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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-598
)
 Claimant.) Agency Case No: [REDACTED]
)
 _____)

ERRATA

A decision in this matter was issued but misdated. The listed decision issue date was December 11, 2009. The actual decision issue date was January 11, 2010.

Dated: January 12, 2010.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 12th day of January 2010, true and correct copies of the foregoing were sent to:

Claimant, via USPS First Class Mail.

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

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DEPARTMENT OF HEALTH AND SOCIAL SERVICES
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In the Matter of)
)
 [REDACTED],) OHA Case No. 09-FH-598
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Food Stamp benefits on October 6, 2009. (Exs. 1, 2.0 – 2.5) On November 6, 2009, the Division of Public Assistance (Division) sent the Claimant written notice informing her that her Food Stamp application was denied because her household income was greater than allowed for Food Stamp eligibility. (Ex. 7) The Claimant requested a fair hearing on November 9, 2009. (Ex. 8.0) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on January 7, 2010.¹ The Claimant attended the hearing telephonically, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended in person, represented the Division and testified on its behalf.

ISSUE

The Division argued that the Claimant was not eligible to receive Food Stamp benefits because her household's gross monthly income (Social Security income, the daughter's wages, and child support) exceeded the Food Stamp program's gross income limit of \$2,987.00.

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 November 9, 2009, this Decision was therefore due no later than January 8, 2010. However, in this case the Division set the date of the Claimant's hearing on January 7, 2010, one day before the Decision was due. For this reason, even though this Decision is issued only 2 business days after the hearing, it is technically late.

The Claimant argued that the Division was wrong to count her daughter's income because she did not contribute financially to the household and because she was planning to move out of the household and in fact did move out of the household at the end of November 2009. The Claimant also argued that the Division did not properly calculate her monthly child support income because it was only received sporadically.

The resulting issues are:

1. Was the Division correct to count the Claimant's daughter's wages as part of the Claimant's household income?
2. Did the Division correctly calculate the Claimant's monthly child support income?

FINDINGS OF FACT

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

1. At the time of her October 6, 2009 Food Stamp application, the Claimant resided in a four person household, which consisted of herself, one 19 year old daughter, and two sons who were under the age of 18. (Exs. 1, 2.0; Claimant testimony)
2. The Claimant's gross monthly household income consisted of the following:
 - a. Social Security income of \$674.00 per month. (Ex. 6.7)
 - b. The daughter's gross monthly wages from employment, which averaged \$1,647.24 per month. (Exs. 6.0, 6.3 – 6.4)
 - c. Child support income which varied from month to month. (Ex. 6.8) The Division calculated that the Claimant's child support income averaged \$1,018.42 for the months of July, August, and September 2009 (\$998.40 for July; \$606.84 for August, and \$1,450.00 for September), and after deducting \$50.00 from that amount, counted \$968.42 as monthly household income. (Ex. 3)
3. The Division added together the Social Security income (\$674.00), the daughter's average gross monthly wages (\$1,674.24), and the child support income (\$968.42), and denied the Claimant's October 6, 2009 Food Stamp application because "with all three incomes combined, your household income is now over the limits for the Food Stamp program." (Ex. 7)
4. The total of all "three incomes" was \$3,298.65, which was greater than the Food Stamp program's gross income limit of \$2,987.00 for a four person household. (██████ testimony; Ex. 16.0)
5. The Claimant did not dispute the Division's calculation with regard to either the monthly Social Security income, or its calculation of her daughter's gross monthly wages. (Claimant testimony) However, the daughter did not contribute her wages toward household use. *Id.* Additionally, the daughter had been planning to move out of the household into her own home and actually did move out into her own home at the end of November 2009. *Id.*

6. The Claimant disputed the Division's calculation with regard to the amount of the monthly child support that she received because the child support was received erratically. (Claimant testimony)

7. The Claimant received the following amounts of child support for the time period from January 2008 through October 20, 2009:

<u>Month</u>	<u>Amount</u>
January 2008	\$ 284.44
February 2008	\$ 284.39
March 2008	\$ 284.39
September 2008	\$1,146.08
October 2008	<u>\$3,231.00</u>
Total 2008	\$5,230.30 (\$435.86 monthly average - 12 month period)
February 2009	\$ 700.00
June 2009	\$ 250.00
July 2009	\$ 998.40
August 2009	\$ 606.84
September 2009	\$1,450.00
October 2009	\$ 166.40
Total 2009	\$4,171.64 (\$417.16 monthly average – 10 month period)

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 administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for determining if an applicant is eligible for Food Stamp benefits. One of the rules is that if a four person household makes more than \$2,987.00 in gross income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(1)(ii); 7 CFR 273.9(a)(2)(ii); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2009 through September 30, 2010).

Food Stamp household income consists of "all income from whatever source" unless specifically excluded in 7 CFR 273.9(c). 7 CFR 273.9(b). The Division is required to anticipate a household's income and determine what income a household is "reasonably certain will be

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)

received.” 7 CFR 273.10(c)(1)(i). Income that is uncertain as to either the timing or amount of the payment is not to be considered, except as to that portion that is reasonably ascertainable. 7 CFR 273.10(c)(1)(i). Money that is “received in the form of nonrecurring lump-sum payments” such as income tax refunds is not counted as income. 7 CFR 273.9(c)(8).

Child support payments are not excluded from being counted as income. 7 CFR 273.9(c).

Children under the age of 22 years old, who reside with their parents, are required to be included as part of the Food Stamp household even if they do not purchase food and prepare meals with the rest of the household. 7 CFR 273.1(b)(1)(ii). There is an earned income (wages) exclusion provided for children who are under the age of 18 and attending either elementary or secondary school. 7 CFR 273.9(c)(7).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant’s Food Stamp application because her household’s gross monthly income exceeded the Food Stamp program’s gross income limit of \$2,987.00 for a four person household. Because the Claimant was applying for Food Stamp benefits, she is the party who is seeking to change the status quo. She 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).

There were three sources of household income for the Claimant: Social Security of \$674.00 per month, the 19 year old daughter’s wages, and the Claimant’s child support payments. The Claimant did not disagree with the Division counting the Social Security payment. She did, however, disagree with the Division counting the daughter’s wages and the child support payments as income. Each of these will be addressed below.

A. Daughter’s Wages

The daughter was residing with the Claimant at the time of the October 6, 2009 Food Stamp application. *See* Finding of Fact 1 above. The daughter’s gross wages averaged \$1,647.24 per month. *See* Finding of Fact 2(b) above. The daughter did not contribute her wages to the household. *See* Finding of Fact 5 above. Additionally, she was planning to move out of the home and did move out of the home at the end of November 2009. *Id.*

However, because the daughter was 19 years old and lived with her mother (the Claimant), the Division was required to count her income as part of the household’s gross income, regardless of whether she actually contributed the income to the household. 7 CFR 273.1(b)(1)(ii). The fact that the daughter was planning on moving out of the household and actually did move out of the household at the end of November 2009 does not change this conclusion. The Division is required to anticipate the income a household is “reasonably certain” to receive. 7 CFR 273.10(c)(1)(i). It would have been speculative on the part of the Division to not count the daughter’s income, given that the Claimant did not present any concrete evidence (such as rental

agreement, etc.) showing that the daughter was definitely moving out at the time of her application.

The Division was therefore correct when it counted the 19 year old daughter's income as part of the Claimant's monthly gross household income.

B. Child Support Payment

The Division calculated the Claimant's monthly child support income at \$968.42. It reached this figure after averaging the payments received in July, August, and September 2009 (\$998.40 for July; \$606.84 for August, and \$1,450.00 for September) and then subtracting \$50. *See* Finding of Fact 3 above.

A review of the Claimant's child support, however, shows that the three averaged payments were atypical. First, July, August, and September 2009 payments were the highest payments made for the entire year. *See* Finding of Fact 7 above. Second, the Claimant received no child support payments whatsoever for 12 months out of the 20 month period from January 2008 through October 2009: the months of April through September 2008, November 2008 through January 2009, or March 2009 through May 2009 were totally without child support payments. *Id.*

Because the Claimant's child support was erratic, i.e. it was uncertain as to both the timing of the payments and the amounts involved, as shown by the historical child support data for January 2008 through October 2009, the Division was not correct to average only the months of July, August, and September 2009. Instead, the Division was required to set the child support income at an amount that was reasonably ascertainable. 7 CFR 273.10(c)(1)(i).

The 2008 and 2009 (through October 2009) child support totals were relatively consistent, averaging \$435.86 per month for calendar year 2008 and averaging \$417.16 per month for the first 10 months of 2009. *See* Finding of Fact 7 above. Given the fact that the average child support payments, when averaged long term were substantially less than the \$968.42 figure used by the Division, the Division should have attributed child support income to the Claimant of the monthly long term average, or \$417.16 per month for January 2009 through October 2009.

It should be noted that the Food Stamp regulations exempt non-recurring lump sum payments from being counted as income. 7 CFR 273.9(c)(8). However, this exemption is not factually appropriate in this case, given that the Claimant received four large child support payments in 2009: February - \$700; July - \$998.40; August - \$606.84; September - \$1,450. *See* Finding of Fact 7 above. In other words, the lump sum payments were recurring, and therefore did not fit within the non-recurring exemption category.

Summary

The Division was correct to count Claimant's household Social Security income (\$674.00) and the 19 year old daughter's gross monthly income (\$1,674.24). While the Division was correct to count the Claimant's child support as income, given the fact that the child support income was undependable both in terms of the timing and the amount, the Division should have used an

annualized average (\$417.16 per month) rather than an average of the three most recent months (July, August and September 2009) which were the three highest payment months in 2009.

The Claimant's total gross monthly income was therefore:

Social Security Income	\$ 674.00
Daughter's Wages	\$1,674.24
Child Support	<u>\$ 417.16</u>
Total	\$2,765.40

Because this amount is less than the \$2,987.00 Food Stamp program gross income limit for a four person household, the Division was not correct when it denied the Claimant's October 6, 2009 Food Stamp application.

CONCLUSIONS OF LAW

1. The Division was correct to count the Claimant's 19 year old daughter's wages as part of the Claimant's household income.
2. The Claimant met her burden of proof and demonstrated by a preponderance of the evidence that the Division should not have counted \$968.42 as being her monthly child support basis. Because both the amount and timing of the child support income was undependable, the Division should have used the figure of \$417.16, which was the average monthly child support income received during the first 10 months of 2009.
3. The Claimant's total gross monthly income was therefore \$2,765.40 (Social Security \$674.00, daughter's wages \$1,674.24, child support \$417.16), which is less than the Food Stamp program gross income limit of \$2,987.00 for a four person household. The Division was therefore not correct when it denied the Claimant's October 6, 2009 Food Stamp application.

DECISION

The Division was not correct when it denied the Claimant's October 6, 2009 Food Stamp application.³

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:

³ This Decision does not calculate the amount of Food Stamp benefits the Claimant should have received. The Division will calculate those as part of its normal case processing after its receipt of this Decision. If the Claimant disagrees with the benefit amount, as determined by the Division, she is entitled to request a new Fair Hearing on that issue.

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.

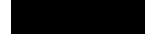
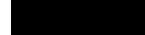
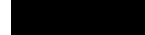
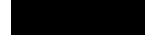
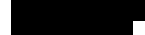

DATED this 11th day of December, 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 11th day of December 2009, 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:

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

J. Albert Levitre, Jr. Law Office Assistant I