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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. 10-FH-15
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) filed an application for Food Stamp benefits on December 28, 2009. (Exs. 1, 2.0) On January 6, 2010, the Division of Public Assistance (Division) notified the Claimant in writing that his Food Stamp application was denied because he owned countable resources that exceeded the Food Stamp program's \$2,000 limit. (Ex. 5) The Claimant requested a fair hearing on January 22, 2010. (Ex. 6.1)

The Division subsequently withdrew its January 6, 2009 denial notice, and on January 27, 2010 sent the Claimant a new written notice stating his December 28, 2009 application was denied because his gross monthly income exceeded the Food Stamp program's income limit for his household size. (Ex. 8)

This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on February 16 and March 2, 2010. The Claimant attended the hearing telephonically; he represented himself and testified on his own behalf. **[REDACTED]**, a Public Assistance Analyst with the Division, attended in person; he represented the Division and testified on its behalf.

ISSUES¹

Was the Division correct to deny the Claimant's December 28, 2009 Food Stamp application because his gross monthly household income allegedly exceeded the Food Stamp program's gross monthly income limit for his household size?²

FINDINGS OF FACT

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

1. The Claimant resides in Soldotna, Alaska. (Ex. 2)
2. The Claimant was present at the Kenai, Alaska job center office on December 21, 2009. (Claimant testimony) At that time, he picked up a Public Assistance application, went into the hallway at the job center office and telephoned the Division's Kenai office to inquire about filing an application for Food Stamp benefits. (Claimant testimony)
3. The Claimant was informed by Division staff member who answered his telephone call that he could not be seen by Division staff until December 28 or 29, 2009, because of a combination of staff being on leave and the upcoming Christmas holiday. (Claimant testimony) The Claimant was not told he could file his application before December 28 or 29, 2009. *Id.*
4. The Claimant filed an application for Food Stamp benefits for a one person household (himself) on December 28, 2009. (Exs. 2 – 2.9)
5. The Claimant participated in an in person eligibility interview with a Division Eligibility Technician on December 29, 2009. (Ex. 3)
6. During the course of the December 29, 2009 interview, the Claimant told the Eligibility Technician he had been laid off from his job and his last day of work was November 23, 2009. (Ex. 3) The Claimant had filed for unemployment benefits and was expecting his first unemployment check the day of the interview or the next day. *Id.*
7. During the course of the December 29, 2009 interview, the Claimant told the Eligibility Technician that his mother gave him \$1,000.00 toward his monthly mortgage payment, which was a loan. (Ex. 3) The Claimant's hearing testimony was consistent with his interview statement.

¹ The Claimant's testimony presented a combined factual and legal issue of whether he was discouraged from applying for Food Stamp benefits on December 21, 2009, the date he first contacted the Division about obtaining Food Stamp benefits. However, because this Decision finds that the Division correctly denied the Claimant's December 28, 2009 application, it is not necessary to resolve this issue.

² This case only deals with the approval of Food Stamp benefits for the month of application, December 2009. The parties agree that the Claimant exceeded the Food Stamp program monthly gross income limits during the month of January 2010.

8. The Eligibility Technician contacted the Claimant's mother on December 29, 2009, who informed the Eligibility Technician that the money she gave him was a gift and not a loan. (Ex. 3)
9. The Claimant received a total of \$740 in unemployment benefits during the month of December 2009. (Exs. 3.1 - 3.2)
10. The Division received a handwritten note, dated January 2, 2010, from the Claimant's mother on January 4, 2010 that stated "I give my son . . . \$1000 per month to assist with mortgage + utility bills. I buy my own food." (Exs. 4 – 4.1) The Eligibility Technician handling the Claimant's case construed the note as meaning that the funds were a gift and not a loan. (Ex. 4)
11. On January 4, 2010, the Claimant telephoned the Eligibility Technician handling the Claimant's case and informed her that he had "overheard [his mother] tell me [the \$1,000.00 payment] was a gift and he said she helps because she wants to financially but as far as he's concerned, it's a loan and he intends to pay her back." (Ex. 4.4)
12. On January 6, 2010, the Division sent the Claimant notice that his Food Stamp application was denied because he owned too much countable resources to qualify for Food Stamp benefits. (Ex. 5)
13. The Claimant requested a fair hearing on January 22, 2010. (Ex. 6.1)
14. On January 26, 2010, the Division determined that its earlier denial based on excess resource ownership was issued in error. (Ex. 7.1)
15. On January 26, 2010, the Claimant's mother contacted the Division; she "called and stated the money she gives her son . . . each month is a loan, not a gift. – She stated she mispoke before when she said it was a gift." (Ex. 7.2)
16. On January 27, 2010, the Division sent the Claimant that his Food Stamp application was denied because his household's countable income of \$1,740.00 exceeded the Food Stamp program's income limit of \$1,466.00 for his household size. (Ex. 8) The Division counted the Claimant's unemployment benefits of \$740.00 and the \$1,000.00 monthly payments from his mother as his income. *Id.*
17. On February 3, 2010, the Claimant spoke to the Eligibility Technician handling his case and informed her that he had been mistaken when he stated he had received \$1,000.00 from his mother in December 2009. (Ex. 9) He stated he had received money from his mother in November 2009 and January 2010, but not in December 2009. *Id.*
18. On February 4, 2010, the Claimant submitted a written statement to the Division that stated "between the date Dec. 1, 2009 and Dec. 31, 2009, the only income received for all household expenses was \$716.00 on Dec. 30th direct deposit U. I. benefit for 2 weeks. No other income was received by me . . ." (Ex. 10.1) At the hearing, the Claimant explained that he had

gone through his bank records and determined that he had not received any money from his mother in the month of December 2009.

19. The Division did not rescind its denial of his application after the Claimant informed it that he had only received unemployment benefits in the month of December 2009. (Ex. 10)

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.³ *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 one person household makes more than \$1,466.00 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).

When determining an applicant's financial eligibility for the Food Stamp program, the Division is required to anticipate a household's income and determine what income a household is "reasonably certain will be received." 7 CFR 273.10(c)(1)(i).

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 Food Stamp program does not consider loans, "including loans from private individuals" as income. 7 CFR 273.9(c)(4). A loan consists of "[d]elivery by one party to and receipt by another party of sum of money upon agreement, express or implied, to repay it with or without interest." *Black's Law Dictionary* 844 (5th Edition, 1979)

The Division normally has 30 days to process and approve or deny a Food Stamp application. 7 CFR 273.2(g). "Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. . . . The household must file a new application if it wishes to participate in the program." 7 CFR 273.2(g)(3).

ANALYSIS

The primary issue in this case is whether the Division was correct when it denied the Claimant's December 28, 2009 Food Stamp application because his monthly gross household income was

³ 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)

greater than \$1,466.00. The Claimant, as an applicant for benefits, is seeking to change the status quo. He therefore has the burden of proof by a preponderance of the evidence.

The pertinent facts in this case are as follows:

1. The Claimant applied for Food Stamps on December 28, 2009. At his December 29, 2009 application interview, he told the Division he had two sources of income, a \$1,000 monthly payment from his mother, and unemployment payments, which he expected to start immediately. The Claimant stated the monthly payment from his mother was a loan. The Claimant received a total of \$740 in unemployment benefits during the month of December 2009.⁴ *See Findings of Fact 7 and 9 above.*
2. The Division contacted the Claimant's mother. She spoke to the Eligibility Technician on December 29, 2009 and said the monthly payment was a gift, not a loan. The Division received a hand written note, dated January 2, 2010, from the Claimant's mother on January 4, 2010, where she stated "I . . . give my son . . . \$1000 per month." *See Findings of Fact 8 and 10 above.*
3. On January 26, 2010, the Claimant's mother contacted the Division and indicated she had misspoken and that the \$1,000 payment to her son was a loan and not a gift as she had originally stated. *See Finding of Fact 15 above.*
4. The Division denied the Claimant's Food Stamp application on January 27, 2010. It found that his total monthly income, consisting of the \$1,000.00 from his mother and his unemployment payments, was greater than allowed for a one person Food Stamp household. *See Finding of Fact 16 above.*
5. On February 3, 2010, the Claimant notified the Division that he had not actually received \$1,000 from his mother in the month of December 2010. *See Finding of Fact 17 above.*

In order to address the issue of whether the Division acted correctly when it denied the Claimant's December 28, 2009 Food Stamp application, it is necessary to first determine if the Claimant's monthly payment from his mother was a loan or not. If the monthly payment is a loan, then it is not countable as income. *See 7 CFR 273.9(c)(4)*. The Claimant would then have qualified for Food Stamp benefits during the month of December, 2009 because his only income for the month would have been his unemployment benefits totaling \$740.00.

The evidence on this point is in a slight conflict. The Claimant consistently has maintained that the \$1,000 payment from his mother is a loan. His mother, on the other hand, stated to the Eligibility Technician on December 29, 2009 that the funds were a gift, and her January 2, 2010 handwritten note to the Division uses the term "give." The Claimant's mother, then on January 26, 2010, informed the Division that the payment was a loan and not a gift.

⁴ The Claimant asserted he received \$716.00 in unemployment benefits. However, the Department of Labor printouts show two \$370.00 payments issued to the Claimant at the end of December 2009. (Exs. 3.1, 3.2, 10.1)

It must be noted that the Claimant was a credible witness. His hearing testimony was consistent with his other statements to the Division. There was nothing in his testimony or telephonic hearing demeanor that suggests he was less than credible.

It is therefore clear that the Claimant was of the opinion that he was borrowing funds from his mother and that she was not “giving” them to him. However, the Claimant’s mother’s initial statements, during her telephone conversation with the Eligibility Technician on December 29, 2009 and in her January 2, 2010 handwritten note, demonstrate that she thought the payments from her to her son were a gift and not a loan. Her January 26, 2010 statement that the payments were loans and not gifts was a change of position on her part.

In order for a financial transaction to be a loan rather than a gift, there must be an intent of the part of the lender that she be repaid. A loan consists of “[d]elivery by one party to and receipt by another party of sum of money upon agreement, express or implied, to repay it with or without interest.” *Black’s Law Dictionary* 844 (5th Edition, 1979)

The Claimant has the burden of proof by a preponderance of the evidence in this case. While the Claimant intended to pay his mother back, the weight of the evidence shows his mother, at least when the payments were made, did not have an intent that she be paid back. Accordingly, the Claimant did not meet his burden of proof and the \$1,000.00 payments from the Claimant’s mother were a gift, and not a loan. Because they were payments, they were countable as income.

The Claimant then stated that he did not actually receive \$1,000.00 from his mother in December 2009. As is stated above, the Claimant was a credible witness. Additionally, there was nothing in evidence to challenge his statements. This means that the Claimant only received \$740.00 in income for the month of December 2009, which would make him income eligible for Food Stamp benefits for that month.⁵

However, the Claimant did not notify the Division that his December 2009 income only consisted of unemployment benefits **until February 3, 2010**. His Food Stamp application for benefits was received on December 28, 2009. It was acted on timely and denied on January 27, 2010. Because his application was denied, in order for the Division to take his new information into account, he was required to reapply for Food Stamp benefits. *See* 7 CFR 273.2(g)(3) (“Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. . . . The household must file a new application if it wishes to participate in the program.”).

The Claimant had the burden of proof in this case by a preponderance of the evidence. He did not meet it. The weight of the evidence shows that his mother intended the monthly payments to the Claimant to be a gift and not a loan. The Division was therefore correct to count the \$1,000.00 monthly payments as part of the Claimant’s income when it made a determination with regard to the Claimant’s application. The \$1,000 monthly payment combined with his \$740

⁵ The Food Stamp program monthly gross income limit for a one person household is \$1,466.00. 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).

in December 2009 unemployment benefits made the Claimant financially ineligible to receive Food Stamp benefits for the month of December 2009. The Division was therefore correct to deny the Claimant's December 28, 2009 Food Stamp application, based upon the information it received during the application process.

The fact that the Claimant subsequently discovered, by reviewing his bank statements, he did not actually receive \$1,000.00 from his mother in December 2009 is not sufficient to cause a reversal of the application's denial. The information was provided to the Division on February 3, 2010, which was **after his application was properly denied**. His information was provided too late.

CONCLUSIONS OF LAW

1. The Claimant has the burden of proof in this case by a preponderance of the evidence.
2. The Claimant did not meet his burden of proof. The weight of the evidence shows that his mother intended her \$1,000.00 monthly payments to the Claimant to be a gift, and not a loan. As a result, the Claimant's income for the month of December 2009 was properly determined by the Division to be \$1,740.00 (\$1,000.00 monthly payment plus \$740 in unemployment benefits).
3. Consequently, the Claimant was not financially eligible for Food Stamp benefits for the month of December 2009.
4. The Division was therefore correct when it denied the Claimant's December 28, 2009 Food Stamp application on January 27, 2010.
5. The Claimant's submittal of new information, being that he had not received \$1,000.00 from his mother in December 2009, was provided on February 3, 2010, which was after the January 27, 2010 denial of his December 28, 2009 Food Stamp application. As a result, it was untimely, and the Division was correct to continue its denial of his December 28, 2009 Food Stamp application.

DECISION

The Division was correct to deny the Claimant's December 28, 2009 Food Stamp application.

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

