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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-27
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Food Stamp benefits, but his certification period ended on December 31, 2009. (Ex. 1 & 2) The Division of Public Assistance (Division) did not renew his Food Stamp benefits and therefore he did not receive Food Stamp benefits starting January 1, 2010. (Testimony of both parties at hearing) Claimant requested a Fair Hearing on January 22, 2010 with regard to the denial of Food Stamp benefits. (Ex. 4.8)

This Office has jurisdiction under authority of 7 AAC 49.010 and Alaska Statute 47.25.980.

Claimant's Fair Hearing was held on March 2, 2010 and then, at the Claimant's request, continued until March 25, 2010. Claimant appeared telephonically and testified on his own behalf. The Division was represented by [REDACTED] Fair Hearing Representative, who appeared in person and testified on behalf of the Division.

ISSUE

Claimant's certification period for Food Stamp benefits ended on December 31, 2009. In order for him to receive Food Stamp benefits after that date, he would have needed to file a recertification application in a timely manner.

The Division asserts it did not receive Claimant's Food Stamp Benefits recertification application until January 19, 2010.

Claimant asserts he provided his Food Stamp recertification application in a timely manner.

Therefore, the resulting issue is:

Did the Claimant file his Food Stamp recertification application in a timely manner before his certification period ended on December 31, 2009?

FINDINGS OF FACT

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

1. Claimant was receiving Food Stamp benefits during a certification period due to expire December 31, 2009. (Ex. 2)
2. Claimant received a notice from the Division dated November 16, 2009, informing him that his Food Stamp certification period would end on December 31, 2009, if he did not submit a recertification application form which was included. (Ex. 2; Testimony of Claimant acknowledging receipt of notice) This same notice of November 16, 2009, informed Claimant: "[t]o avoid a delay in benefits, we must receive the application no later than the 15th of next month."
3. Claimant did not receive Food Stamp benefits on January 1, 2010. (Testimony of Claimant and Hearing Representative)
4. The Division received a Food Stamp application from Claimant on January 19, 2010. (Ex. 4; Testimony of Hearing Representative) The Division asserts it did not receive a Food Stamp application after November 16, 2009, until this January 19, 2010 application.
5. During the hearing, Claimant made the following assertions:
 - a. He sent his recertification application in a timely manner but he could not remember the date he submitted it.
 - b. He does not remember whether he faxed, mailed, or hand delivered the form.

c. At the time he would have sent the application, his building was having a problem with outgoing mail being stolen.

d. In the later part of 2009, his benefits were switching from Interim Assistance to Adult Public Assistance. He called the Division regarding his Food Stamp benefits and was told that “everything was taken care of.”

6. On January 26, 2010, the Division sent Claimant notice his January 19, 2010 Food Stamp application was approved, and the benefit start date was January 19, 2010.

PRINCIPLES OF LAW

I. Burden of Proof

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 regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (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).

Therefore, the “preponderance of the evidence” is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC §§2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 Code of Federal Regulations (CFR) §§271-274.

Administration of the Food Stamp Program has been delegated to the states. 7 CFR §271.4. There are specific procedures for administering the Program in Alaska. 7 CFR §272.7. The Department of Health and Social Services administers the Food Stamp program in Alaska. AS 47.25.975-AS 47.25.990. The Department’s regulations, 7 AAC 46.010 - 7 AAC 46.990, adopt the federal regulations (with certain minor variations as allowed by federal law). Thus, the State applies federal regulations, 7 CFR §271 et. seq., in the administration of the Food Stamp Program.

Regulation 7 CFR §273.14 governs recertification of eligibility for Food Stamp benefits. This regulation provides in relevant part:

(a) General. *No household may participate beyond the expiration of the certification period ... without a determination of eligibility for a new period.* (Emphasis added.)

...

(c) Timely application for recertification.

(2) ...households ...that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

The Food Stamp program rules require each recertification application to involve a new and independent eligibility determination. *Banks v. Block*, 700 F.2d 292, 296-97 (6th Cir. 1983).

ANALYSIS

The issue in this case is whether the Claimant filed his Food Stamp benefits recertification application in a timely manner before his certification period ended on December 31, 2009.

This case involves Claimant's Application to be recertified as eligible for continued Food Stamp benefits. Pursuant to Food Stamp regulations, each recertification application requires a new and independent eligibility determination. *Banks v. Block*, 700 F.2d 292,296-97 (6th Cir. 1983). Because Claimant is attempting to change the status quo by applying for another period of eligibility for Food Stamp benefits after December 31, 2009, Claimant bears the burden of proof by a preponderance of the evidence.

Claimant's Food Stamp certification period ended on December 31, 2009. (Ex. 2) Claimant could not participate in the Food Stamp program beyond this date without a determination of eligibility for a new period. 7 CFR § 273.14. Claimant was required to submit his recertification application by the fifteenth day of the last month of the certification period, which would have been December 15, 2009. 7 CFR § 273.14(c)(2). The Division provided notice to the Claimant regarding this requirement on November 16, 2009. (Ex. 2; Testimony of Claimant) The Division asserts it never received an application prior to December 15, 2009, or even prior to January 1, 2010.

Claimant stated he submitted his recertification application in a timely manner. However, he could not remember the date he submitted it. Furthermore, he could not recount the method of submission - whether by mail, fax or hand delivery. If he did mail the application by posting it in his building's outgoing mail, and that mail was stolen, he admitted he knew at the time of mailing that outgoing mail was being stolen. Claimant should have used a more secure location to post his mail.

The Division asserts it never received this application prior to December 15, 2009, or even January 1, 2010. Claimant has the burden in this case. Based on the facts discussed

above, Claimant has failed to meet his burden of demonstrating he submitted his recertification application by December 15, 2009, or even by January 1, 2010. Instead, Claimant submitted a recertification application on January 19, 2010.

Because Claimant failed to demonstrate he submitted his recertification application in a timely manner, and because Claimant must submit a recertification application in order to receive benefits for the next certification period which was to start on January 1, 2010, the Division acted properly in not providing Food Stamp benefits to Claimant on January 1, 2010.

CONCLUSIONS OF LAW

Pursuant to 7 CFR § 273.14, Claimant could not participate in the Food Stamp program beyond December 31, 2009, without a redetermination of eligibility for the new period starting on January 1, 2010.

Pursuant to 7 CFR § 273.14(c)(2) Claimant was required to submit his recertification application by the fifteenth day of the last month of the certification period, which would have been December 15, 2009.

Claimant failed to prove by a preponderance of the evidence that he submitted his recertification for Food Stamp benefits by December 15, 2009.

When Claimant did not submit a timely certification application, his household was not certified as eligible for Food Stamp benefits are required by 7 CFR 273.14(a) and 7 CFR § 273.15(k) during the period from January 1, 2010 through January 18, 2010.

Accordingly, the Division acted properly when it did not issue Food Stamp benefits to Claimant's household during the gap in time, from January 1, 2010 through January 18, 2010.

DECISION

The Division did not err when it failed to provide Food Stamp benefits to Claimant from January 1, 2010 through January 18, 2010.

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, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
P.O. Box 110640

Juneau, AK 99811-0640

If the Claimant appeals, the 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 April 12, 2010



Patricia Huna
Hearing Authority

CERTIFICATE OF SERVICE

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

Claimant – Certified Mail, Return Receipt Requested.

A copy set 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