

Office of Hearings and Appeals  
3601 "C" Street, Suite 1322  
P.O. Box 240249  
Anchorage, Alaska 99524-0249  
Phone: (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 )  
 )  
 [REDACTED] )  
 )  
 Claimant. )  
 )  
 \_\_\_\_\_ )

OHA Case No. 09-FH-663  
Division Case No. [REDACTED]

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of Food Stamps. On November 12, 2009, the Division of Public Assistance, Department of Health and Social Services (Division) sent Claimant notice it was terminating his Food Stamp benefits after November 30, 2009, for failing to provide requested information. (Ex. 6) On December 30, 2009, the Division received Claimant's request for a fair hearing. (Ex. 8.2)

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

Pursuant to the Claimant's request, a hearing was held on February 10, 2010. Claimant was present telephonically, representing and testifying on his own behalf. [REDACTED] a Public Assistance Analyst, was present in person, representing and testifying for the Division.

**ISSUE**

Was the Division correct to terminate Claimant's Food Stamp benefits after November 30, 2009 for failing to provide the 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 September 22, 2009. (Ex. 2.0)
2. After a September 24, 2009, telephonic interview with the Claimant, the Division certified Claimant's application on an expedited basis. Certification on an expedited basis does not require full verification. (Ex. 3 – 3.1) In addition, the Division also approved his Food Stamp benefits for the normal certification period. (Ex. 3)
3. On October 9, 2009, during a telephonic interview with the Claimant regarding Adult Public Assistance and Medicaid benefits, the Division learned Claimant received an inheritance of approximately \$6,550.00. (Ex. 4)
4. On October 30, 2009, the Division sent Claimant a request for information. The information needed was proof of the amount Claimant received from his inheritance, the spend down list and amounts, and proof of the bank balance amount. (Ex. 5) The Division stated that if the information was not provided by November 9, 2009, benefits may be stopped or reduced. (Ex. 5)
5. Claimant did not provide the Division with the requested information. (Testimony of Claimant)
6. On November 12, 2009, the Division sent Claimant notice it was terminating his benefits after November 30, 2009 because he failed to provide the information requested in the October 30, 2009 request. (Ex. 6)
7. Claimant submitted a request for a fair hearing via telephone on December 30, 2009. (Ex. 8.2)
8. At the February 10, 2010 hearing, the Claimant testified his depression hindered him from providing the information to the Division. He admitted not calling the Division to request an extension of time or help in submitting the information. Claimant also testified at the hearing that he did not provide information regarding the inheritance on his September 24, 2009 application because at that time he was not certain he would be receiving it.
9. Claimant submitted another application for Food Stamp and Adult Public Assistance benefits with the Division on December 29, 2009. (Ex. 7)

### **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 a change of more than \$50.00 in the amount of unearned income. 7 CFR 273.12(a)(1)(i)(A) A household must also report when money in a bank account or saving institution reaches or exceeds a total of \$2,000.00. 7 CFR 273.12(a)(1)(v)

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 November 30, 2009 for failing to provide the information requested by the Division.

On September 24, 2009, the Division approved Claimant’s Food Stamp application, including benefits for the normal certification period. Therefore, Claimant was receiving ongoing benefits when on October 30, 2009, the Division acted on the information Claimant provided regarding his inheritance. The Division sent the Claimant a request for information on his inheritance. The notice also stated the Claimant had until November 9, 2009 to provide the information or his 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).

Pursuant to federal regulation 7 CFR 273.12(a)(1)(i)(A) the Claimant was required to report to the Division a change of more than \$50.00 in the amount of unearned income. Pursuant to federal regulation 7 CFR 273.12(a)(1)(v) the Claimant was required to report when money in a bank account or savings institution reaches or exceeds a total of \$2,000.00. Accordingly, Claimant was required to report his inheritance of \$6,550.00. Claimant did so in his October 9, 2009 interview with the Division.

On October 30, 2009, the Division requested information regarding Claimant's inheritance. Claimant never submitted the information and did not call the Division requesting an extension of time or assistance in obtaining that information. (Testimony of Claimant) Claimant blamed his depression for this failure. (*Id.*) However, Claimant was able to file two applications for benefits on September 22, 2009 and again on December 29, 2009. He also participated in two Division interviews on September 24, 2009 and October 9, 2009 and requested a fair hearing. This demonstrates Claimant's capability in providing the information. However, despite his capabilities, he did not do so.

Claimant did not provide the requested information which was needed by the Division. The amount of requested information was reasonable and was readily available to Claimant. Therefore, Claimant refused to cooperate in providing verification. Because he 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)

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 November 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 requested information regarding his inheritance requested and the Claimant refused to do so. Therefore, the Division acted properly in terminating Claimant's Food Stamp benefits after November 30, 2009.

### **DECISION**

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

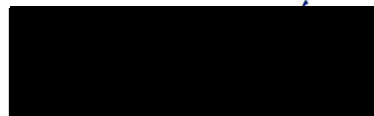
### **APPEAL RIGHTS**

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 23rd day of February, 2010.



Patricia Huna  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 23rd day of February 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy sent via e-mail to the following:

██████████ Fair Hearing Representative  
██████████ DPA Director  
██████████ DPA Director's Office  
██████████ DPA director's Office  
██████████ Chief of Field Services  
██████████ Policy & Program Development  
██████████ Staff Development & Training

J. Albert Levitre, Jr.  
Law Office Assistant I