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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-552
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant), completed and signed only the first page of an Application for Services (Application) for Food Stamp benefits¹ on August 20, 2009. (Ex. 3) The Division of Public Assistance (Division) received this Application on August 20, 2009. (Ex. 1) The Division notified Claimant on September 11, 2009 she had to complete her Application by submitting the rest of the application booklet and proof of income and certain expenses by September 21, 2009. (Ex. 5) When Claimant failed to meet this deadline, the Division delayed the start of her benefits until September 24, 2009. (Ex. 8.4)

On October 6, 2009, Claimant requested a Fair Hearing asserting her benefits should have started August 20, 2009. (Ex. 12.1-12.2) This Office has jurisdiction under authority of 7 CFR § 273.15 and 7 AAC 49.010 *et. seq.*

A fair hearing was scheduled for December 8, 2009 and was begun on that day.² Claimant appeared telephonically and testified on her own behalf. The Division was represented by

¹ Claimant initially applied for Medicaid benefits for her three children. However, after applying for Denali Kid Care, Claimant withdrew her request for Medicaid. (Claimant testimony; Ex. A) The Medicaid program is not at issue in this decision and will not be addressed further. This decision applies only to Food Stamps.

² 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 calendaring the Claimant's hearing, the 60 days period within which this Office is required to issue its decision expired 3 days prior to the first 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 13 calendar days of the close of the hearing, it technically is late.

Ms. [REDACTED], Public Assistant Analyst I, who testified in person on behalf of the Division of Public Assistance (Division).

On December 8, 2009, the hearing was continued at Claimant's request until December 16, 2009. Claimant appeared in person and testified on her own behalf. Ms. [REDACTED] again appeared in person and testified on behalf of the Division. In addition, Ms. [REDACTED], Eligibility Technician II for the Division of Public Assistance, testified by telephone on behalf of the Division.

ISSUE

Was the Division correct to delay the start of Claimant's Food Stamp benefits until September 24, 2009 because Claimant did not timely provide information requested by the Division?

FINDINGS OF FACT

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

1. Claimant applied for Food Stamp benefits on August 20, 2009 by submitting only the first page of an Application for Services (Application). ([REDACTED] testimony; Claimant testimony) This Application was received by the Division on August 20, 2009. (Ex. 1; [REDACTED] testimony)
2. On August 28, 2009, the Division sent Claimant a notice that her Application had been received, and that she had to supply additional information, including a completed application booklet and proof of self-employment income and expenses. (Ex. 3) The notice told her "you can fax these items to 1-888-266-1619 attn [REDACTED]." (Ex. 3) The notice gave no deadline for the Claimant's submission of these items. (Ex. 3)
3. On September 10, 2009, the Eligibility Technician wrote a case note memorializing an interview with Claimant: She noted that Claimant was informed orally that the processing of her Application was suspended until she provided additional information, including verification of employment income and business expenses and other information. (Ex. 4)
4. On September 11, 2009, the Division sent a second written notice informing Claimant her Application was being held because the Division needed the same information previously requested from Claimant. (Ex. 5) This notice directed Claimant to submit the requested information by September 21, 2009 or her Food Stamp Application "may be denied." (Ex. 5) The notice also stated Claimant could fax the requested information to "1-888-266-1619 Attn to [REDACTED]." (Ex. 5)
5. On September 17, 2009, Claimant faxed three pages of information to the Division at the correct number. (Ex. A, typed portion; Claimant testimony) The Division testified it did not receive the three pages Claimant faxed on September 17, 2009. ([REDACTED] testimony)

6. On September 21, 2009, Claimant sent the rest of her Application, consisting of 9 pages, by fax to the Division. (Exs. 6.1-6.9) The Division date stamped the packet of pages as received on September 21, 2009. (Exs. 6.1-6.9)

7. On September 24, 2009, the Eligibility Technician wrote a case note memorializing she had received Claimant's "complete application booklet" but that Claimant had not provided proof of income and expenses, and that all information was due September 21, 2009. (Ex. 7)

8. On September 25, 2009, Claimant telephoned the Eligibility Technician to check if her information had been received. (Ex. 8.0) In response to her telephone conversation with the Eligibility Technician, Claimant again faxed the same three pages of information, two of which were self-employment invoices that she had faxed on September 17, 2009. (Exs. 8.1-8.3; Claimant testimony) The three pages Claimant sent by fax on September 25, 2009 are identified as hearing record Exhibits 8.1-8.3.³ (Claimant testimony) The two invoices show only Claimant's handwritten notes of her business expenses. (Ex. 8.2, 8.3)

9. At the same time on September 25, 2009, Claimant also sent a fourth page which was a copy of the fax transmission report, (Ex. A), proving she had faxed the invoices on September 17, 2009. (Ex. E; Claimant testimony) On this transmission report, Claimant had written a note in large bold black letters drawing attention to her September 17, 2009 submission of the three pages of information, her name and social security number. (Ex. A; Claimant testimony)

10. Also on September 25, 2009, the Division issued a notice to Claimant that her August 20, 2009 Food Stamp Application had been denied because she had failed to provide the requested income and expense information by September 21, 2009. (Ex. 8.4)

11. On September 29, 2009, Claimant telephoned the Division concerning the status of her Application and whether the information she had faxed on September 25, 2009 had been received and was adequate. (Ex. 9; Claimant testimony; ██████ testimony) The Eligibility Technician informed Claimant that the faxed pages had been received but the two invoices "came out blank." (Ex. 9)

12. Claimant was unaware her invoices had been received by the Division "blank" as to the income information until the Eligibility Technician told her this on September 29, 2009. (Claimant testimony)

13. On September 29, 2009, Claimant again faxed copies of her computer generated invoices to the Division, which the Division date stamped as received on September 29, 2009. (Exs. 9.1-9.2) However, on these versions of the invoices, Claimant had added handwritten billing details and income totals, which were missing from the previously faxed versions.⁴ (Exs. 9.1-9.2; Exs. C; D)

³ Claimant faxed the same three pages of information on September 17, September 25 and September 29, 2009. Exhibits 8.1-8.3 are the versions received on September 25, 2009. Exhibits 9.1-9.2 are the versions received on September 29, 2009 with the added hand written income information.

⁴ In addition, Claimant changed the date on invoice #110 on which she sent out the payment from "5-18-09" to "7-3-09." (Compare Ex. 9.1 with Ex. 8.2: this change is immaterial to the issue in this Decision)

14. The Division deemed Claimant's supplemental information sufficient as of September 24, 2009⁵ and therefore established September 24, 2009 as Claimant's benefit start date. (██████ testimony) The Division determined Claimant was eligible to receive Food Stamps but due to the delay in receiving her completed information, it set the benefit start date as September 24, 2009, instead of August 20, 2009, the date of her initial application. (██████ 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. 7 CFR § 273.15. A preponderance of the evidence is the normal standard of proof in an administrative proceeding and applies in this case. *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)

II. The Food Stamp Program.

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 CFR § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations of 7 CFR §§ 271 – 274. Regulations at 7 CFR § 273.2 pertain to processing applications for Food Stamps.

Food Stamp regulation 7 CFR § 273.2(g)(1) provides that eligible households that complete the initial application process during the month the application is filed will be given an opportunity to receive benefits no later than 30 days after the date the application was filed.

⁵ Claimant's invoices are date stamped as received on September 25, 2009. (Exs. 8.1-8.3) On September 24, 2009 the Division's Eligibility Technician noted receipt of Claimant's completed application booklet and the lack of receipt of income and expense information. (Ex. 7) The Division has elected to deem Claimant's application completed as of September 24, 2009, based on the information received on September 25, 2009 and amended on September 29, 2009. The date discrepancy is immaterial because both dates are more than 30 days after the date of initial application, August 20, 2009. The Division's choice of September 24, 2009, instead of another date in September 2009 was not addressed.

When applicants are unable to complete the application process within the first 30 days of the application and the delay is caused by the applicant household, the applicant loses its entitlement to benefits for the month of application. 7 CFR § 273.2(h)(2). However, the application may still continue to be processed and benefits may start thereafter if the household completes the application process within the following 30 day period. 7 CFR § 273.2(h)(2).

Regulation 7 CFR § 273.2(f)(5) provides, in relevant part:

“[t]he household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.”

ANALYSIS

I. Issue

Was the Division correct to delay the start of Claimant’s Food Stamp benefits until September 24, 2009?

II. Burden of Proof and Standard of Proof

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).

Claimant is attempting to change the status quo because Claimant is seeking to obtain Food Stamp benefits. Accordingly, Claimant has the burden of proving by a preponderance of the evidence that on or before September 21, 2009 she completed the application process she began August 20, 2009.

III. Undisputed Facts

The Division and Claimant agree that Claimant’s submission of the first page of her Application for Services on August 20, 2009 satisfied the legal requirement to establish an Application filing date. Thirty days from this date is September 21, 2009, the deadline set by the Division for Claimant to supply information completing the application process.

On September 21, 2009, Claimant faxed the remainder of her Application booklet to the Division’s fax number and the Division acknowledged receipt of the booklet.

Claimant proved that on September 17, 2009 she faxed two invoices purporting to show her self-employment income and expenses. The Division asserts it did not receive them. Whether or not the invoices faxed on September 17, 2009 were received by the Division on that day is immaterial because it is undisputed the income information was missing from them when Claimant re-faxed these same invoices to the Division on September 25, 2009. Therefore, the income information necessarily was missing from the invoices when faxed on September 17, 2009.

Claimant did not follow up on her submissions of September 17 and September 21 until September 25, 2009. By September 25, 2009, more than 30 days had elapsed from the August 20, 2009 date Claimant filed her Application.

During her September 25, 2009 follow-up telephone call, Claimant learned the Division had no record of her September 17, 2009 fax. On September 25, 2009, Claimant re-faxed the same invoices to the Division which received them. However, the Eligibility Technician wrote in a case note the invoices were “blank” as to income information. The invoices showed only the handwritten notes made by Claimant concerning her business expenses.

On September 29, 2009, Claimant followed up on her September 25, 2009 fax transmission. Claimant then was told her invoices were “blank” as to income information. Claimant corrected the problem by hand writing the income amounts on the invoices and re-faxing them to the Division on September 29, 2009. The Division accepted her handwritten amendments to the invoices she faxed on September 29, 2009 and applied them retroactively to September 24, 2009.⁶ The Division established September 24, 2009 as the start date for her Food Stamp benefits.

Claimant asserts the Division should have started her Food Stamp benefits on August 20, 2009, not September 24, 2009.

IV. Claimant Must Supply the Information Necessary for a Food Stamp Eligibility Determination.

Claimant, as an applicant for Food Stamp benefits, must do what is necessary to complete the application process. Regulation 7 CFR § 272.2(f)(5) clearly states Claimant has the primary responsibility to provide proof of her eligibility. This regulation states, in relevant part:

“[t]he household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.” 7 CFR §273.2(f)(5).

Claimant applied on August 20, 2009 for Food Stamp benefits by filing only the first page of her Application. Claimant was notified on August 28, September 10 and September 11, 2009 to provide additional information including her completed Food Stamp application booklet, verification of her self-employment income and expenses, and proof of other expenses. (Exs. 3; 4; 5) Claimant was informed orally during an eligibility interview on September 10, 2009 to provide this information. Claimant was given written notice on September 11, 2009 she had to supply additional information on or before September 21, 2009 or her application would be denied.⁷

The September 21, 2009 deadline is the 30th day following August 20, 2009, when Claimant filed her Application. Claimant’s application process would have to have been completed within 30 days from the date her Application was filed for her to be eligible for benefits beginning in the month she filed her Application. 7 CFR § 273.2(g).

⁶ See footnote 5.

⁷ On September 21, 2009, Claimant provided her completed application. It is not at issue in this case. What is at issue is whether Claimant provided the required proof of her income on or before September 21, 2009.

A. Claimant failed to provide the necessary information within 30 days of the date she filed her Application.

Claimant proved that on September 17, 2009 she sent three documents, including 2 invoices, to the Division's fax number by supplying a fax transmission report. (Exhibit A, top portion) Moreover, Claimant proved the three documents identified in the record as Exhibits 8.1-8.3, (which were received by the Division on September 25, 2009) are the same as the three documents she sent by fax on September 17, 2009.

Claimant did not follow up on her September 17, 2009 fax of these invoices until over a week later, on September 25, 2009. When she re-submitted the invoices on September 25, 2009, they were "blank" as to income. Claimant acknowledged she did not realize the income information on the invoices did not show on the faxed versions that the Division received on September 25, 2009. Claimant did not supply the missing income information until her re-transmission of the invoices on September 29, 2009.

Thus, the invoices lacked the income information when transmitted on September 17, 2009. Even had the Division received them on September 17, 2009, Claimant would not have provided the information necessary to complete the application process before the lapse of 30 days after she filed her Application, that is, by September 21, 2009. Claimant did not supply the income information on September 25, 2009, either.

Therefore, Claimant did not supply the income information sufficient to complete the application process until September 29, 2009. Claimant failed to complete the application process on or before the 30th day following the filing of her Application on August 20, 2009.

Consequently, Claimant failed to meet her burden of proving she supplied the information requested by the Division by the September 21, 2009 deadline to complete her application process. Regulation 7 CFR § 273.2(g) makes clear that an applicant is entitled to benefits for the month of initial application only if the application process is completed within the 30 day period immediately after filing.

B. Claimant did complete the application process within the month after September 21, 2009.

Although Claimant did not supply the missing income information until September 29, 2009, the Division attributed its receipt of Claimant's information complete as of September 24, 2009. This date is within the 30 day period after the initial month of application. Regulation 7 CFR § 273.2(h) permits the Division to start benefits without requiring Claimant to file a new application if the application process is completed within 30 days after the month of initial application. The Division did not err in establishing Claimant's benefit start date on September 24, 2009.

The Division was correct to start Claimant's Food Stamp benefits after the month of her application, on September 24, 2009, because Claimant did not complete the application process within the 30 day period after her August 20, 2009 initial filing but did complete the process within the following 30 day period.

CONCLUSIONS OF LAW

1. Claimant failed to prove by a preponderance of the evidence that she met the requirements of 7 CFR § 273.2(g)(1) entitling her to the start of Food Stamp benefits beginning August 20, 2009, the date she filed her initial Application.
2. The Division did not err in starting Claimant’s Food Stamp benefits on September 24, 2009 pursuant to 7 CFR §273.2(h) because Claimant delayed in completing the application process longer than 30 days after filing her Application.

DECISION

The Division was correct to delay the start Claimant’s Food Stamp benefits until September 24, 2009 because Claimant did not complete the application process within 30 days of filing her Application on August 20, 2009.

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
PO 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 this _____ day of December 2009.

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 by U.S.P.S., by Certified Mail, Return Receipt Requested
and to other listed persons by e-mail:

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

J. Albert Levitre, Jr., Law Office Assistant I