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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-541
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Food Stamp benefits on September 28, 2009. (Exs. 2.0-2.8) On October 1, 2009, the Division of Public Assistance (Division) sent Claimant written notification his application for Food Stamp benefits was denied. (Ex. 4.0) Claimant requested a fair hearing on October 1, 2009. (Ex. 4.1) This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 CFR §273.15.

Pursuant to Claimant's request, a hearing was held on November 24, 2009. Claimant attended the hearing in person and testified in his own behalf. Claimant's mother, [REDACTED], appeared in person and testified on behalf of Claimant. The Division was represented by [REDACTED], Fair Hearing Representative and a Public Assistance Analyst with the Division of Public Assistance, who appeared in person and testified on behalf of the Division.

ISSUE

Was the Division correct to deny Claimant's September 28, 2009 Food Stamp application due to a felony drug conviction in 2004?

FINDINGS OF FACT

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

1. Claimant was convicted on [REDACTED] of a Class C Felony for violation of AS 11.71.040(a)(3)(A) in Superior Court case [REDACTED]. (Exs. 3.1-3.5) This constitutes the crime of Misconduct Involving a Controlled Substance in the fourth degree, a felony involving possession of a controlled drug substance. (Ex. 3.3) AS 11.71.040(d). Claimant's felony drug case was filed in [REDACTED]. (Ex. 3.4) There is no evidence in the hearing record that Claimant's behavior constituting the felony occurred before August 22, 1996, about [REDACTED] years prior to Claimant being charged in [REDACTED] or convicted on [REDACTED].¹
2. Claimant applied for Food Stamp benefits on September 28, 2009. (Exs. 2.0-2.8)
3. The Division denied Claimant's September 28, 2009 Food Stamp application because he had a felony drug conviction. (Ex. 4.0)
4. Claimant affirmed that he had been convicted of a felony drug crime in [REDACTED]. (Claimant's 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).

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).

¹ Because Claimant admitted his conviction, the issue of whether his behavior underlying the crime might have occurred about [REDACTED] years prior (to his [REDACTED]) is not part of this case and will not be addressed further.

III. Applicable Law

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) details the specific Food Stamp rules relating to drug felons:

(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. Ineligibility under this provision is only limited to conviction based on behavior which occurred after August 22, 1996.

7 CFR 273.11(m) (emphasis in original).

AS 11.71.040 “Misconduct Involved a Controlled Substance in the Fourth Degree” criminalizes manufacture, possession, or delivery of specified controlled substances (drugs). “Misconduct involved a controlled substance in the fourth degree is a class C felony.” AS 11.71.040(d).

ANALYSIS

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). Accordingly, the Division has the burden of proof. Because this case involves the denial of an application, the Claimant 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. Claimant must meet his burden of proof by a preponderance of the evidence.

III. Issue

Was the Division correct to deny Claimant's September 28, 2009 Food Stamp Application because of a felony drug conviction?

IV. Undisputed Facts

This case involves the question of whether or not the Division was correct to deny the Claimant's September 28, 2009 application for Food Stamp benefits. There are no disputed facts in this case. The sole legal issue is whether the Division can deny a person Food Stamp benefits on the basis of a felony drug conviction.

On [REDACTED], Claimant was convicted of the crime of Misconduct Involving a Controlled Substance in the fourth degree in violation of AS 11.71.040(a)(3)(A). (Ex. 3.3) This crime is a felony involving possession of a controlled substance. AS 11.71.040(d). Claimant's felony drug case was filed in [REDACTED]. See Finding of Fact 1 above.

Federal regulations 7 CFR 273.1(b)(7)(vii) and 7 CFR 273.11(m) provide that individuals 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. During the hearing, Claimant affirmed that in [REDACTED], he had been convicted of behavior constituting a felony drug crime. Because about [REDACTED] years elapsed between August 22, 1996 and [REDACTED], it is reasonable to presume that Claimant's behavior constituting the crime did not occur before 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." 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 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 Division was correct to deny Claimant's September 28, 2009 Food Stamp application due to a felony drug conviction for a crime committed after August 22, 1996.

DECISION

The Division was correct to deny Claimant's September 28, 2009 Food Stamp application.

APPEAL RIGHTS

If, for any reason, Claimant is not satisfied with this decision, 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 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 __, 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