

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (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])	OHA Case No. 10-FH-64
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED]. (Claimant) applied for Food Stamp benefits on December 14, 2009. (Ex. 2 – 2.8) On January 5, 2010, the Division of Public Assistance (Division) notified the Claimant in writing that it required additional information from him before it could process his Food Stamp application, and that the deadline for providing the information was January 15, 2010. (Ex. 4) On February 2, 2010, the Division notified the Claimant, in writing, that his Food Stamp application was denied because he did not provide the Division with the information it requested on January 5, 2010. (Ex. 6)

The Claimant requested a fair hearing on February 16, 2010. (Ex. 7.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on March 23, 2010 before Hearing Examiner Patricia Huna-Jines.¹ The Claimant attended the hearing telephonically; he represented himself and testified on his own behalf. The Claimant's father, **[REDACTED]**, attended the hearing telephonically; he assisted in the Claimant's representation and testified on the Claimant's behalf. **[REDACTED]**, a Public Assistance Analyst with the Division, attended in person; he represented the Division and testified on its behalf.

ISSUE

Was the Division correct when it denied the Claimant's December 14, 2009 Food Stamp application because he did not timely comply with its January 5, 2010 request for information?

¹ This case was subsequently assigned to Hearing Examiner Larry Pederson, who has reviewed the entire record including the electronic recording of the March 23, 2010 hearing in preparation for drafting this Decision.

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits on December 14, 2009. (Ex. 2 – 2.9) The Claimant has been mentally disabled since birth and his father is his authorized representative. (Father's testimony; Exs. 2.7, 7.1)

2. The Claimant and his father participated in an in-person intake interview for his Food Stamp application on January 4, 2010. (Ex. 3) During that interview, the Claimant notified the Division Eligibility Technician conducting the interview that he had a Washington State drug felony conviction from either 1995 or 1996. *Id.*

3. On January 5, 2010, the Division sent the Claimant a written notice that he needed to provide the Division with "verification of ... the conviction date of [his] drug felony in Washington." (Ex. 4) That same notice informed that if he did not provide the requested verification by January 15, 2010, his application would be denied. *Id.* In addition, the notice stated:

FOR FOOD STAMPS ONLY: If you give us these items after the due date, or after 30 days from the date you applied, which is later, you will not get food stamps for the month you applied. If you give us this information late but are eligible, the amount of food stamps will be figured from the date we get your information. If you give us these items after the due date, but within 60 days from the date you first applied, we will use the same application to see if you are eligible for food stamps. After that, you will need a new application.

Id.

4. The Claimant's father could not obtain verification of the information and repeatedly contacted the Division and informed them that he was having difficulty obtaining the requested information. (Father's testimony)

5. On January 20, 2010, the Claimant's father provided the Division with a hand written document, which he wrote, that stated "Drug Charge Aug 18, 2005 [REDACTED] Wash Case [REDACTED]." (Father's testimony; Ex. 14) Division staff then informed him that the information was not adequate and that he was responsible for providing the requested information. (Father's testimony) Sometime after that conversation, the Claimant's father contacted individuals in Washington State for their assistance in obtaining copies of the Claimant's criminal conviction paperwork. *Id.*

6. On February 2, 2010, the Division sent the Claimant written notice that his December 14, 2009 Food Stamp application was denied because he did not provide the Division with "verification of the date of your drug felony conviction." (Ex. 6)

7. The Claimant requested a fair hearing on February 16, 2010. (Ex. 7.1) He simultaneously provided the Division with copies of Washington State Superior Court documents showing that he had been convicted in [REDACTED] County ([REDACTED], Washington) on [REDACTED],

of the felony possession of a controlled substance, cocaine, based upon an incident that occurred on or about August 18, 2005. (Exs. 8 – 8.11)

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.

The Division is allowed to verify a Food Stamp applicant's information:

The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level.

7 CFR 273.2(f)(2)(i).

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.

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

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)

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(f)(5)(i). (Emphasis supplied)

“Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction” may not receive Food Stamp benefits. 7 CFR 273.1(b)(7)(vii). 7 CFR 273.11(m) details the specific Food Stamp rules relating to drug felons:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996.

7 CFR 273.11(m) (Emphasis in original). The State of Alaska has not adopted legislation that allows persons with felony drug convictions to receive Food Stamp benefits.

ANALYSIS

The primary issue in this case is whether the Division was correct when it did not approve the Claimant’s December 14, 2009 Food Stamp application. 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 Division did not present any testimony or documents that contradicted the Claimant’s father’s testimony. Accordingly, the following facts are undisputed.

1. The Claimant applied for Food Stamp benefits on December 14, 2010. During the application interview, he informed the Division that he had a 1995 or 1996 felony drug conviction.
2. The Division requested the Claimant provide it with verification of the date of his felony drug conviction and gave him until January 15, 2010 to supply the information.
3. The Claimant was not able to provide the requested information by the January 15, 2010 deadline. The Claimant’s father was acting on the Claimant’s behalf. He told the Division

he was having difficulty in obtaining the information. The Claimant did not provide the Division with any written documentation of the drug conviction until January 20, 2010, which consisted of the father's written statement that the Claimant had an August 15, 2005 drug charge in [REDACTED], Washington and a case number of [REDACTED].

4. When the Claimant's father supplied his written statement, Division personnel told him the information was not adequate and that he was responsible for providing the requested information to the Division.
5. The Division then denied the Claimant's application on February 2, 2010. It was not until February 16, 2010 that the Claimant's father provided the Division with a copy of the Claimant's felony drug conviction paperwork.

It should first be noted that the Division had a valid reason to request verification of the Claimant's criminal conviction. The Claimant told the Division he had a felony drug conviction dating back to 1995 or 1996. If that conviction was based on conduct that occurred after August 22, 1996, then the Claimant would not be allowed to receive Food Stamp benefits. *See* 7 CFR 273.11(m). Because the date of the criminal conduct was directly relevant to whether the Claimant was eligible for Food Stamp benefits, the Division was justified in requesting verification of the criminal conviction.

The facts of this case show that the Claimant's father, acting on his son's behalf, was trying to obtain the necessary documentation about his son's felony drug conviction. He was having difficulty in obtaining the information. He informed the Division he was having difficulty obtaining the information. After the deadline (January 15, 2010), but *before the Division denied* his son's application (February 2, 2010), he provided them with the date and location of his son's criminal case by supplying it on January 20, 2010 with his handwritten document that stated "Drug Charge Aug 18, 2005 [REDACTED] Wash Case [REDACTED]." The Division then told the father that providing the actual verification, i.e. some form of official documentation, was his responsibility.

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 and the agency shall provide assistance." 7 CFR 273.2(d)(1). In this case, the Division did not provide assistance and denied the application. The facts of this case show the Claimant was trying to cooperate. He was not refusing to cooperate. Given that, and the fact that the Claimant's father informed the Division he was having trouble obtaining the required verification, the Division had an obligation to assist the Claimant in obtaining the verification:

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(f)(5)(i). (Emphasis supplied)

The only evidence in this case on the issue of whether the Division assisted the Claimant with his verification efforts consists of the father's testimony that the Division told him the information he supplied was not adequate and that he was responsible for providing the requested information to the Division. The Division did not present any evidence that contradicted the father's testimony. The evidence therefore supports an inference that the Division did not assist the Claimant in obtaining verification, as required by regulations 7 CFR 273.2(d)(1) ("shall provide assistance") and 7 CFR 273.2(f)(5)(i) ("must assist").

The Claimant has the burden of proof in this case by a preponderance of the evidence. He has satisfied that burden. He has demonstrated that the Division he was cooperating with the Division and attempting to provide the required documentation. The Division did not assist the Claimant in obtaining the required verification of his criminal conviction when it was required to provide assistance. *See* 7 CFR 273.2(d)(1) and 7 CFR 273.2(f)(5)(i).

The Division then denied the Claimant's application, even though he was cooperating with the Division. However, 7 CFR 273.2(d)(1) does not allow the Division to deny an application due to a lack of verification, when an applicant is cooperating with the Division's request for verification. As a result, the Division was not correct to deny the Claimant's December 14, 2009 application for the reason that he did not supply the required verification.

This is a narrow decision. It addresses only the issue of whether the Division was correct when it denied the Claimant's application because he did not supply required verification. Because the issue of whether the Claimant's felony drug conviction makes him not eligible for Food Stamp benefits was not before this Hearing Office, this decision does not address the issue of the Claimant's eligibility for Food Stamp benefits. It is therefore necessary to remand (send the case back) to the Division for its review and its determination as to whether the Claimant is eligible for Food Stamp benefits.

CONCLUSIONS OF LAW

1. The Claimant has the burden of proof in this case by a preponderance of the evidence.
2. The Claimant met his burden of proof. He was cooperating with the Division's request for verification of his felony drug conviction. He demonstrated that he was having difficulty in obtaining the required verification of his felony drug conviction, that the difficulty was communicated to the Division, and that the Division did not assist him in obtaining the required verification.
3. Because the Claimant was cooperating with the Division, the Division was required to assist him in obtaining the requested verification, and was required to NOT deny the Claimant's application. *See* 7 CFR 273.2(d)(1) and 7 CFR 273.2(f)(5)(i).
4. The Division did not comply with 7 CFR 273.2(d)(1) when it denied the Claimant's application.

5. Consequently, the Division was not correct when it denied the Claimant's December 14, 2009 Food Stamp application based upon the Claimant's failure to timely provide it with the required verification of his felony drug conviction.

DECISION

The Division was not correct when it denied the Claimant's December 14, 2009 Food Stamp application based upon the Claimant's failure to timely provide it with the required verification of his felony drug conviction. Because this decision does not address the issue of whether the Claimant is eligible for Food Stamp benefits, this case is remanded to the Division to determine whether the Claimant is eligible for Food Stamp benefits based upon his December 14, 2009 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

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 19th day of April 2010.

/Signed/

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 19th day of April 2010, true and correct copies of the foregoing were sent to:
Claimant by U.S.P.S., Certified Mail
and to the following by e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I
[REDACTED], Chief of Field Services

J. Albert Levitre, Jr., Law Office Assistant I