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

In the Matter of)
)
 [REDACTED])
)
 Claimant.)
)
 _____)

OHA Case No. 09-FH-593
Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Food Stamp benefits. On August 24, 2009, the Division of Public Assistance, Department of Health and Social Services (Division) sent Claimant notice it was terminating her Food Stamp benefits for failing to provide requested information. On November 6, 2009, the Division received Claimant's request for a fair hearing. (Ex. 6.1)

This office has jurisdiction of the Claimant's appeal pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on January 6, 2010. Claimant was present in person, representing and testifying on her behalf. [REDACTED] a Public Assistance Analyst, was present in person, representing and testifying for the Division. [REDACTED] also a Public Assistance Analyst with the Division, was present, but did not participate.

After the hearing, this case was reassigned to Hearing Authority Patricia Huna-Jines. After reviewing the entire record and listening to a recording of the hearing, this decision was issued.¹

¹ Because of the Division's delay in calendaring the Claimant's hearing, this Office (Office of Hearings and Appeals) is not able to issue this decision within the time frame required by 7 CFR 273.15. This regulation requires this Office 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, the hearing request was received on November 6, 2009, and the hearing

ISSUE

Was the Division correct to terminate Claimant's Food Stamp benefits effective after September 30, 2009, for failing to provide verification on her ending of employment?

FINDINGS OF FACT

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

1. Claimant was a recipient of Food Stamp benefits. (Ex. 2)
2. On June 30, 2009, Claimant signed and submitted an application for Alaska Temporary Assistance and Medicaid benefits. (Ex. 2.2-2.11) In the application, she indicated she had a job end in the last 60 days. (Ex. 2.3) She also admitted in an interview with Division personnel which was conducted on that same day, that she last worked on June 5, 2009. (Ex. 2.1)
3. On July 23, 2009, the Division approved Claimant for Food Stamps recertification. (Ex. 2.12)
4. On August 7, 2009, newly assigned Division Eligibility Technician placed the Claimant's Food Stamp case on hold in order to receive information on her ending of employment. (Ex. 3)
5. On August 10, 2009, the Division sent Claimant a request for proof that her job had ended. (Ex. 4) In particular, the request asked for a reason the job ended, the last day of work, and the gross amount of all wages received in June 2009. The notice further stated Claimant was to provide the information by August 20, 2009 or her benefits may be stopped or reduced. (Ex. 4)
6. On August 21, 2009, the Division closed Claimant's Food Stamp case for failing to provide the information regarding the ending of her employment. (Ex. 5)
7. On August 24, 2009, the Division sent Claimant notice her Food Stamp case would close after September 30, 2009, because she did not provide the proof regarding her job termination. (Ex. 6)

was scheduled on January 6, 2010. Thus, the decision was due on January 5, 2010, one day 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 29 calendar days after the close of the hearing, it technically is late.

8. On September 2, 2009, the Claimant called the Division and stated she had turned in the information regarding her job ending when she turned in her proof of pregnancy. (Ex. 7) The Eligibility Technician indicated she would follow up with the assigned Denali KidCare representative to determine if the missing information was submitted to that office by mistake. (Ex. 8)

9. On November 6, 2009, the Claimant again called and said she had turned in her employment information at the same time she provided her proof of her pregnancy. She also requested a fair hearing. (Ex. 9)

10. The Division reviewed Claimant's Food Stamp, Medicaid, Alaska Temporary Assistance file, and also the Claimant's Denali Kid Care file to determine whether Claimant's ending work verification was in these files. Denali Kid Care is a part of the Division. (Ex. 7, 8, & 10.8) The review showed the job ending documentation was not in these files.

11. The Claimant testified at the January 6, 2010 hearing she submitted her work verification and pregnancy verification to the Division at the same time.

12. The case record indicates Claimant submitted her pregnancy verification to the Division on July 2, 2009. (Ex. 10.3)

PRINCIPLES OF LAW

"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). The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com'n*, 711 P.2d 1170, 1183 (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)

Federal Food Stamp regulations require households to report a change in the source of income, including starting or stopping a job. 7 CFR 273.12(a)(1)(B)

Federal Food Stamp regulations also state a household shall be determined ineligible if it refused to cooperate in reviews generated by reported changes. 7 CFR 273.2(d)(1)

7 CFR 273.2(f)(5) states:

The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency must assist the household in obtaining this

verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. . . .

7 CFR 273.2(d)(1) provides in pertinent part:

For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. . . .

ANALYSIS

The issue in this case is whether the Division was correct to terminate Claimant's Food Stamp benefits effective after September 30, 2009 for failing to provide verification on her ending of employment.

On July 23, 2009, the Division approved Claimant's recertification of Food Stamp benefits and Claimant was receiving ongoing benefits when on August 10, 2009, the Division acted on the information Claimant provided regarding her ending of employment. The Division sent the Claimant a request for information on her end of employment. The notice also stated the Claimant had until August 20, 2009 to provide the information or her benefits would be terminated or reduced. Because the Division is the party wishing to terminate ongoing benefits, it is the party changing the status quo. Therefore, the Division has the burden of proof by a preponderance of the evidence. *Amerada Hess Pipeline Corp.*, 711 P.2d 1183 (Alaska 1986).

Claimant was required to report her ending of employment. 7 CFR 273.12(a)(1)(B). Claimant did so in her June 30, 2009 application for Alaska Temporary Assistance and Medicaid benefits.

On August 10, 2009, the Division requested verification of the Claimant's job ending. The Division asserts it never received such information. Claimant asserts she submitted this information at the same time she submitted her pregnancy verification. However, the Claimant submitted her pregnancy verification on July 2, 2009. (Ex. 10.3) Any information and/or documentation submitted by the Claimant on July 2, 2009, could not have been in response to an August 10, 2009 request. Furthermore, upon receipt of the August 10, 2009 notice, Claimant should have known the Division did not receive her employment information and therefore should have acted on that request. The Claimant failed to do so.

Claimant did not provide the requested information which was needed by the Division to determine if she had voluntarily quit her job. The amount of requested information was reasonable and was readily available to Claimant. Therefore, Claimant refused to cooperate in providing verification. 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 the information. 7 CFR 273.2(d)(1)

From the August 10, 2009 request date, to the August 20, 2009 deadline, the Division received no response from the Claimant requesting assistance in obtaining the information. After hearing from the Claimant on September 2, 2009, the Division reviewed Claimant’s file thoroughly. It did not find any documentation regarding Claimant’s ending employment. (See, Finding of Fact #10)

Because the Claimant was responsible for providing the information requested, and because the Claimant refused to provide this information, the Division was correct to issue a notice that it would terminate Claimant’s Food Stamp benefits after September 30, 2009. 7 CFR 273.2(d)(1)

CONCLUSIONS OF LAW

The Division met its burden of proof by a preponderance of the evidence that Claimant had a responsibility to provide the end of employment information requested and the Claimant refused to do so, therefore, the Division acted properly in terminating Claimant’s Food Stamp benefits after September 30, 2009.

DECISION

The Division’s decision to terminate Claimant’s Food Stamp benefits after September 30, 2009 is affirmed.

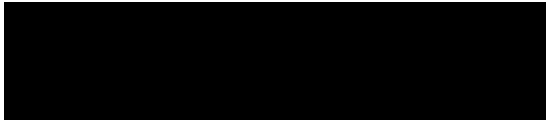
APPEAL RIGHTS

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
P.O. Box 110640
Juneau, Alaska 99811-0640

An appeal request must be sent within fifteen (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 4th day of February, 2010.



Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 4th day of February, 2010, true and correct copies of the foregoing document were sent to the Claimant via certified mail, return receipt requested, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.

[Redacted] Director
[Redacted] Policy & Program Development
[Redacted] Staff Development & Training
[Redacted] Chief of Field Services
[Redacted] Office of Fair Hearing Representative
[Redacted] Administrative Assistant II
[Redacted] Eligibility, Technician I

[Redacted]
Al Levitre
Law Office Assistant I