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

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 10-FH-104
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) applied for Food Stamp benefits<sup>1</sup> on January 13, 2010. (Exs. 2.0 – 2.11) The Division of Public Assistance (Division) received her application on January 27, 2010. (Ex. 2.0) On February 26, 2010, the Division sent the Claimant written notice it was denying her application for Food Stamp benefits because she did not comply with the Division’s request for information. (Ex. 7) The Claimant requested a fair hearing on April 5, 2010. (Exs. 10.0 – 10.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant’s request, a hearing was held on May 6 and June 1, 2010. The May 6, 2010 portion of the hearing was held before Hearing Examiner Patricia Huna. The case was subsequently reassigned to Hearing Examiner Larry Pederson, who reviewed the entire record, including the audio recording of the May 6, 2010 portion of the hearing, and then conducted the June 1, 2010 portion of the hearing.

The Claimant attended the May 6, 2010 hearing telephonically; she represented herself and testified on her own behalf. ██████████, the Claimant’s husband, attended both hearing dates telephonically; he represented the Claimant and testified on her behalf. ██████████, who is employed by the ██████████ and is a Fee Agent<sup>2</sup> for the Division, attended the May 6, 2010 hearing telephonically and testified on the Claimant’s behalf.

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<sup>1</sup> The Claimant also applied for Medicaid benefits on the January 13, 2010 application. (Ex. 2.0) Because only Food Stamp benefits are an issue in this case, this Decision only refers to the application as being one for Food Stamp benefits.

<sup>2</sup> Fee Agents are individuals, not employed by the Division, who assist people in applying for Public Assistance benefits in parts of Alaska where the Division does not maintain offices. *Fee Agent Manual* at 1 (Alaska Dept. of Health and Social Services, Division of Public Assistance, 2009).

██████████, Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

The record was left open after the June 1, 2010 hearing to allow the Claimant to submit additional documentation (Ex. A), and for the Division's written response (Ex. 18).

### **ISSUE**

Was the Division correct to deny the Claimant's January 13, 2010 Food Stamp application because she did not comply with the Division's requests for information?

### **SUMMARY OF DECISION**

The Division requested that the Claimant provide it with three items of information by February 18, 2010. Only one of those items of information, her husband's January 2010 income, was necessary to process her January 13, 2010 Food Stamp application. The Claimant did not submit the husband's January 2010 income by the February 18, 2010 deadline, and the Division was correct to initially deny the Claimant's January 13, 2010 Food Stamp application. However, the Division erred when it did not reopen the Claimant's Food Stamp case when it received the husband's January 2010 income information on March 24, 2010.

### **FINDINGS OF FACT**

The following facts were proven by a preponderance of the evidence:

1. The Claimant and her husband completed a Food Stamp application. They signed it, respectively, on January 13 and 14, 2010. (Exs. 2.0 – 2.11) The application was emailed to the Division on January 26, 2010 at 6:06 a.m. (Ex. A, p. 2) The Division date stamp on the application is January 27, 2010. (Ex. 2.0)
2. The Claimant's daughter ██████████ was not part of the Claimant's household and the application does not list her as being part of the Food Stamp household. (Ex. 2.1; Husband's testimony)
3. The application states that the Claimant's husband is employed on a part-time basis. (Ex. 2.2) Neither the application nor the Fee Agent interview notes indicate the husband had recently ended his job or anticipated it ending. (Exs. 2.2, 2.11 – 2.12)
4. On February 8, 2010, the Division sent the Claimant notice her Food Stamp application was placed on hold pending receipt of the following information:
  - 1) Proof of ending income for [her husband]. An employment statement will be mailed to you separate from this letter. Your employer may use this form to provide this information.
  - 2) Proof of [the husband's] January 2010 gross wages.

- 3) Proof of [REDACTED]'s gross wages for January 2010 from [REDACTED] Hotel. If she is no longer working for them, please have her employer verify her last day of work, date she received her final paycheck and the reason her job ended.

(Ex. 5.0) The notice provided the Claimant with a deadline of February 18, 2010 to provide the requested information and advised her that her "application may be denied" if she did not provide the requested information by the February 18, 2010 deadline. *Id.*

5. The Division stated that it did not receive the requested information from the Claimant by the February 18, 2010 deadline. (Gagne testimony; Ex. 6) On February 25, 2010, after the February 18, 2010 deadline had passed, the Division reviewed the Claimant's application for Food Stamp benefits and decided to deny it because she did not provide the requested information. (Ex. 6)

6. On February 26, 2010, the Division sent the Claimant written notice her Food Stamp application was denied because she did not provide the following:

- a. The information about her husband's job ending.
- b. Proof of her husband's January 2010 gross wages.
- c. Proof of [REDACTED]'s January 2010 wages.

(Ex. 7)

7. On March 24, 2010, Mr. [REDACTED], who is a Fee Agent for the Division, faxed the Division Eligibility Technician two paystubs for the husband. (Exs. 8.0 – 8.2) Those paystubs were dated January 15 and January 29, 2010. *Id.* The Claimant's Food Stamp case was not reopened. (Ex. 1)

8. The husband testified he supplied the requested information to the Division Technician on three separate occasions, but that he did not have a record of when he faxed it. He further testified he had a history of repeatedly sending information to the Division Eligibility Technician and having them deny receiving it.

9. Mr. [REDACTED] testified he emailed the requested information, on behalf of the Claimant, to the Division Technician. He said he was unsure of the dates, but had the information on his computer. He said he sent the information on three separate occasions. He also testified he had a history of repeatedly sending information to the Division and having them deny receiving it.

10. The record was left open for the Claimant to submit proof the requested information had been sent to the Division. The husband provided a copy of one email, dated January 26, 2010, showing that Mr. [REDACTED] emailed the Claimant's January 13, 2010 Food Stamp application to the Division on January 26, 2010 at 6:06 a.m. (Ex. A, p. 2)

## PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence.<sup>3</sup> *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 rules that control an applicant's eligibility and the application process are set out in the Code of Federal Regulations (CFR).

An applicant's household income is a factor used in determining Food Stamp eligibility and benefit levels. 7 CFR 273.10. The Division is required to verify a household's gross income on an initial application. 7 CFR 273.2(f)(1)(i). It is also required to verify a Food Stamp applicant's questionable 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).

If there is a delay in processing a Food Stamp application that is caused by the applicant, including an applicant not providing requested verification, and that delay extends to the 30<sup>th</sup> day

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<sup>3</sup> 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)

after the date an application is filed, “the household shall lose its entitlement to benefits for the month of application.” 7 CFR 273.2(h)(2)(i). The State agency may then deny the application. 7 CFR 273.2(h)(2)(i)(A). However, if the applicant “takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application.” *Id.*

### ANALYSIS

This case presents the issue of whether the Division was correct when it denied the Claimant’s Food Stamp application because she did not comply with the Division’s requests for information.

Because this case involves the Claimant having applied for benefits, she seeks to change the status quo. Accordingly, she has the burden of proof in this case 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 Division requested three items of information from the Claimant with a deadline of February 10, 2010:

- 1) Proof of ending income for [her husband]. An employment statement will be mailed to you separate from this letter. Your employer may use this form to provide this information.
- 2) Proof of [her husband’s] January 2010 gross wages.
- 3) Proof of ██████’s gross wages for January 2010 from ██████ Hotel. If she is no longer working for them, please have her employer verify her last day of work, date she received her final paycheck and the reason her job ended.

(Ex. 5.0)

It should first be noted that the Division maintains it only received the information for item 2 above, albeit not until March 24, 2010. The Claimant argues, by way of the husband’s testimony and Mr. ██████’s testimony, that the Division was provided the information earlier.

With regard to item 1, the proof of ending income for the husband, nothing in the record shows he had recently lost his job. The January 13, 2010 Food Stamp application shows him as being currently employed, and neither the application nor the Fee Agent interview notes indicate the husband had recently ended his job or anticipated it ending. *See* Finding of Fact 3 above.

With regard to item 3, ██████’s gross wages, nothing in the record shows ██████ was a member of the Claimant’s Food Stamp household. She was not listed on the January 13, 2010 Food Stamp application as a household member. *See* Finding of Fact 2 above. In addition, there is nothing in the record to contradict the husband’s statement that ██████ was not living in the household.

The Food Stamp regulations allow the Division to require verification of household members' income and questionable information. 7 CFR 273.2(f)(1)(i) and (f)(2)(i). However, in this case, there is nothing in the record suggesting that either the husband had lost his job recently or was about to lose his job, or that [REDACTED] was a household member. Under those circumstances, the Division's requested information about the husband's ending income or [REDACTED]'s income was not justified. Even assuming the Division was correct and the Claimant did not provide this information, she cannot be faulted for failing to respond, because the information was not relevant. Accordingly, the Division may not use the failure to provide the information with regard to the husband's employment ending (item 1) or [REDACTED]'s income (item 3) as grounds to deny the Claimant's application.

This leaves item 2 above, the husband's gross wage information for January 2010. This is clearly relevant information, because the husband was part of the Claimant's household. His income was required to determine both eligibility and benefit levels. *See* 7 CFR 273.10. The Division was entitled to request this information. *See* 7 CFR 273.2(f)(1)(i). The due date for the information was February 18, 2010.

The record clearly shows Division was provided the husband's income information for January 2010 on March 24, 2010, when Mr. [REDACTED] faxed the husband's January 15 and January 29, 2010 pay stubs to the Division. *See* Finding of Fact 7 above. The husband and Mr. [REDACTED] both claimed that they had repeatedly provided the information to the Division Eligibility Technician earlier. However, neither the husband nor Mr. [REDACTED] could provide dates. The husband said he had faxed the information to the Eligibility Technician, but that he did not keep copies of the faxes. Mr. [REDACTED] testified that he had emailed the information to the Eligibility Technician and that he had the email information on his computer. When the record was left open for the Claimant to submit proof the husband's income information had been sent to the Division earlier than March 24, 2010, the Claimant submitted one item, the January 26, 2010 email that transmitted the Claimant's January 13, 2010 Food Stamp application. *See* Findings of Fact 8 – 10 above.

The Claimant was given the opportunity to corroborate the husband's and Mr. [REDACTED]'s testimony and demonstrate that the husband's income information had been sent to the Division earlier than March 24, 2010. She was unable to, instead showing only that her January 13, 2010 Food Stamp application was emailed on January 26, 2010. The Claimant has not met her evidentiary burden and the Division is deemed more credible on this disputed point; it is therefore found the Claimant did not provide her husband's January 2010 income information to the Division until March 24, 2010.

Because the Claimant had the ability to provide the husband's income information and chose not to do so until March 24, 2010, this was a "refusal" to provide information, rather than a mere failure to provide information. *See* 7 CFR 273.2(d)(1). The Division was therefore correct when it initially denied the Claimant's January 13, 2010 Food Stamp application on February 26, 2010.

The Division, however, received the husband's January 2010 income information on March 24, 2010. This was within 60 days after it received the January 13, 2010 application, which was emailed to the Division on the morning of January 26, 2010. Pursuant to Food Stamp regulation

7 CFR 273.2(h)(2)(i)(A), if an applicant “takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application.” The Division should therefore have reopened the Claimant’s Food Stamp case and redetermined her household’s eligibility.

The Claimant had the burden of proof to establish that she complied with the Division’s valid request for her husband’s January 2010 income information. She did not meet it. As a result, the Division was initially correct to deny the Claimant’s Food Stamp application. However, because the husband’s January 2010 income information was provided on March 24, 2010, within 60 days of the date (January 26, 2010) the Division received the Claimant’s January 13, 2010 Food Stamp application, the Division was required to reopen the Claimant’s Food Stamp case and redetermine her household’s eligibility.

### **CONCLUSIONS OF LAW**

1. The Claimant was not required to provide the Division with information about her husband’s job ending because there was no information in the record showing that the husband’s job had ended; instead, the record showed the husband was currently employed.
2. The Claimant was not required to provide the Division with information about [REDACTED]’s employment income because [REDACTED] was not a household member.
3. The Claimant was required to and refused to provide the Division with proof of the husband’s January 2010 income by the February 18, 2010 deadline. As a result, the Division was correct to deny the Claimant’s January 13, 2010 Food Stamp application.
4. The Claimant, however, did provide the Division with proof of her husband’s January 2010 income on March 24, 2010. Pursuant to Food Stamp regulation 7 CFR 273.2(h)(2)(i)(A), the Division was required to “reopen the case without requiring a new application.” The Division should therefore have reopened the Claimant’s Food Stamp case and redetermined her household’s eligibility.

### **DECISION**

The Division was correct when it initially denied the Claimant’s January 13, 2010 Food Stamp application. However, it was not correct when it did not reopen her case and redetermine eligibility on March 24, 2010, the date the Claimant provided it with her husband’s January 2010 income information.

### **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 30th day of June 2010.

/Signed/  
Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 30th day of June 2010, true and correct copies of the foregoing were sent to:  
Claimant by Certified Mail, Return Receipt Requested

and to other listed persons by e-mail:

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

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