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

In the Matter of)	
)	
<div style="background-color: black; width: 150px; height: 1.2em; display: inline-block;"></div> ,)	OHA Case No. 10-FH-69
)	
Claimant.)	Food Stamp Case No. <div style="background-color: black; width: 100px; height: 1.2em; display: inline-block;"></div>
<hr style="width: 400px; margin-left: 0;"/>)	CAMA Case No. <div style="background-color: black; width: 100px; height: 1.2em; display: inline-block;"></div>

FAIR HEARING DECISION

STATEMENT OF THE CASE

(Claimant) was receiving Food Stamp and Chronic and Acute Medical Assistance (CAMA) benefits in February 2010. (Ex. 1) The Division of Public Assistance (Division) mailed the Claimant two notices on February 19, 2010. One of the notices informed the Claimant his Food Stamp benefit amount would be reduced to \$19.00 per month for the month of March 2010. (Ex. 6) The other notice informed the Claimant his CAMA case was “closed as of February 2010” (i.e. he would not receive CAMA benefits after February 2010). (Ex. 6.1)

The Claimant verbally requested a fair hearing on April 24, 2010. (Exs.7 – 7.1)

This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant’s request, a hearing was held April 6 and 27, 2010 before Hearing Examiner Patricia Huna-Jines. The Claimant attended the hearing telephonically; he represented himself and testified on his own behalf. , a Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

The record was left open after the April 27, 2010 hearing for additional information from the parties regarding whether the Claimant had unreimbursed medical expenses for March 2010 and the Division’s calculations regarding the Claimant’s Food Stamp benefit amount. The Division’s Food Stamp benefit calculations were received by this Office on April 28, 2010. The Claimant did not submit a response to the Division’s Food Stamp benefit calculations. No information was received showing the Claimant had unreimbursed medical expenses.

Following the April 27, 2010 hearing, this case was reassigned to Hearing Examiner Larry Pederson, who reviewed the entire hearing record and listened to the recording of the entire hearing before issuing this Decision.

ISSUES

The record and the arguments of the parties present the following issues:

1. Did the Division's February 19, 2010 notices that informed the Claimant his Food Stamp benefits were being reduced and his CAMA benefits were terminated comply with the adverse action ten day minimum advance notice requirement?
2. Was the Division correct to reduce the Claimant's monthly Food Stamp benefit amount to \$19.00 for the month of March 2010?
3. Was the Division correct to terminate the Claimant's CAMA benefits after the month of February 2010?

SUMMARY OF DECISION

The Division did not provide the Claimant with the required ten day adverse action minimum advance notice before it reduced his Food Stamp benefits and terminated his CAMA benefits. As a result, the Division was not correct to reduce the Claimant's monthly Food Stamp benefit amount to \$19.00 for the month of March 2010. Similarly, the Division was not correct to terminate the Claimant's CAMA benefits after the month of February 2010.

FINDINGS OF FACT

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

1. The Claimant was receiving Food Stamp benefits in February 2010 in the amount of \$239.00 per month. (Ex. 4)
2. The Claimant was receiving CAMA benefits in February 2010. His CAMA benefits were due to expire at the end of March 2010. (Ex. 31.2)
3. On February 18, 2010, the Division found out the Claimant was receiving unemployment benefits. (Ex. 5) It calculated he would be receiving \$1,066.40 in unemployment benefits in March 2010, and that he would not receive unemployment benefits after the end of March 2010. *Id.*
4. The Claimant does not dispute that he was receiving unemployment benefits. While he testified he only received unemployment benefits for half of March, unemployment records show that a total of \$1,187.00 in unemployment payments was deposited into his bank account during March 2010. (Ex. B) However, only \$992.00 of these unemployment payments were countable as income for Food Stamp benefit calculation purposes. *See* the Division's April 27, 2010 Supplement.

5. The Division mailed the Claimant two notices on February 19, 2010 as follows:
 - a. One notice informed the Claimant his monthly Food Stamp benefit amount was reduced to \$19.00 for the month of March 2010 because he was receiving unemployment benefit income. (Ex. 6)
 - b. The other notice informed the Claimant his CAMA “case is closed as of February 2010” because he was receiving unemployment benefit income that exceeded the allowable income level. (Ex. 6.1)
6. The Division of Public Assistance prepares monthly calendars for personnel to follow. These calendars contain the dates by which personnel are required to take actions with regard to public assistance recipients. The calendar for February 2010, on the section for February 18, 2010, contains the language “**Adverse Action**” at the top of the section, which then contains the entry “10 = 3/1.” (Ex. 25.1)

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.¹ *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. The federal agency that is responsible for overseeing the operation of the program is the Department of Agriculture Food and Nutrition Service (Food and Nutrition Service). 7 CFR 271.3(a). The day to day administration of handling applications and issuing benefits is delegated to State agencies. 7 CFR 271.4(a).

The Code of Federal Regulations (CFR) contains the rules stating what notice a State agency is required to provide a Food Stamp recipient before it reduces or terminates Food Stamp benefits:

§ 273.13. Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household’s benefits within the certification period, the State agency shall . . . provide the household time and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes *at least 10 days from the date the notice is mailed to the date upon which the action becomes effective.*

¹ 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)

(Emphasis provided)

The Alaska regulations for public assistance cases require that a public assistance applicant/recipient be given advance notice of an intended agency action that affects their benefits:

The division shall give written notice to client at least 10 days *before* the date the division intends to take action denying, suspending, reducing, or terminating assistance.

7 AAC 49.060. (Emphasis added) These regulations apply to both Food Stamp and CAMA benefit cases. 7 AAC 49.010(a).²

“The time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.” AS 01.10.080. The term “law” also includes regulations. *Perito v. Perito*, 756 P.2d 895, 898 (Alaska 1988)

ANALYSIS

The issue in this case is whether the Division was correct when it took action that affected the Claimant’s receipt of benefits in two separate public assistance programs, Food Stamps and CAMA, as follows:

1. The Division reduced the Claimant’s monthly Food Stamp benefit amount from \$239.00 to \$19.00 for the month of March, 2010.
2. The Claimant was approved to receive CAMA benefits through the end of March 2010; the Division’s action terminated those benefits at the end of February 2010, which was a month early.

Because the Division’s actions changed the status quo by reducing the Claimant’s Food Stamp benefits and by terminating his CAMA benefits a month early, it is the party seeking to change the status quo. The Division therefore has the burden of proof by a preponderance of the evidence. *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).

The relevant facts, which are not disputed, are:

² The Alaska regulation, 7 AAC 49.060, is slightly different from the federal regulation, 7 CFR 273.13(a)(1). The Alaska regulation requires 10 days notice *before* the action becomes effective. The federal regulation requires a minimum of 10 days from the date of mailing until the action becomes effective. However, the federal regulation specifically provides that the State notice period applies as long as it satisfies the minimum federal notice requirements. Because the State regulation requires that the 10 day notice be provided “before” the date of the adverse action, it satisfies the minimum federal notice requirements, and it governs in this case.

1. The Claimant was receiving unemployment benefits in February 2010, while he was also receiving Food Stamp and CAMA benefits.
2. After finding out the Claimant was receiving unemployment benefits, the Division took action to reduce his Food Stamp benefits for March 2010 and to terminate his CAMA benefits after February 2010. Both of those actions took effect on March 1, 2010, i.e. his Food Stamp benefit amount for the month of March was reduced and he no longer received CAMA benefits beginning on March 1, 2010.
3. The Division mailed the Claimant notices informing him of the Food Stamp benefit reduction and CAMA benefit termination on February 19, 2010.

This case presents a purely legal issue. Did the Division's February 19, 2010 notices comply with the adverse action ten day minimum advance notice requirement?

The Alaska regulations require that a public assistance recipient be provided notice "10 days *before* the date the division intends to take action denying, suspending, reducing, or terminating assistance." 7 AAC 49.060. (Emphasis added) The first day is not counted. AS 01.10.080.

The Division's notices were mailed to the Claimant on February 19, 2010. Since the first day, i.e. February 19, 2010 is not counted, in order for the Division's notices to satisfy minimum notice requirements, there had to be a minimum of 10 days, inclusive of February 20, 2010 – the day after mailing, before March 1, 2010 – the date the Division's actions took effect. February 28, 2010 was the day before March 1, 2010. The time period between February 20, 2010 and February 28, 2010, counting both of these days, is 9 days total. The Division therefore provided the Claimant with only 9 days of notice before its actions reducing his Food Stamp benefits and terminating his CAMA benefits took effect.

If the Division had mailed its notices to the Claimant on February 18, 2010, it would have complied with the 10 day minimum notice requirement (disregarding the mailing date of February 18, 2010, the period February 19, 2010 through February 28, 2010 is 10 days). The Division's own February 2010 calendar recognizes this by containing the language "**Adverse Action**" and the entry "10 = 3/1" on the calendar section for the date of February 18, 2010. (Ex. 25.1)

Because the Division did not mail its Food Stamp reduction and CAMA termination notices to the Claimant until February 19, 2010, it provided the Claimant with 9 days advance notice of its intent to reduce his Food Stamp benefits and terminate his CAMA benefits effective March 1, 2010. This did not comply with the minimum 10 day adverse action notice requirement contained in 7 AAC 49.060. As a result, the Division was not correct to reduce the Claimant's monthly Food Stamp benefit amount to \$19.00 for the month of March 2010. Similarly, the Division was not correct to terminate the Claimant's CAMA benefits after the month of February 2010.

CONCLUSIONS OF LAW

1. Alaska regulation 7 AAC 40.060 requires the Division to provide the Claimant with a minimum of 10 days written notice before the date it intends to take action reducing or terminating his public assistance benefits.
2. The Division's February 19, 2010 notices informing the Claimant it intended to reduce his Food Stamp benefits and terminate his CAMA benefits, both of which took effect on March 1, 2010, provided the Claimant with 9 days of notice.
3. The Division therefore did not comply with the regulatory requirement that it provide the Claimant with a minimum of 10 days written notice before the date of its intended action. *See* 7 AAC 49.060.
4. The Division was therefore not correct when it reduced the Claimant's monthly Food Stamp benefit amount from \$239.00 to \$19.00 for the month of March, 2010.
5. The Division was therefore not correct when it terminated the Claimant's CAMA benefits after the month of February 2010.

DECISION

The Division was not correct when it reduced the Claimant's monthly Food Stamp benefit amount from \$239.00 to \$19.00 for the month of March, 2010. The Division was also not correct when it terminated the Claimant's CAMA benefits after the month of February 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:

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 25th day of May 2010.

/Signed/_____
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 25th day of May 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