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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-508
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant) completed and signed an Eligibility Review Form (Application) for continued Food Stamp benefits on July 5, 2009.¹ (Ex. 3.0-3.6) The Division of Public Assistance (Division) date stamped this Application as received on July 13, 2009. (Ex. 3.0) The Division did not complete its determination of Claimant's recertification of eligibility until August 19, 2009. (Ex. 5) Claimant's prior certification of eligibility for Food Stamps expired on July 31, 2009. (Ex. 2)

Claimant's receipt of Food Stamps automatically terminated on July 31, 2009 because the Division was delayed in processing and re-determining Claimant's continued eligibility. (Division's Position Statement, [REDACTED] testimony; Claimant testimony) Claimant requested a Fair Hearing on August 6, 2009 as an attempt to ensure continued receipt of Food Stamp benefits during the Division's delay in processing her application.² (Ex. 4.1) Claimant did not get Food Stamp benefits until at least August 20, 2009, when she was

¹ Claimant's Application was accompanied by wage statements and other documentation. See Ex. 3.8-3.13. Exhibit 3.7 appears to be a copy of a page from one of Claimant's prior Food Stamp applications because it is dated "2-10-09." Exhibit 3.7 is immaterial for purposes of this case.

² Pursuant to 7 AAC 49.080, the Division is generally required to issue a notice of hearing within 10 days of the date that the Division receives a claimant or recipient's hearing request. However, in this case, the Division sent Claimant the scheduling notice for her fair hearing on September 11, 2009, about 36 days later. The hearing was set for November 3, 2009. Although the Division was late in meeting the requirements of 7 AAC 49.080, it did comply with Food Stamp regulation 7 CFR§273.15(l) which requires the scheduling notice to be sent at least 10 days before the scheduled hearing.

notified of her recertification. (Ex. 6) This Office has jurisdiction under authority of 7 AAC 49.010 and Alaska Statute 47.25.980.

Claimant's Fair Hearing was held on November 3, 2009.³ Claimant appeared in person and testified on her own behalf. The Division was represented by [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division.

ISSUE

Did the Division improperly deny Claimant Food Stamp benefits during the period it delayed processing her July 13, 2009 recertification Application?

FINDINGS OF FACT

The following facts have been proven by a preponderance of the evidence:

1. Claimant's household was receiving Food Stamp benefits during a prior certification period due to expire July 31, 2009. (Exs. 1, 2)
2. The Division sent Claimant a notice dated June 16, 2009 informing her that her Food Stamp certification period would end on July 31, 2009 "if you do not submit this application form." (Ex. 2) This same notice of June 16, 2009 informed Claimant: "[t]o avoid a delay in benefits, we must receive the application no later than the 15th of next month." (Ex. 2) Claimant received a second notice either on the same day or one or two days later, which signified to her that something had gone wrong with the timing of the Division's notification process. (Claimant testimony)
3. Claimant signed her Eligibility Review Form (Application) on July 5, 2009 and promptly submitted it to the Division. (Exs. 3.0-3.6; Claimant testimony) The Division date stamped the Application as received on July 13, 2009. (Ex. 3.0)
4. As July 31, 2009 drew nearer, Claimant repeatedly called and left messages for Division staff and supervisors asking for assistance so that her benefits would not lapse. (Claimant testimony) Claimant did not receive any response at all to her messages and she felt she was being treated inhumanely. (Claimant testimony) Claimant became convinced it was useless to try to get a response from the Division. (Claimant testimony)

³ Pursuant to 7 CFR 273.15, this Office (the Office of Hearings and Appeals) is required to issue a decision in Food Stamp cases no later than 60 days after the date that the Division receives a claimant or recipient's request for a hearing. This Office cannot prepare its decision until after the hearing is actually held. In this case, because of the Division's delay in noticing the Claimant's hearing, the 60 day period within which this Office is required to issue its decision expired 29 days prior to the hearing date. It was therefore not possible for this Office to issue its decision within the 60 day period specified by regulation. Accordingly, even though this decision was issued within 15 days of the hearing, it technically is late.

5. After July 31, 2009, Claimant's household did not receive Food Stamp benefits and was forced to use monies otherwise committed to paying bills for the purpose of buying food. (Claimant testimony) Claimant had no way to restore money to her bill paying fund, which caused her family hardship. (Claimant testimony)

6. On August 6, 2009, Claimant filed a Fair Hearing Request and expressly requested the continuation of Food Stamp benefits.⁴ (Ex. 6) Claimant had resorted to this procedure in the past to ensure her continued receipt of public assistance benefits when receipt had been jeopardized by Division inaction or problems. (Claimant's testimony) In the past, after the difficulties had been resolved, she withdrew her Fair Hearing Request. (Claimant testimony) After filing her Fair Hearing Request on August 6, 2009, Claimant still received no response from the Division and did not receive continued benefits. (Claimant testimony)

7. The Division did not complete processing Claimant's Application and re-determining Claimant's eligibility until August 19, 2009. (Ex.5) On August 20, 2009, the Division notified Claimant of her renewed eligibility. (Ex. 6) This was a delay of 20 days beyond July 31, 2009, the end of Claimant's certification period. The Division did not otherwise contact Claimant or communicate with Claimant before issuing the notice on August 20, 2009. (Claimant's testimony) The Division acknowledged its delay in its "Fair Hearing Position Packet" at paragraph 5: "The delay in processing [REDACTED] application was the fault of the agency."

8. The Division paid Claimant Food Stamp benefits retroactive to August 1, 2009. (Ex. 5)

9. On September 3, 2009, a Division representative telephoned Claimant to ask if Claimant still wanted to appeal the fact that she did not receive her benefits timely. (Ex. 7.0) Claimant did not withdraw her Fair Hearing Request. (Ex. 7) On September 11, 2009, the Division sent Claimant a scheduling notice for her fair hearing. This notice was issued 36 days after Claimant requested her Fair Hearing.⁵

10. At the Fair Hearing, Claimant asserted:

a. the Division should have followed the laws applicable to the Food Stamp program so that her household benefits would have been received without interruption;

b. the Division should had administered the Food Stamp program as required by law and responded to Claimant calls so that Claimant would not have felt she had been treated inhumanely; and

⁴ In response to the question "[p]lease tell us why you are asking for a Fair Hearing," Claimant wrote: "that food stamps will continue till case manager has ability to process renewal that you received 7-13-09 there is no reason to stop food stamps without notice of why I can't have food stamps." (Ex. 6)

⁵ See footnote 2, hereinabove.

c. Claimant requested that her case never again be handled by the Muldoon office of the Division of Public Assistance. (Claimant testimony)

11. The Division did not dispute Claimant's assertions (as stated in paragraph 10 above) during the Fair Hearing. (██████ testimony)

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).

“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).

Therefore, the “preponderance of the evidence” is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not.

III. Food Stamp Program Regulations

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.

Administration of the Food Stamp Program has been delegated to the states. 7 CFR §271.4. There are specific procedures for administering the Program in Alaska. 7 CFR §272.7. The Department of Health and Social Services administers the Food Stamp program in Alaska. AS 47.25.975-AS 47.25.990. The Department's regulations, 7 AAC 46.010 - 7 AAC 46.990, adopt the federal regulations (with certain minor variations as allowed by federal law). Thus, the State applies federal regulations, 7 CFR §271 et. seq., in the administration of the Food Stamp Program.

Regulation 7 CFR §273.14 governs recertification of eligibility for Food Stamp benefits. This regulation provides in relevant part:

(a) General. *No household may participate beyond the expiration of the certification period ... without a determination of eligibility for a new period.* (Emphasis added.)

...

(c) Timely application for recertification.

(2) ...households ...that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

(d) Timely processing.

(2) ... households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period.

(e) Delayed processing.

(1) If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of §273.2(h)(1).

Regulation 7 CFR §273.2(h)(1) requires the State agency to determine why it did not determine eligibility within 30 days of the date the application was filed. Subsection (h)(3)(i) of this regulation further provides, in relevant part:

[W]henever a delay in the initial 30 day period is the fault of the State agency, the State agency shall take immediate corrective action. ... [T]he State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process.

IV. Food Stamp Program Fair Hearings Regulations

Federal regulations applicable to Fair Hearings are relevant because Claimant sought to continue receipt of Food Stamp benefits during the pendency of the processing of her Application by expressly requesting continuation of benefits until the Fair Hearing decision was issued.

Regulation 7 CFR §273.15 governs Food Stamp Program Fair Hearings. Subsection (k) addresses the “[c]ontinuation of benefits” during the fair hearing process. It states, in relevant part:

(1) If a household requests a fair hearing within the period provided by the notice of adverse action⁶, as set forth in §273.13, *and its certification period has not expired*, the household’s participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. (Emphasis added.)

(2) Once continued or reinstated, the State agency must not reduce or terminate benefits prior to the receipt of the official hearing decision unless:

(i) *The certification period expires.* (Emphasis added.)

ANALYSIS

I. Burden of Proof

This case involves Claimant’s Application to be recertified as eligible for continued Food Stamp benefits. The Food Stamp program rules require each recertification application to involve a new and independent eligibility determination. *Banks v. Block*, 700 F.2d 292,296-97 (6th Cir. 1983). Because Claimant is attempting to change the status quo by applying for another period of eligibility for Food Stamp benefits, Claimant bears 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). The Claimant must meet her burden of proof by a preponderance of the evidence.

III. Issue

Did the Division improperly deny Claimant Food Stamp benefits during the period it delayed processing her July 13, 2009 recertification Application?

⁶ In this case, the Division did not issue a notice of adverse action. However, 7 CFR§273.15(a), governing the availability of fair hearings, provides that the Division “shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.” Therefore, Claimant was entitled to a fair hearing notwithstanding the lack of notice of adverse action.

IV. Undisputed Facts

The facts of this case are not disputed and are, in essence, as follows:

A) Claimant timely applied for recertification of her eligibility for Food Stamp benefits but the Division did not process her application in time to prevent the automatic termination of benefits.

B) The automatic termination of benefits occurred on July 31, 2009, with the expiration of Claimant's prior certification period.

C) Claimant diligently attempted to communicate with the Division but received no response to any of her contacts.

D) On August 6, 2009, Claimant gave up trying to reach the Division and filed a Fair Hearing Request intending that she would continue receiving Food Stamps until the Division acted on her Application or the Decision in her Fair Hearing was issued, whichever occurred first.

E) However, Claimant's certification period and benefits expired on July 31, 2009, before she filed her request for fair hearing on August 6, 2009.

F) The Division acknowledged it did not timely process Claimant's Application and that her Food Stamp benefits terminated with the expiration of her prior certification period on July 31, 2009.

G) The Division paid Claimant retroactive benefits to August 1, 2009.

V. Food Stamp Regulations That Govern Processing of Applications

The Food Stamp Program is administered by the States under regulations enacted at 7 CFR §271 et. seq. Regulation 7 CFR §273.14 governs the recertification of eligibility for Food Stamp benefits.

Regulation 7 CFR §273.14(d)(2) governs timely processing of Claimant's recertification Application. This regulation states:

(2) ... households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period.

The Division received Claimant's recertification Application on July 13, 2009.⁷ (Ex. 3.0) The Division had issued a notice on June 16, 2009 requesting Claimant file her recertification Application by July 15, 2009 or her receipt of Food Stamp benefits might be delayed. (Ex. 2) Claimant met that deadline when the Division received her

⁷ There is no evidence Claimant had not "met all application requirements."

Application on July 13, 2009. The end of Claimant's period of certification was July 31, 2009. Therefore, Claimant should have been notified by July 31, 2009 of her eligibility or ineligibility as required by 7 CFR §273.14(d)(2).

The Division acknowledged it did not determine Claimant's eligibility and notify her as required by July 31, 2009. The Division did not notify Claimant that she had been recertified as eligible until August 20, 2009. The Division was 20 days late in satisfying 7 CFR §273.14(d)(2). Therefore, the Division's failure to complete its determination and notify Claimant of her eligibility or ineligibility was in violation of 7 CFR §273.14(d)(2).

It is undisputed that Claimant repeatedly contacted the Division after submitting her Application and received no response whatsoever until August 20, 2009. But aside from notifying an applicant of its determination of eligibility or ineligibility, the Division is not required⁸ to communicate with an applicant concerning the processing of an application. Claimant felt aggrieved by the lack of communication. However, the regulations provide no remedy for failing to communicate with applicants, other than the remedy applied by the Division.

When the Division fails to comply with regulation 7 CFR §273.14(d)(2) by not making an eligibility determination before the end of the current certification period, another regulation specifies what the Division is required to do.

A. Food Stamp Regulation Pertaining to Delayed Processing of Applications

The Division acknowledged that it did not timely process Claimant's Application because it had not finished processing her Application before July 31, 2009. In such cases, regulation 7 CFR §273.14(e)(1), governing delayed processing, applies.⁹ This regulation requires the Division to continue to process the case and to provide a full month's benefit for the first month of the new certification period, if the household is eligible.

In addition, regulation 7 CFR §273.14(e) also requires the agency to determine why the delay in processing occurred and to notify the applicant about the status of the application, as required by regulation 7 CFR 273.2(h)(1). Regulation 7 CFR §273.2(h)(1) requires the State agency to determine the cause for which it did not determine eligibility within 30 days of the date the application was filed.

⁸ However, Claimant asserted this failure to communicate was inhumane and caused her to expend funds earmarked to pay bills and which could not be replaced by retroactive payment of Food Stamps.

⁹ Regulation 7 CFR §273.14 incorporates by reference some of the provisions applicable to initial applications found at 7 CFR §273.2. The provisions which are relevant to this case are incorporated at 7 CFR §273.2(h)(1).

When the delay is caused by the Division, regulation 7 CFR §273.2(h)(3)(i)¹⁰ further requires the Division to take immediate corrective action by notifying Claimant by the 30th day after the date her Application was filed.

The 30th day after Claimant filed her Application was August 12, 2009 and the Division should have notified Claimant by then that her Application was pending. It is undisputed the Division again erred in failing to notify Claimant as required. The Division delayed notifying Claimant until August 20, 2009, when it notified her of the recertification of her eligibility for Food Stamp benefits. This constituted an 8 day delay in notification.

This regulation does not provide a penalty or remedy when the Division fails to timely notify an Applicant. Also, the regulation prohibits payment of Food Stamp benefits during the period the Division delays notification that an Application is pending.

VI. Only Households Certified as Eligible for Food Stamp Benefits Can Receive Them.

Claimant asserts that she was improperly denied continued Food Stamp benefits while the Division was processing her Application between August 1 and August 20, 2009. Claimant asserts she should have received Food Stamps because a) the delay in processing her Application was not her fault and b) she requested continued benefits pending a decision on her fair hearing.

A. Food Stamp Benefit Regulations

Regulation 7 CFR § 273.14 governs recertification of eligibility for Food Stamp benefits. In particular, 7 CFR §§273.14(a) clearly states that Food Stamp benefits may not be issued after a certification period has expired:

(a) General. *No household may participate beyond the expiration of the certification period ... without a determination of eligibility for a new period.* (Emphasis added)

Per the above regulation, it is clear no Food Stamp benefit may be paid unless a household has been certified as eligible. Therefore, while the Division was processing Claimant's Application between August 1, 2009, the day following the end of her prior certification period, and August 19, 2009, the date it determined Claimant's household was eligible again, it was not authorized to continue paying her Food Stamps. Only after the Division completed processing her Application and certified Claimant as eligible for Food Stamps, was it authorized to pay her the full month's benefits, retroactively.

¹⁰ 7 CFR §273.2(h)(3)(i) states in relevant part: [W]henever a delay in the initial 30 day period is the fault of the State agency, the State agency shall take immediate corrective action. ... [T]he State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process.

The Division did issue Food Stamp benefits on August 20, 2009 immediately after Claimant's household was recertified. These were paid retroactively pursuant to regulation 7 CFR §273.14(e)(1), after her eligibility had been determined, for the period August 1 through August 19, 2009.

B. Fair Hearing Regulations

While the Division was delayed in processing Claimant's Application, she sought to continue receiving Food Stamps by filing a Fair Hearing Request and requesting continuation of benefits. In the past, this action had provided Claimant with the continued benefits she sought. However, in this case, Claimant did not file her Fair Hearing Request until August 6, 2009, six days *after* her prior certification period expired on July 31, 2009.

Regulation 7 CFR §273.15 governs Fair Hearings, including under what circumstances the Division is authorized to continue Food Stamp benefit issuance between the time of request for a Fair Hearing and the issuance of the decision after hearing.

Regulation 7 CFR §273.15(k) addresses the "Continuation of benefits" during the fair hearing process. This regulation authorizes the Division to continue issuance of Food Stamps during the pendency of the hearing process, but only if the certification period has not expired.¹¹ Because Claimant's request for fair hearing was made after her certification period expired, the Division was not authorized to continue her Food Stamp benefits solely because of the pendency of the fair hearing process.

Finally, even if Claimant had requested a fair hearing before her prior certification period ended on July 31, 2009, the Division still would have had to terminate her benefits on July 31, 2009 and could not continue issuing them during the pendency of the hearing process. This termination is required by regulation 7 CFR §273.15(k)(2).¹²

Therefore, Claimant could not achieve her goal of ensuring continuation of her Food Stamp benefits by requesting their continuation until a fair hearing decision. It does not matter that Claimant delayed in filing her fair hearing request because the Division did not respond to her calls. Even if she had filed before July 31, 2009, once Claimant's eligibility for benefits terminated on July 31, 2009, the Division was not authorized to continue paying them to her.

¹¹ 7 CFR §273.15(k) states, in relevant part: (1) If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in §273.13, *and its certification period has not expired*, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. (Emphasis added.)

¹² 7 CFR §273.15(k)(2) states, in relevant part: (2) Once continued or reinstated, the State agency must not reduce or terminate benefits prior to the receipt of the official hearing decision unless: (i) *The certification period expires*. (Emphasis added.)

The law clearly prohibits the Division from issuing Food Stamp benefits to a household at any time during which the household is not certified as eligible to receive benefits. The Division properly provided Food Stamp benefits until the end of Claimant's prior certification period and properly did not provide them again to the household until it was recertified as eligible to receive benefits.

Therefore, Claimant failed to prove the Division improperly denied her Food Stamp benefits during the period it was processing her July 13, 2009 recertification Application.

CONCLUSIONS OF LAW

1. Claimant timely filed an Application for recertification of her Food Stamp benefits;
2. The Division failed to process the Application and to notify Claimant of her eligibility or ineligibility before the end of Claimant's prior certification period as required by 7 CFR §273.14(d)(2);
3. The Division properly granted retroactive Food Stamp benefits for the period August 1, 2009 through August 19, 2009, after Claimant's eligibility had been determined through the recertification process, as required by 7 CFR §273.14(e)(1);
4. The Division properly did not issue Food Stamp benefits to Claimant's household during the gap in time when Claimant's household was not certified as eligible as required by 7 CFR 273.14(a) and 7 CFR §273.15(k); and
5. Therefore, Claimant failed to prove by a preponderance of the evidence the Division improperly denied her Food Stamp benefits during the period the Division was processing her July 13, 2009 recertification Application.

DECISION

The Division did not err when it denied Claimant Food Stamp benefits during the period it was processing her July 13, 2009 Eligibility Review Application between August 1, 2009 and August 19, 2009.

The Division properly granted retroactive Food Stamp benefits for the period August 1, 2009 through August 19, 2009, after Claimant's eligibility had been determined through the recertification process, as required by 7 CFR §273.14(e)(1).

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 November 18, 2009

/Signed/

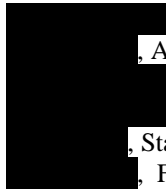
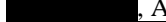
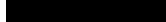
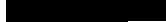
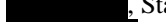
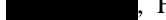
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ____ day of
November 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