
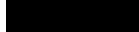


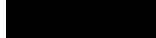
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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

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| In the Matter of |) | |
| |) | |
|  |) | OHA Case No. 10-FH-38 |
| |) | |
| Claimant. |) | Division Case No.  |
| _____ |) | |

FAIR HEARING DECISION

STATEMENT OF THE CASE

 (Claimant) was receiving Food Stamp benefits in December 2009. Her Food Stamp benefits were due to expire on January 31, 2010. (Ex. 7) She filed an application to renew (recertification application) her Food Stamp benefits on December 30, 2009. (Ex. 2.0) On January 25, 2010, the Division of Public Assistance (Division) notified the Claimant in writing that her Food Stamp recertification application was denied because her household's gross monthly income exceeded the Food Stamp program's \$2,480.00 gross income limit for her household size. (Ex. 6)

On January 29, 2010, the Claimant provided the Division with information that her personal income had decreased, and that her household size and household income had decreased because her daughter had moved out of her home. (Ex. A, pp. 1 – 2, 4) The Claimant requested a fair hearing that same day, January 29, 2010. (Ex. 7)

On or about February 18, 2010, the Division declined to renew the Claimant's Food Stamp benefits based upon the additional information presented by the Claimant on January 29, 2010.¹ (Ex. 11)

¹ The Division did not introduce a denial notice into evidence with regard to its determination that the Claimant's January 29, 2010 information was not sufficient to justify renewing the Claimant's Food Stamp benefits. The only information in the record on this point consists of a February 18, 2010 case note authored by a Division Eligibility Technician indicating that the Claimant's household composition (daughter leaving home) was questionable and that the Claimant did not provide requested information. (Ex. 11)

This office has jurisdiction pursuant to 7 AAC 49.010.

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

The record was held open until April 2, 2010 for the Claimant to submit additional documentary evidence and for the Division to submit its written response to the Claimant's additional documents. The Claimant's additional documents were received on March 23, 2010. The Division's written response was received on March 30, 2010.

ISSUE

This case initially arose as an income based denial of the Claimant's December 30, 2009 Food Stamp recertification application, which meant that the Claimant's Food Stamp benefits expired effective January 31, 2010. After the Food Stamp recertification application was denied on January 25, 2010, the Claimant submitted new information to the Division on January 29, 2010 that indicated her individual income had decreased and that her adult daughter had moved out of the household which also had the effect of decreasing the total household income.

After the Claimant reported the change in her income and household composition, the Division requested a field home visit and sent an investigator to the Claimant's home to determine if the Claimant's daughter was still living in the home. The Division alleged that the Claimant would not provide it with information about where her daughter was living, and as a result the Claimant's household composition was in question. The Division then declined to reopen the Claimant's Food Stamp case and find her eligible for Food Stamp benefits.²

The Claimant did not argue that the original income based denial was not correct. Instead, her arguments addressed the Division's failure to reopen and approve her Food Stamp benefits after she provided the Division with her changed household and income information on January 29, 2010.³

The resulting issue is:

Was the Division correct when it did not reopen and approve the Claimant's Food Stamp benefits effective February 1, 2010 based upon new information provided it by the Claimant on January 29, 2010?

FINDINGS OF FACT

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

² See fn. 1 above.

³ Because this case is completely resolved by addressing the Claimant's January 29, 2010 action where she reported a change in her household and income, it is not necessary to address the issue of whether the Division was correct when it denied her December 30, 2009 Food Stamp recertification application.

1. The Claimant was receiving Food Stamp benefits in December 2009. Her Food Stamp benefits were set to expire as of January 31, 2010. (Ex. 1)

2. The Claimant submitted a Food Stamp recertification application to the Division on December 30, 2009. (Ex 2. – 2.5) That application notified the Division the Claimant had a three person household consisting of the Claimant, her minor son, and her 18 year old daughter. Both the Claimant and her 18 year old daughter were employed at the time of the December 30, 2009 application. *Id.* The application contains a cell phone number for the 18 year old daughter, which is a different phone number from that of the Claimant. (Ex. 2.5)

3. On January 25, 2010, the Division of Public Assistance (Division) notified the Claimant in writing that her Food Stamp recertification application was denied because her household's gross monthly income, consisting of both the Claimant's and her daughter's income, exceeded the Food Stamp program's \$2,480.00 gross income limit for her household size. (Ex. 6) A subsequent Division case note indicated that the Claimant's daughter's income placed the household over the Food Stamp program's income limit: "FS recert was denied because [household] was over income with [daughter's] income." (Ex. 11)

4. On January 29, 2010, the Claimant filed a "Fair Hearing Request" form with the Division. On it, the Claimant requested a hearing because there was a "change in my circumstances since I filed out my forms for recertification. [REDACTED] moved out and employer reduced weekly hours for work." (Ex. B, p. 3) At the same time the Claimant filed her "Fair Hearing Request" with the Division, she also filed a "Change Report" form with the Division that informed the Division her daughter had moved out of her house on January 29, 2010, that her work hours had been reduced, and she gave the Division a copy of her pay information for the paycheck the Claimant received on January 21, 2010. (Ex. B, pp. 1 - 2, 4)

5. The Division followed up on the Claimant's report of change by requesting a field home visit. Division Investigator [REDACTED] was sent to the Claimant's home sometime before February 18, 2010⁴ to determine whether the Claimant's daughter was still residing with the Claimant. (Ex. 11; [REDACTED] testimony) The Division Investigator did not testify at the hearing. The only evidence in the record, other than the Claimant's testimony, regarding the investigator's visit is contained in a case note authored by a Division Eligibility Technician on February 18, 2010 that states the Claimant

refused to give the EFD Investigator any information when the home visit was conducted. Investigator informed [the Claimant] that she need to verify where [the daughter] was living (Address/Landlord). [The Claimant] became upset so investigator left her a card and asked her to call with the information. No call from [the Claimant] rec'd.

(Ex. 11)

⁴ It is not possible to precisely date the investigator's visit to the Claimant's home. The investigator did not testify. The Division did not introduce the investigator's report into evidence. The only reference to the investigator's home visit is contained in the Division's February 18, 2010 case note, which does not contain the date the home visit occurred. (Ex. 11)

6. The following factual findings are based upon the Claimant's credible testimony, as follows:

- a. The Claimant let the investigator in the house. The investigator looked around the house, including in the closets.
- b. The investigator wanted to know where the Claimant's daughter was living. The Claimant was not able, at the time of the investigator's visit, to tell the investigator where her daughter was living because she did not know exactly where her daughter was staying.
- c. The Claimant's daughter was staying with and continued to stay with different friends and did not have a residence of her own.
- d. The Claimant gave the investigator her daughter's cell phone number.

7. The Claimant's testimony, as stated above, is found to be credible based upon the following:

- a. The Claimant's demeanor, as observed during the in person hearing.
- b. The Claimant's testimony was consistent, direct, and not evasive.
- c. While the Claimant had an economic motive to be less than truthful, the Division did not present any contradictory testimony, or any reports authored by the investigator who inspected the Claimant's home.

8. The Division did not rescind its denial of the Claimant's Food Stamp recertification application. The only documentation in the record pertaining to the Division's continued denial of the Claimant's December 30 2009 Food Stamp recertification application is contained in the Division's February 18, 2010 case note that states "[household composition] remains questionable at this time." (Ex. 11) The record does not contain an explicit denial notice from the Division notifying the Claimant that her Food Stamp case remained closed because her household composition was questionable.

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.⁵ *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).

⁵ 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)

Because of the manner in which the Food Stamp program is administered, each Food Stamp recertification application involves an independent and new eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6th Cir. 1983).

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.

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). A Food Stamp household consists of those persons "who live together and customarily purchase food and prepare meals together for home consumption." 7 CFR 273.1(a)(3). Children under the age of 22 and their parents with whom they reside must be included in a Food Stamp household. 7 CFR 273.1(b)(ii).

The Division is allowed to verify a Food Stamp applicant/recipient's "information which has changed" at recertification. 7 CFR 273.2(f)(8)(i)(D). It is also allowed to verify questionable information. 7 CFR 273.2(f)(2). It is allowed to conduct home visits for verification purposes when documentary evidence is insufficient or unavailable. 7 CFR 273.2(f)(4)(iii) and (f)(5)(ii).

A *refusal to cooperate* with the Division's request for verification is grounds for denial of a Food Stamp application; a mere *failure to cooperate* is not:

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household *refuses to cooperate* with the State agency in completing this process, the application shall be denied at the time of refusal. 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 to be ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reporting changes and applications for recertification.

7 CFR 273.2(d)(1). (Emphasis supplied)

The starting date for Food Stamp benefit recertification, based upon the Claimant's action after either the certification period expires or the Division denies a Food Stamp recertification, vary:

- a. If a Food Stamp recertification application is submitted before the end of the certification period and the Division denies the application because the applicant has not taken a

required action, and the applicant completes the process before the end of the certification period, the Division “must reopen the case and provide a full month’s benefits for the initial month of the new certification period.” 7 CFR 273.14(e)(2).

- b. If the Food Stamp recertification application is denied because the applicant has not taken a required action and the applicant completes the process within 30 days after the end of the certification period, the Division “shall reopen the case and provide benefits retroactive to the date the household takes the required action.” *Id.*
- c. If an applicant late files the Food Stamp recertification application within 30 days after the end of the certification period, the application “shall be considered to be an application for recertification” and benefits are prorated as of the date of the application. 7 CFR 273.10(a)(ii) and 7 CFR 273.14(e)(3).

Food Stamp benefits, based upon a new application, are prorated as of the date of the application. 7 CFR 273.10(a)(1)(ii).

ANALYSIS

The primary issue in this case is whether the Division was correct when it did not reapprove the Claimant for Food Stamp benefits effective February 1, 2010. Because the Claimant’s previous Food Stamp benefits expired as of January 31, 2010, the Claimant was reapplying for Food Stamp benefits. The Claimant, as an applicant for benefits, is seeking to change the status quo. She therefore has the burden of proof by a preponderance of the evidence.

The pertinent facts in this case are as follows:

1. The Claimant’s Food Stamp benefits were due to expire on January 31, 2010. Before her benefits expired, she submitted a Food Stamp recertification application on December 30, 2009, which was for a three person household, herself, her minor child, and her 18 year old daughter. The Division sent the Claimant a notice on January 25, 2010 informing the Claimant her December 30, 2009 Food Stamp recertification application on January 25, 2010 because her gross monthly household income exceeded the Food Stamp program’s gross monthly income limit for her household size. *See Findings of Fact 1, 2, and 3 above.*
2. The Claimant requested a hearing and notified the Division of a household change on January 29, 2010. The grounds for a hearing request and the change notification were identical. The Claimant stated her 18 year old daughter had moved out of the home and also stated that her individual income had decreased. *See Finding of Fact 4 above.*
3. The Division did not (insofar as can be determined from the record in this case) inform the Claimant that she needed to reapply for Food Stamp benefits. Instead, it acted upon the Claimant’s report of her household change by sending an investigator to her home to determine if the 18 year old daughter still lived there. The Claimant, as explained in the Findings of Fact, cooperated with the investigator. She let the investigator in the home.

She could not answer the investigator's question about where her daughter was actually staying because her daughter did not have a fixed residence; she is staying with various friends. She gave the investigator her daughter's cell phone number. *See* Finding of Fact 6 above. It should additionally be noted that the Claimant's December 30, 2009 Food Stamp recertification application also contains a cell phone number for the 18 year old daughter. *See* Finding of Fact 1 above.

4. Division personnel stated, in a February 18, 2010 case note, that the investigator gave the Claimant her card so that the Claimant could call the investigator with information about her daughter's residence, that the Claimant did not call, and that the Claimant's household composition remained questionable. *See* Findings of Fact 5 and 8 above.

The record does not contain a denial notice resulting from the Division's February 18, 2010 conclusion that the Claimant's household composition remained questionable. However, it is undisputed that the Division did not reopen the Claimant's Food Stamp case and reapprove her for benefits.

A review of the procedural history and the record in this case shows that the Division denied the Claimant's December 30, 2009 Food Stamp recertification application on January 25, 2010. After its denial, the Division effectively treated the Claimant's January 29, 2010 report of change (daughter's change in residence and change in the Claimant's income) either as a continuing recertification application or a new application for Food Stamp benefits. This is because the Division acted upon the reported change by investigating it, an action the Division would not need to take unless it was processing an application.

The Division is allowed to investigate and verify changes in circumstances. 7 CFR 273.2(f)(8)(i)(D). It is allowed to investigate and verify questionable information. 7 CFR 273.2(f)(2). If a household refuses to cooperate with verification, the Division "shall" deny the Food Stamp application. 7 CFR 273.2(d)(1).

In this case, the Division's case note makes the Division's position clear, despite the lack of a denial notice. Its February 18, 2010 case note indicates the Claimant was asked to call the investigator with information about the daughter's whereabouts, she did not call, and that the household composition remained questionable. *See* Findings of Fact 5 and 8 above. The only possible inference to be drawn from this case note is that the Division denied the Claimant's application because of the Claimant's lack of cooperation.

However, the Food Stamp regulations distinguish between a *failure to cooperate* and an *intentional refusal to cooperate*: "[i]f 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." 7 CFR 273.2(d)(1).

The Claimant had the burden of proof in this case by a preponderance of the evidence. She satisfied that burden. Her credible testimony established that she cooperated with the Division's efforts to verify her household composition (her daughter's residence). She let the Division investigator into her home. She was unable to answer the investigator's questions about her

daughter's specific residence, because her daughter did not have a specific residence: she was staying with various friends. She gave the investigator her daughter's cell phone number. *See* Finding of Fact 6 above. Additionally, the Division already had the daughter's cell phone number from the Claimant's December 30, 2009 Food Stamp recertification application. *See* Finding of Fact 1 above.

The Division only submitted a case note created on February 18, 2010 to support its determination that the Claimant refused to cooperate with the Division. This case note was created by an Eligibility Technician and not the investigator who conducted the home visit. While this case note states the Claimant did not call the Division's investigator back with information about her daughter's residence, this cannot be construed as a *refusal to cooperate* on the Claimant's part. The Claimant testified that at the time of the investigator's visit, she did not know her daughter's whereabouts: she was not able to provide the investigator information on her daughter's whereabouts because she did not know her daughter's exact whereabouts and where she was staying. She had her daughter's cell phone number, which she provided the investigator. In other words, the Claimant provided the Division all the information she had. Under the circumstances, the Claimant actually cooperated with the investigator.

There was no evidence or testimony in the record that contradicted the Claimant's testimony. It must be noted that because the investigator did not testify and because the investigator did not author the February 18, 2010 case note used by the Division in support of its action, the information regarding the investigator's contacts with the Claimant, as stated in the case note, is hearsay, which is given less weight than the Claimant's credible testimony provided during the hearing.

Because the Claimant did not refuse to cooperate with the Division's efforts to determine her household composition, but actually cooperated, the Division was not justified in denying the Claimant's application for Food Stamp benefits: "[i]f 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." 7 CFR 273.2(d)(1).

The Division should therefore have approved the Claimant's Food Stamp benefits. The question arises as to when those benefits should have begun. The Claimant's new information about her household composition and wages was submitted to the Division on January 29, 2010. This was after the January 25, 2010 written denial notice and shortly before her Food Stamp benefits were due to expire, January 31, 2010.

The Food Stamp regulations specifically provide effective dates for Food Stamp benefits when a recertification applicant retroactively complies with the Division's request for a required action after their recertification is denied based upon the applicant's failure to take that action. *See* 7 CFR 273.14(e)(2). However, in this case, the original Food Stamp recertification denial was made based upon the Claimant's income; the denial was not made based upon the Claimant's failure to take an action required by the Division. The Food Stamp regulations that provide effective dates for Food Stamp benefits when a recertification applicant retroactively complies with the Division's request for a required action after their recertification is denied based upon the applicant's failure to take that action do not apply.

For the purposes of establishing a Food Stamp benefit start date, the fact pattern in this case is most similar to a brand new application made after benefits are denied. Because Food Stamp benefits, based upon a new application, are prorated as of the date of the application, the Food Stamp benefit start date should be the date of the new application, which in this case would be January 29, 2010. *See* 7 CFR 273.10(a)(1)(ii). However, since the Claimant already had preexisting Food Stamp benefits through January 31, 2010, her new Food Stamp benefits should have been approved effective February 1, 2010.

The Division was therefore not correct when it did not reopen and approve the Claimant's Food Stamp benefits effective February 1, 2010 based upon new information provided it by the Claimant on January 29, 2010.⁶

CONCLUSIONS OF LAW

1. The Claimant has the burden of proof in this case by a preponderance of the evidence.
2. The Claimant met her burden of proof. She provided credible testimony that she cooperated with the Division's efforts to verify her household composition; she allowed the Division's inspector to enter her home and provided the inspector with the information she had regarding her daughter. In contrast, the Division relied upon hearsay, which had less weight than the Claimant's credible testimony, to support its determination.
3. Consequently, the Division should have approved the Claimant's Food Stamp benefits effective February 1, 2010.
4. The Division was therefore not correct when it did not reopen and approve the Claimant's Food Stamp benefits effective February 1, 2010 based upon new information provided it by the Claimant on January 29, 2010.

DECISION

The Division was not correct when it did not reopen and approve the Claimant's Food Stamp benefits effective February 1, 2010 based upon new information provided it by the Claimant on January 29, 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, the Claimant must send a written request directly to:

⁶ This Decision does not discuss the issue of whether the Claimant was financially eligible for Food Stamp benefits as a household of two persons, herself and her minor child, i.e. whether the household without the 18 year old daughter was financially eligible, because the Division did not raise that as an issue in this case.

