

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907)-334-2239  
Fax: (907)-334-2285

**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of	)	
	)	
<b>[REDACTED]</b> ,	)	OHA Case No. 09-FH-553
	)	
Claimant.	)	Division Case No. <b>[REDACTED]</b>
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

**[REDACTED]** (Claimant) applied for Food Stamp and Interim Assistance<sup>1</sup> benefits on July 24, 2009. (Exs. 2.0 – 2.10) On October 5, 2009, the Division of Public Assistance (Division) sent the Claimant written notice it was denying her application for Food Stamp and Interim Assistance benefits because she did not comply with the Division’s request for information. (Exs. 8 – 8.1) The Claimant requested a fair hearing on October 8, 2009. (Ex. 9) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant’s request, a hearing was held on December 17, 2009. The Claimant attended in person; she represented herself and testified on her own behalf. **[REDACTED]**, the Claimant’s husband, attended in person; he testified on behalf of the Claimant and assisted in her representation. **[REDACTED]**, Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

**ISSUE**

Was the Division correct to deny the Claimant’s July 24, 2009 Food Stamp and Interim Assistance (Adult Public Assistance) application because she did not comply with the Division’s requests for information?

---

<sup>1</sup> The Claimant actually applied for Adult Public Assistance benefits. (Ex. 2.0) However, in order to receive Adult Public Assistance benefits, an applicant must normally be found to qualify for federal Supplemental Security Income benefits. 7 AAC 40.030. That process is quite lengthy. Interim Assistance is a limited form of Adult Public Assistance which is available to qualified applicants while their application for federal Supplemental Security Income is pending. See 7 AAC 40.170(b). For ease of reference, this Decision therefore refers to the Claimant’s application as being for Interim Assistance rather than Adult Public Assistance.

## FINDINGS OF FACT

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

1. Claimant applied for Food Stamps and Interim Assistance (Adult Public Assistance) benefits on July 24, 2009. (Exs. 2.0 – 2.10) The application states that the Claimant was not receiving any income because she was on medical leave from her employment with [REDACTED]. (Ex. 2.3) It does not provide a contact name, phone number, or address for her employer. (Ex. 2.9)

2. On July 30, 2009, the Division sent the Claimant notice that her Food Stamp benefits had been approved on an expedited basis and that in order to continue receiving Food Stamp benefits, she would have to provide the following information by August 10, 2009:

a. Written information regarding the Claimant's job ending:

Provide the date job ended, last day worked, reason job ended. Gross income and . date final check was/will be available & the gross amount . . . .onies (sic) related to this job ending? \*\* Provide the printed name phone of the person who is filling out the statement, along with their signature. You can pick up a copy of the work statement at the Muldoon or Gambell office if you do not receive the one we mailed you.

b. Written verification of the Claimant's husband's self-employment income for the "last three months," including his total income for each month and the business expenses incurred for each month.

(Exs. 3.0 - 3.1) The notice also informed the Claimant that "[i]f you need help or have questions, please contact me." (Ex. 3.1)

3. On August 14, 2009, the Division sent the Claimant notice that her application for Interim Assistance (Adult Public Assistance) was being placed on hold and that the following information was needed by August 24, 2009 or her application could be denied:

a. Ending employment verification.

b. Her husband's self employment information for July and August 2009.

(Ex. 3.2)

4. The August 14, 2009 notice also requested the Claimant to provide proof that she had filed a Social Security application. The Claimant was given until September 14, 2009 to provide this information, and the Claimant was informed that she should call the Eligibility Technician on her case if she did not receive the needed forms. (Ex. 3.2)

5. The Claimant did not provide the Division with the requested information about her job ending. ([REDACTED] testimony) She did not provide her employer with the Division's job ending statement form because she did not receive the form from the Division. (Claimant testimony)

Instead, on August 28, 2009 – after the Division’s deadlines, she provided the Division with a copy of her July 31, 2009 pay stub with the hand written notation on it of “Last Check.” (Ex. 5.0; Claimant testimony)

6. On September 28, 2009, the Claimant submitted a Preliminary Examination for Interim Assistance form (form AD #2) stating that the Claimant had undergone surgery on June 30, 2009 for a cervical discectomy and fusion and that it was uncertain if she would recover from her conditions of cervical spondylosis with myelopathy. (Exs. 6.0 – 6.1)

7. The Claimant’s husband testified that he did not turn in the requested information on his self-employment because he had not earned any self-employment income for several months, and that he told the Eligibility Technician at the Muldoon Office that he had not earned any income. The Claimant testified that the Eligibility Technician told them that if her husband had not earned any self-employment income, he did not need to turn any information in. There was no contradictory testimony or evidence on this point and the Claimant and her husband are found to be credible.

8. The Claimant admittedly did not turn in the requested information on her Social Security application. She applied online and did not have a copy of her application to submit to the Division. (Husband testimony) The Claimant did not receive confirmation from the Social Security Administration that she had applied for Social Security benefits until the end of August 2009, which the Claimant did not provide to the Division. *Id.*

9. On October 5, 2009, after the deadlines for producing the requested information had passed, the Division reviewed the Claimant’s application for Interim Assistance (Adult Public Assistance) and Food Stamp benefits and denied it because she did not provide the following:

- a. The requested information about the Claimant’s job ending.
- b. Self-employment income information for the Claimant’s husband.
- c. Verification that the Claimant had applied for Social Security benefits.

(Ex. 7)

10. On October 5, 2009, the Division sent the Claimant written notice that her application for Interim Assistance (Adult Public Assistance) had been denied because she did not provide the following:

- a. The requested information about the Claimant’s job ending.
- b. Self-employment income information for the Claimant’s husband.
- c. Verification that the Claimant had applied for Social Security benefits.

(Ex. 8) The notice stated that the Division’s action was “supported by [Adult Public Assistance] Manual Section 400-4 and Aged, Disabled, and [Long Term Care] Manual Section 520-E.” *Id.*

11. On October 5, 2009, the Division sent the Claimant written notice that she would not receive Food Stamp benefits after October 31, 2009 because she did not provide the following:

- a. The requested information about the Claimant's job ending.
- b. Self-employment income information for the Claimant's husband.

(Ex. 8.1) The notice stated that the Division's action was "supported by Food Stamp Manual Section 605-3B." *Id.*

12. The Claimant requested a Fair Hearing challenging the denial of her application for Food Stamp and Interim Assistance benefits on October 8, 2009. (Ex. 9)

13. On October 20, 2009, after the Claimant requested a Fair Hearing, the Claimant provided her husband's self-employment income information to the Division. (Ex. 10.2) This was submitted because he had recent self-employment income. (Husband testimony)

14. On December 17, 2009, during the scheduled Fair Hearing, the Claimant provided a copy of a Social Security Administration Notice, dated November 14, 2009, informing her that she was approved for monthly Social Security Disability Insurance payments beginning with the month of December 2009. (Ex. A) The Claimant's husband called the Division Eligibility Technician and informed her of the approval. (Husband testimony)

### **PRINCIPLES OF LAW**

This case involves the question of whether or not the Division was correct to deny the Claimant's application for application for Food Stamp and Interim Assistance (Adult Public Assistance) benefits. The party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence.<sup>2</sup> *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

#### A. Interim Assistance (Adult Public Assistance)

The Alaska Adult Public Assistance regulations provide the Division with the authority to request information from Adult Public Assistance applicants:

The division will, in its discretion, require each applicant for aid to the permanently and totally disabled to submit evidence concerning his education and training, work experience, activities before and after onset of the claimed disability, efforts to engage in gainful employment, and other related matters.

---

<sup>2</sup> Preponderance of the evidence is defined as "[e]vidence 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)

7 AAC 40.050(d). “[F]inancial need with respect to income” is an eligibility factor for Adult Public Assistance. 7 AAC 40.090(8). An applicant’s spouse’s income is considered income of the applicant. 7 AAC 40.240(a).

An Interim Assistance (Adult Public Assistance) applicant is required to apply for Social Security benefits within 30 days of the date that she applied for Interim Assistance (Adult Public Assistance) benefits. 7 AAC 40.060.

When the Division requests information from an Interim Assistance (Adult Public Assistance) applicant, it is required to “provide the client with a written notice that states what evidence is needed and [give] a reasonable amount of time (at least 10 days) to submit the necessary proof.” *Alaska Adult Public Assistance Manual* §400-4(B).

#### B. Food Stamp Program

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The rules that control an applicant’s eligibility and the application process are set out in the Code of Federal Regulations (CFR).

An applicant’s household income is a factor used in determining Food Stamp eligibility and benefit levels. 7 CFR 273.10.

An applicant’s employment and whether she has recently ended a job is also a factor in determining Food Stamp eligibility. For instance, if a Food Stamp applicant has “voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week” within the 60 day time period immediately before her Food Stamp application, she can be disqualified for receiving Food Stamp benefits for up to two months. 7 CFR 273.7(a)(1)(vii); 7 CFR 273.7(f)(2)(i)(B); 7 CFR 273.7(j)(2). The Division is responsible for determining “good cause” which includes such causes as illness. 7 CFR 273.7(i)(1) and (2).

The agency is entitled to request verification of an applicant’s information to determine her eligibility for the Food Stamp program. 7 CFR 273.2(d)(1). If a Food Stamp applicant refuses to comply with a request for verification of information, the application will be denied. *Id.* A “refusal” is when the applicant is able to cooperate with the request for information, but “clearly demonstrate[s] that [she] will not take actions that [she] can take and that are required to complete the application process.” *Id.*

### ANALYSIS

This case presents the issue of whether the Division was correct when it denied the Claimant’s Interim Assistance (Adult Public Assistance) and Food Stamp application because she did not comply with the Division’s requests for information.

Because this case involves the Claimant having applied for benefits, she was seeking to change the status quo. Accordingly, she has the burden of proof in this case by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985);

*Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

The Division requested three items of information from the Claimant:

- a. Self-employment income information for the Claimant's husband.
- b. Information about the Claimant's job ending.
- c. Verification that the Claimant had applied for Social Security benefits.

It is undisputed that the Claimant did not provide the requested information. Each of the information requests is addressed separately below.

A. Self-employment Information

The Division requested, as part of its July 30, 2009 and August 14, 2009 requests for information, information regarding the Claimant's self-employment income information. *See* Findings of Fact 2 and 3 above. This request was appropriate for both of the programs that the Claimant had applied for, the Interim Assistance (Adult Public Assistance) and Food Stamp programs. Both of these programs require income information in order to assess financial eligibility and benefit levels. 7 AAC 40.090(8); 7 CFR 273.10.

However, the Claimant's husband credibly testified that he did not have any self-employment income for several months and that he told the Eligibility Technician that he had not had any self-employment income. *See* Finding of Fact 7 above. The Claimant credibly testified that the Eligibility Technician told them that if her husband did not have any self-employment income, he did not need to report it. *Id.*

There was no evidence or testimony to contradict the Claimant or her husband's testimony. Accordingly, the Division was aware he had no self-employment income. He was told he did not need to report non-existent self-employment.

The Claimant has therefore met her burden of proof on this issue. Because the Claimant's husband had no self-employment income, and was told he did not need to report self-employment income where he had none, the Claimant did not need to comply with the Division's request for information about her husband's self-employment income.

B. Job Ending Information

The Division requested, as part of its July 30, 2009 and August 14, 2009 requests for information, information regarding the ending of the Claimant's employment. *See* Findings of Fact 2 and 3 above. This request was appropriate for both of the programs that the Claimant had applied for, the Interim Assistance (Adult Public Assistance) and Food Stamp programs. Both of these programs require income information in order to assess financial eligibility and benefit levels. 7 AAC 40.090(8); 7 CFR 273.10. Additionally, the Food Stamp program has benefit penalties ("job quit penalty") that come into play when a person has unjustifiably quit their job

(or been fired) in the 60 day time period preceding her Food Stamp application. 7 CFR 273.7(a)(1)(vii); 7 CFR 273.7(f)(2)(i)(B); 7 CFR 273.7(j)(2).

The job ending information was necessary to determine if (1) the Claimant was actually still working, (2) if she had quit or been fired, and (3) if she was subject to a job quit penalty. All the Claimant did was indicate her employer on her application form, indicate that she was on medical leave, and submit a pay stub with her notation on it that it was her last pay check. *See* Findings of Fact 1 and 5. This was not sufficient information to verify the exact facts of whether the Claimant had received pay checks after the pay stub she submitted to the Division or the exact reason why the Claimant was no longer working.

The Claimant also submitted a Preliminary Examination for Interim Assistance medical form (form AD #2), that indicated she the Claimant had undergone surgery on June 30, 2009 for a cervical disectomy and fusion and that it was uncertain if she would recover from her conditions of cervical spondyloliosis with myelopathy. *See* Finding of Fact 6 above. This did not provide any information with regard to her job ending either. It was a medical examination form that showed she had recent surgery and her recovery was uncertain. It did not show if she had gone back to work after the surgery, or if she had completely stopped working, or the last date she had worked.

The Claimant also stated that she did not receive a statement for her employer to fill out. The Food Stamp information request about her employment ending, specifically informed the Claimant that she could contact the Division to obtain a form if she did not receive the form. *See* Findings of Fact 2. As a result, the Claimant's argument that she did not have the appropriate form does not constitute a justification for her failure to submit it.

The Claimant had the responsibility for providing the job ending information to the Division. She had the ability to obtain it. She did not. Because she had the ability to provide the information and chose not to do so, this was a "refusal" to provide information, rather than a mere failure to provide information. *See* 7 CFR 273.2(d)(1).

It should also be noted that the Claimant did not provide the Division with full contact information for her employer, merely that it was [REDACTED], i.e. no contact name, no phone number, etc. *See* Finding of Fact 1 above. As a result, the Division did not have the ability to do its own verification.

The Division therefore had a legitimate need for the Claimant's job ending information. The Claimant did not provide the Division with it, nor did the Claimant provide the Division with sufficient information to independently verify her job ending. The Claimant was also advised by written notice that if she did not have the necessary form, she could obtain it from the Division.

The Claimant has therefore not met her burden of proof on this point. The Division was correct to deny the Claimant's Interim Assistance (Adult Public Assistance) and Food Stamp application because she did not comply with the Division's valid request for information about her job ending.

C. Social Security Application Verification

The Division requested verification that the Claimant had applied for Social Security benefits. This was with regard to her application for Interim Assistance (Adult Public Assistance) benefits only. This request was appropriate because the Interim Assistance (Adult Public Assistance) program requires that an applicant have also applied for Social Security benefits. 7 AAC 40.060.

The Claimant did not comply with this request. She did not have a copy of her application because she applied online. *See* Finding of Fact 8 above. However, as the Claimant's husband testified, she received confirmation from the Social Security Administration at the end of August 2009 that she had applied. *Id.* This was before the September 14, 2009 deadline to submit the verification information. *See* Finding of Fact 4 above.

The Claimant therefore had the Social Security verification information in hand before the deadline to submit it. She did not. She therefore had no justification for not complying with the Division's valid request for information. The fact that she was approved for Social Security Disability Insurance on November 14, 2009 and informed the Division about her approval occurred after the fact of her application denial, and does not operate to retroactively set aside the denial. *See* Finding of Fact 14 above.

The Claimant therefore did not meet her burden of proof on this issue. The Division was correct to deny the Claimant's application for Interim Assistance (Adult Public Assistance) because the Claimant did not timely comply with its request that she provide verification that she applied for Social Security benefits.

**CONCLUSIONS OF LAW**

1. The Claimant was not required to provide the Division with self-employment income information for her husband because he had not earned any self-employment income, the Division was verbally informed of the fact and the Division Eligibility Technician told him that if he did not earn any money, he did not have to report it.
2. The Claimant was required to and refused to provide the Division with information about her job ending. Her furnishing of her pay stub marked "last check" by her, and her furnishing of the Preliminary Examination for Interim Assistance medical form (form AD #2) did not comply with the Division's request for information.
3. The Claimant was required to and did not provide the Division with verification that she had applied for Social Security benefits. She had information in her possession before the Division's deadline that would have verified the fact she had applied for Social Security benefits. She did not furnish it.
4. The Division's action denying Claimant's July 24, 2009 application for Interim Assistance (Adult Public Assistance) and Food Stamp benefits was correct because the Claimant did not furnish information requested by the Division in connection with her application for Interim Assistance (Adult Public Assistance) benefits, being the job



ending information and the Social Security verification, and Food Stamp benefits, being the job ending statement.

**DECISION**

The Division was correct to deny the Claimant's July 24, 2009 application for Interim Assistance (Adult Public Assistance) and Food Stamp benefits.

**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  
PO Box 110640  
Juneau, AK 99811-0640

An appeal 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 6th day of January, 2010.

*/Signed/*  
Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 6th day of January, 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.  
[REDACTED], Director Policy & Program Development - email  
[REDACTED], Director's Office - email  
[REDACTED], Policy & Program Development - email  
[REDACTED], Policy & Program Development - email  
[REDACTED], Staff Development & Training - email  
[REDACTED], Fair Hearing Representative - email

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