant was entitled to the minimum monthly benefits of \$19.00.

7. On July 8, 2009, the Division notified Claimant of its determination that her monthly Food Stamp benefit would be \$19.00, effective August 1, 2009. (Ex. 3) Claimant requested a Fair Hearing on September 7, 2009. (Exs. 4.0-4.1)

8. At the hearing, Claimant did not offer any evidence or testimony contradicting the Division's calculations as set forth above or showing the Division erred in any aspect of its re-calculation of benefits. (Claimant testimony) Claimant testified at length about her need for more Food Stamps and her belief that she was being denied greater Food Stamp benefits because she is [REDACTED]. (Claimant's testimony) Her reason for requesting the fair hearing was to express her belief that \$19.00 per month Food Stamps was too little.

PRINCIPLES OF LAW

I. 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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *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 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)

"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).

III. Applicable Law

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC §§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 Code of Federal Regulations (CFR) §§271-274.

The Food Stamp Program has been delegated to the states for administration. 7 CFR §271.4. The Department of Health and Social Services administers the Food Stamp program in Alaska. AS 47.25.975-AS 47.25.990. The Department has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 AAC 46.010 - 7 AAC 46.990.

Regulation 7 CFR 273.9 governs the determination of income for purposes of calculating Food Stamp benefits. This regulation governs the attribution of gross income, income exclusions, and deductions from income. Regulation 7 CFR 273.10 governs the determination of a household’s eligibility for Food Stamps and benefits levels. Subsection (d) provides that only certain deductions to income are allowed and are limited to costs for dependent care, child support, shelter, and medical costs.

ANALYSIS

I. Burden of Proof

This case involves the Division’s reduction of Claimant’s Food Stamp benefit amount based on changes in Claimant’s circumstances. A re-calculation of benefits is deemed a change in the status quo. 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). Accordingly, the Division has the burden of proof.

II. Standard of Proof

A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is probably true. The Division must meet its burden of proof by a preponderance of the evidence.

III. Issue

Was the Division correct to reduce Claimant’s Food Stamp benefit for August 2009 to \$19.00?

IV. Undisputed Facts

None of the material facts of this case are disputed, therefore this is solely a legal issue. Claimant's income is fixed and limited to receipt of disability benefits from the Social Security Administration and Adult Public Assistance.

Claimant's changes of circumstances triggered a re-calculation of her Food Stamp benefit. The undisputed changes of circumstances were that her dependent child left her home and that Claimant became homeless in June 2009. Accordingly, Claimant had no expenses for shelter, dependent child care or medical care. The Division re-calculated her Food Stamp benefits based on a monthly income of \$1,056 and no deductions, which resulted in a benefit amount of \$19.00 per month.

The sole dispute is whether the Division was correct to reduce Claimant's Food Stamp benefits to \$19.00 monthly, effective August 2009.

V. Application of the Facts to the Law

The Division employed the "Food Stamp Budget Work Sheet for Households with ... Disabled Member." (Work Sheet) This was the correct Work Sheet to use to calculate Claimant's benefits because she is deemed disabled.

Claimant's sole monthly income of \$1,056.00 consists of the Adult Public Assistance and Social Security benefits she receives. She has no shelter, child care, or dependent care expenses. The calculations are straight-forward, based on the standard formula printed on the Work Sheet. The Division correctly applied the Standard Deduction of \$246.00 to Claimant's income and correctly applied the urban (Fairbanks) household of 1 classification to determine the Maximum Food Stamp Allotment. There is no error in the arithmetic. There is no error in the Division's calculation. Under the facts, Claimant is entitled only to the minimum monthly benefit of \$19.00.

Claimant's testimony was limited to her assertion that she needs more Food Stamp benefits and she did not provide an explanation of how the Division may have erred in its calculation. Therefore, Claimant did not offer any evidence to contradict or show error in the Division's calculation.

Consequently, the Division has met its burden of proof and proven that it properly and correctly calculated Claimant's Food Stamp benefit for August 2009.

CONCLUSIONS OF LAW

1. The Division proved by a preponderance of the evidence that:
 - a. The Division correctly calculated Claimant's monthly income at \$1,056.00;

b. The Division correctly applied the Standard Deduction of \$246.00 to Claimant's income, correctly applied the urban (Fairbanks) household of 1 classification to determine the Maximum Food Stamp Allotment; and

c. The Division correctly determined Claimant was eligible for the minimum amount of Food Stamp benefit of \$19.00 for August 2009.

DECISION

The Division's calculation of Claimant's Food Stamp benefit amount for August 2009 was correct.

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 December __, 2009







/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of
December 2009 true and correct
copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.

and by e-mail to the following:

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

J. Albert Levitre, Jr.
Law Office Assistant I