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

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| In the Matter of |) | |
| |) | |
| ██████████, |) | OHA Case No. 09-FH-577 |
| |) | |
| Claimant. |) | Division Case No. ██████████ |
| _____ |) | |

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a Food Stamp recipient in July 2009. (Ex. 1) The Division of Public Assistance (Division) received her Food Stamp benefit renewal application on July 6, 2009. (Ex. 2) Her application was approved with a one year certification period. (Ex. 9; ██████████ testimony) A Division Eligibility Technician spoke to the Claimant on October 27, 2009 and informed her that her certification period was changed to six months and she would be required to reapply for Food Stamp benefits every six months. (Ex. 11) The Claimant verbally requested a fair hearing on October 27, 2009. *Id.* The Division sent the Claimant a formal written notice that she would be required to reapply for Food Stamp benefits every six months on October 28, 2009. (Ex. 12)

This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing began on December 31, 2009. The hearing was then continued to January 13, 2010¹ because the Division had not mailed its Position Statement to the Claimant's correct address. The Claimant attended both hearing dates telephonically, represented herself, and testified on her own behalf.

¹ Pursuant to 7 CFR 273.15(c)(1), this Office (the Office of Hearings and Appeals) is required to render a decision on Food Stamp cases no later than 60 days after the date that the Division receives a claimant or recipient's request for a hearing. Because the Claimant requested her Fair Hearing on October 27, 2009, this Decision was therefore due no later than December 26, 2009. However, Division personnel scheduled the hearing for December 31, 2009, which was 5 days after the due date required by 7 CFR 273.15(c)(1). The hearing then had to be continued to January 13, 2010 because the Division did not mail its Position Statement to the Claimant's address. For this reason, even though this Decision is issued only 9 business days after the completion of the hearing, it is technically late.

██████████, a Public Assistance Analyst with the Division, attended in person and represented the Division on December 31, 2009. ██████████, a Public Assistance Analyst with the Division attended the January 13, 2010 hearing in person, represented the Division and testified on its behalf.

ISSUE

The Division originally renewed the Claimant's Food Stamp benefits for a one year period. It then changed her certification period from one year to six months. It argued that it had erred in certifying the Claimant's Food Stamp benefits for a one year period, and that because the Claimant was not receiving Adult Public Assistant benefits, it was required to change her Food Stamp certification period from one year to six months.

The Claimant argued that other Medicaid Waiver recipients were certified to receive Food Stamp benefits for a one year period and that she should be treated the same as other Medicaid Waiver recipients. She also argued that she was disabled and that it was difficult for her to reapply for Food Stamp benefits every six months.

The resulting issue is:

Was the Division correct to change the Claimant's Food Stamp certification period from one year to six months because she does not receive Adult Public Assistance benefits?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant receives Medicaid benefits under the Medicaid Home and Community Based Waiver (Waiver) category. (Ex. 1) The Claimant does not receive Adult Public Assistance benefits. *Id.*
2. The Claimant was receiving Food Stamp benefits in July 2009. (Ex. 1) She reapplied to continue to receive Food Stamp benefits on July 6, 2009. (Ex. 2)
3. The Division approved the renewal of the Claimant's Food Stamp benefits on July 28, 2009. (Ex. 4) The Claimant was certified to receive Food Stamp benefits for one year. (Ex. 9; ██████████ testimony)
4. On October 5, 2009, the Division determined that the Claimant should only have been certified to receive Food Stamp benefits for a six month period. (Ex. 9; ██████████ testimony) The Division subsequently changed the Claimant's Food Stamp certification period to six months, which meant her Food Stamp benefits were only authorized through January 2010. (██████████ testimony)
5. The Claimant was informed of the change in her certification period on October 27, 2009. (Exs. 11, 12)

6. The Claimant objected to the change in her certification period. She is a disabled woman with only one kidney, who has dialysis sessions four times per week. (Claimant testimony) It is difficult for her to reapply for Food Stamp benefits every six months. *Id.*

PRINCIPLES OF LAW

The party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence.² *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).

Food Stamps is a federal program. The federal agency that is responsible for overseeing the operation of the program is the Department of Agriculture Food and Nutrition Service (Food and Nutrition Service). 7 CFR 271.3(a). The day to day administration of handling applications and issuing benefits is delegated to State agencies. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for how Food Stamp benefits are processed, including applications, renewals, and benefit levels.

The normal certification period for Food Stamp benefits is six months. 7 CFR 273.10(f)(3)(i). A state may extend the certification period for up to two years, at the state's discretion. 7 CFR 273.10(f)(5).

In 2004, the Food and Nutrition Service approved a change in the way the State of Alaska administered Food Stamp benefit certification periods. (Ex. 10) The change that was made was shortening the certification period for Food Stamp benefits to six months, unless the Food Stamp recipient is also receiving Adult Public Assistance benefits. (Exs. 10.1 – 10.2)

ANALYSIS

The issue in this case is whether the Division was correct when it shortened the Claimant's Food Stamp certification period from one year to six months. What this means in terms of practical effects for the Claimant is that she is required to reapply for her Food Stamp benefit every six months instead of once per year.

Because the Division is trying to shorten the Claimant's Food Stamp certification period, it is the party seeking to change the status quo. The Division therefore has the burden of proof 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 relevant facts, which are undisputed, are:

² 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)

1. The Claimant does not receive Adult Public Assistance benefits. She receives Medicaid Waiver benefits. *See* Finding of Fact 1 above.
2. The Claimant was receiving Food Stamp benefits in July 2009. She reapplied to continue to receive Food Stamp benefits on July 6, 2009. Her application was approved with a certification period of one year, meaning that she would not need to reapply for Food Stamp benefits for one year. *See* Findings of Fact 2 and 3 above.
3. In October 2009, the Division reviewed the Claimant's Food Stamp case and determined that the Claimant should have been assigned a certification period of six months rather than one year. *See* Finding of Fact 4 above.
4. The Claimant is disabled and it is difficult for her to reapply for Food Stamps every six months. *See* Finding of Fact 6 above.

This case does not present a factual issue, because there are no disputed facts. Instead, it is a purely legal issue: was the Division correct when it changed the Claimant's Food Stamp certification period from one year to six months because she does not receive Adult Public Assistance benefits?

The federal Food Stamp regulations establish a standard six month certification period. 7 CFR 273.10(f)(3)(i). A state may extend the certification period for up to two years, at the state's discretion. 7 CFR 273.10(f)(5). However, in 2004, the Food and Nutrition Service, the federal agency responsible for the overall operation of the Food Stamp program, approved a policy change, consistent with the federal Food Stamp regulations, authorizing the State of Alaska to reduce the Food Stamp certification period to six months, unless the Food Stamp recipient was also receiving Adult Public Assistance benefits. (Exs. 10.0 – 10.2)

It is undisputed that the Claimant is not receiving Adult Public Assistance benefits. As a matter of law, she is therefore not eligible for a one year Food Stamp certification period, only a six month Food Stamp certification period.

The Claimant argued for an exception to the Adult Public Assistance requirement. Her first argument was that the other Medicaid Waiver recipients were certified for Food Stamp benefits for a one year period. This argument fails because (1) those Medicaid Waiver recipients may very well be Adult Public Assistance recipients, which would entitle them to a one year certification period; and (2) even if other non Adult Public Assistance recipients were certified for a Food Stamp benefits for one year in error, that does not mean the Division is required to perpetuate its error and similarly grant the Claimant a one year Food Stamp certification period.

The Claimant's second argument was that because of her disability, it was difficult for her to reapply for Food Stamp benefits every six months. The Food and Nutrition Service allowed the State of Alaska to shorten its Food Stamp certification period to six months; the only exception was for those individuals who were also receiving Adult Public Assistance. Regardless of the

Claimant's disability, she does not qualify for this exception because she does not receive Adult Public Assistance.

The Division was therefore correct when it shortened the Claimant's Food Stamp certification period from one year to six months.

CONCLUSIONS OF LAW

1. Federal Food Stamp regulation 7 CFR 273.10(f)(3)(i) and explicit authorization from the Food and Nutrition Service provide for a standard six month certification period for all Alaska Food Stamp recipients, except for those persons who receive Adult Public Assistance benefits. The Claimant does not qualify for a one year Food Stamp certification period because she is not receiving Adult Public Assistance benefits.

2. The Division was therefore correct when it took action on October 27, 2009 shortening the Claimant's Food Stamp certification period from one year to six months.

DECISION

The Division was correct when it took action on October 27, 2009 shortening the Claimant's Food Stamp certification period from one year to six months.

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 27th day of January 2010.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 27th day of January 2010, true and correct copies of the foregoing were sent to:
Claimant by First Class Mail, Certified, Return Receipt Requested.
And to the following by email:

[REDACTED], Fair Hearing Representative
[REDACTED], Director
[REDACTED], Director's Office
[REDACTED], Policy & Program Development
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training

J. Albert Levitre, Jr. Law Office Assistant I