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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-134
)
 Claimant.) D.P.A. Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Food Stamp benefits on or about April 7, 2010. (Exs. 2.0 - 2.10) On April 26, 2010, the State of Alaska Division of Public Assistance (Division) determined Claimant's gross monthly household income exceeded the amount allowed for eligibility for Food Stamps and denied Claimant's application. (Ex. 3.0) On April 27, 2010, the Division notified Claimant of its denial. (Ex. 4) On May 5, 2010, Claimant requested a fair hearing. (Ex. 5.1)

A hearing was held on May 27, 2010 before Hearing Authority Patricia Huna.¹¹ Claimant appeared telephonically, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst representing the Division, attended in person and testified on behalf of the Division (Division's Hearing Representative). This office has jurisdiction pursuant to regulation 7 AAC 49.010.

ISSUE

Was the Division correct to deny Claimant's April 7, 2010 application for Food Stamp benefits because the household's gross income exceeded the Food Stamp Program's gross income limit

¹ Following the completion of the hearing, this case was reassigned to Hearing Officer Claire Steffens to prepare and issue this decision. Ms. Steffens reviewed the entire record, including the electronic recording of the hearing and the case file, prior to the issuance of this decision.

for her household size because the Division did not include Claimant's minor child as a member of the household?

FINDINGS OF FACT

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

1. The Claimant completed and signed an application for Food Stamp benefits on April 7, 2010. (Exs. 2.0 - 2.10) This application was received by the Division on April 8, 2010. (Ex. 2.0; Ex. 2.1) Claimant applied as a household of three-persons, consisting of herself, her husband, and her minor child. (Ex. 2.2) The Division conducted Claimant's eligibility interview on April 26, 2010. (Ex. 3.0; Hearing Representative's testimony) As part of her application, Claimant signed a "STATEMENT OF TRUTH" certifying the information in her application was true and correct to the best of her knowledge. (Ex. 2.8)

2. To determine eligibility for Food Stamp benefits, the Division calculated the household's gross monthly income as \$2,270.14, which included Claimant's part-time employment income, her husband's unemployment insurance benefits, and no other income, for the period March 14, 2010 through April 18, 2010.² (Ex. 3.0; Exs. 3.5-3.9) Claimant agreed this calculation of gross household income was accurate. (Claimant's testimony)

3. On April 26, 2010, the Eligibility Technician determined Claimant's household consisted of two persons because it learned Claimant's minor child was issued Food Stamps at another household. (Ex. 3.0; Ex. 3.1; Ex. 3.2) Also on April 26, 2010, the Division determined it was too late to stop the issuance of May 2010 Food Stamp benefits to the child. (Ex. 3.0)

4. The minor child was a member of Claimant's household on April 7, 2010 based on the following facts:

a. During the April 26, 2010 eligibility interview, Claimant reported her child had returned to live in her home approximately mid-March 2010. (Ex. 3.0) During a conference on May 5, 2010, Claimant confirmed to the Eligibility Technician that her child returned home on March 21, 2010. (Ex. 5.0)

b. During the hearing, Claimant's credible testimony supported her statement to the Eligibility Technician that her daughter resumed living with her on or about March 21st, 2010: Claimant knew the date by connecting the child's return to other events. Claimant also credibly testified concerning the history of her child's residence locations. (Claimant's testimony)

c. At the hearing, the Division's evidence (on which it relied in determining the child had dwelled in another household until April 22, 2010) was of lesser evidentiary value than Claimant's sworn testimony because it consisted exclusively of the Eligibility Technician's case note, which memorialized the

² The Division averaged the spouse's unemployment insurance benefits. (Ex. 3.0)

statement of a member in the child's former household. The Eligibility Technician wrote that the child left four days (i.e., April 22, 2010) before the Eligibility Technician called to discuss the matter on April 26, 2010 and did not verify this statement. (Ex. 3.3) The Division did not offer the testimony of that household member as a witness subject to cross-examination. The Eligibility Technician's case note is hearsay and is accorded far less evidentiary weight than Claimant's live testimony.

5. The Division applied the household's income of \$2,270 to the Food Stamp Program's gross monthly income limit for a household of two persons, i.e., \$1,973, to determine Claimant's eligibility for benefits. (Ex. 3.0; Ex. 10.0; Division's Hearing Representative's testimony) The Division denied Claimant's application because household income exceeded the eligibility income limits for a two person household. (Ex. 4)

6. On April 27, 2010, the Division notified Claimant it had denied her application for Food Stamps because her household's gross monthly income exceeded the Food Stamp Program's gross income limit for eligibility for two persons. (Ex. 4.0) That notice specifically informed the Claimant that her household was counted as "a 2-person household due to [the child] receiving Food Stamps in another household." *Id.*

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof.³ In this case, the Claimant has the burden of proof because she is attempting to change the existing status quo by applying for benefits.

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.⁴ Therefore, "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.⁵

³ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴ *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

⁵ *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

II. The Food Stamp Program.

Administration of the federal Food Stamp Program has been delegated to the states.⁶ Federal Regulation 7 CFR Section 271.4. The Department of Health and Social Services administers the Food Stamp program in Alaska, and has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC 46.010 - 7 AAC 46.990.

With regard to household composition, regulation 7 CFR § 273.1(b)(1) requires a person under 22 years of age who is living with his or her natural parent to be included in the parent's household.

The Division is prohibited from issuing Food Stamp benefits for the same period to the same person more than once and must ensure duplicate participation does not occur. 7 CFR § 273.3(a) and (b); 7 CFR § 272.4(e).

With regard to income eligibility standards, 7 CFR § 273.9(a) provides, in relevant part:

Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program.” [Emphasis added.]

Regulation 7 CFR § 273.9(a) also requires the use of net and gross income eligibility standards as provided in 42 U.S.C. 9902(2) and based on the Federal income poverty levels. These standards have been adopted by Alaska and are set out in the Alaska Food Stamp Manual, Addendum 4 (version effective October 1, 2009 through September 30, 2010) implements 7 C.F.R. § 273.9(a). The standard Food Stamp Program gross income limits effective in April 2010 for a household of two (2) is \$1,973 and for a household of three (3) is \$2,480. (See, Ex. 10.0)

Portions of federal regulation 7 CFR § 273.2 govern the processing of an application for Food Stamp benefits. The Division is given 30 days to process an application. 7 CFR § 273.2(g) If a household is found not eligible for benefits for the month of the application, and if there is an anticipated change in circumstances, the Division also is required to determine eligibility for the month following the month of the application. 7 CFR § 273.10(a)(3).

Before an agency can take an action denying, suspending, reducing, or terminating assistance, it must give written notice to the client at least 10 days before the date the Division intends to take action, except in certain situations not applicable to this case. 7 AAC 49.060.

⁶ The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 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 CFR Sections 271-274.

ANALYSIS

The issue is whether the Division was correct to omit Claimant's child from Claimant's household on April 7, 2010 and thereby cause the Division to determine eligibility for a two-person household rather than a three person household.

I. Burden of Proof and Standard of Proof.

Because the Claimant is attempting to change the existing status quo by obtaining benefits, the Claimant must prove, by a preponderance of the evidence, that the Division's decision denying the Claimant's application for benefits was incorrect.

II. The Arguments of the Parties.

The Division's calculation of Claimant's household income and the total monthly income attributed to the household was not disputed by the parties. The Division's denial of Claimant's application turns on whether the Division should have applied the Food Stamp program gross monthly income limit for a three person household rather than a two person household.

It is undisputed that the Claimant's household gross monthly income exceeds the Food Stamp Program's gross monthly income limit for a 2-person household. It is also undisputed that the Claimant's household's gross monthly income is within the Food Stamp Program's gross monthly income limit for a three-person household.

Claimant's household consists of herself and her husband and her minor child, i.e., it is a three-person household. However, the parties disagree whether the Claimant's minor child was a member of the household for purposes of Food Stamp eligibility at the time Claimant applied for services on April 7, 2010.

Claimant asserts the child returned to her household on March 21, 2010. The Division asserts the child became a member of Claimant's household on April 22, 2010.

In asserting the child returned to Claimant's household on April 22, 2010, the Division's Hearing Representative relied on the case note written by an Eligibility Technician who talked with a member of the child's former household on April 26, 2010. That case note memorializes the other household's member's statement that the child left his household on April 22, 2010, four days prior to the Eligibility Technician's telephone call.

The Eligibility Technician also learned the child received Food Stamp benefits for April 2010 as a member of the other household and concluded the child could not be counted as a member of Claimant's household for the month of April 2010 because the child already had received benefits in another household for that month.

The Division argued:

1. At the time of the April application, the child had already received benefits in another household for the month of April 2010, so she could not receive duplicate benefits in the Claimant's household.
2. Because the Division verified the child was part of the Claimant's household during the interview conducted on April 26, 2010, (within the Division's 30-day timeframe to process benefits), it was too late to cancel the child's receipt of benefits in the other household for May, 2010. The child could not be included in the Claimant's household for May 2010 because the child could not receive duplicate Food Stamp benefits.

The Claimant argues the Division should have determined eligibility based on a three-person household because the child was living in her household as of mid-March 2010.

III. Should the Division have included Claimant's Minor Child as a Member of the Household?

Claimant informed the Division on April 7, 2010 that her household consisted of three-persons, one of whom is her minor child. On April 26, 2010, the Division conducted an eligibility interview with Claimant and learned the child had moved into Claimant's household in mid-March 2010. However, also on April 26th, the Eligibility Technician obtained conflicting information that Claimant's minor child had been residing in another household until April 22, 2010. The Eligibility Technician also determined the child had been paid Food Stamp benefits as a resident of that other household.

Federal regulation 7 CFR § 273.1(b)(1) requires a person under 22 years of age who is living with his or her natural parent to be included in the household.

Therefore, it is first necessary to determine if the child was residing with the Claimant beginning April 7, 2010. Under the facts of this case, whether or not the child was a member of Claimant's household rests on a determination of the weight and credibility of the evidence concerning the child's residency on April 7, 2010.

IV. Weight and Credibility of the Evidence Concerning the Child's Residence on April 7, 2010.

Claimant's testimony at the fair hearing was credible and subject to cross-examination. The Division's contravening evidence consisted of a case note containing hearsay in the form of a person's unsworn, unverified statement to the Eligibility Technician.

When evaluating the weight of the evidence, it is clear Claimant's testimony meets the preponderance of the evidence standard of proof. Claimant's testimony corroborated her April 7, 2010 application information and her statement at the eligibility interview that her child moved into her household in mid-March. Claimant corroborated the date of her child's return with other events at the household. Also, Claimant signed the Statement of Truth at the end of her application certifying, under penalty of perjury, that her inclusion of her child in her household composition was truthful and correct. Claimant's testimony at the hearing was credible.

Claimant met her burden of proving by a preponderance of the evidence that the Division erred in determining Claimant's minor child was not a member of Claimant's household on April 7, 2010. This means Claimant's household consisted of three-persons, not two. As a result, the Claimant's household was within the Food Stamp Program's gross income limit for a three-person household.

V. Claimant's Child was Not Countable for Food Stamp Benefits.

The next step in the analysis is to determine whether the Division was correct to deny the Claimant's April 7, 2010 application, even though the child was residing with the Claimant. Because the Food Stamp Program requires the Division to consider both the month of the application (April 2010) and the following month (May 2010), this discussion will address each month separately. *See*, 7 CFR § 273.10(a)(3).

A. April 2010 Benefit Month

The Division had notice the child was a member of Claimant's household as of April 8, 2010, when it received Claimant's application for benefits as a three person household. However, Claimant's application was made in April after benefits already had been paid for April to the child's former household. Because the child could not receive Food Stamp benefits in two households simultaneously, she could not also receive Food Stamp benefits for April 2010 as part of the Claimant's household. This meant that even though the child was residing with the Claimant, she was not properly countable as part of the Claimant's household. As a result, the Claimant's household, for Food Stamp calculation purposes for the month of April 2010, was only two persons. As noted above, the Claimant's gross monthly income exceeded the Food Stamp Program's gross monthly income limit for 2 persons. Therefore, Claimant's household is not entitled to Food Stamp benefits for April 2010.

B. May 2010 Benefit Month

The Division learned the child had joined Claimant's household on March 21, 2010 when it conducted an eligibility interview with Claimant on April 26, 2010. Also on April 26, 2010, the Division learned the child's prior household had received benefits for April and May 2010.

The Division is required to process an application for Food Stamp benefits within 30 days of its receipt of the application. 7 CFR §273.3(g). The Division was within its 30 day period when it processed Claimant's application on April 26, 2010 and when it notified Claimant of its denial on April 27, 2010.

However, in order to stop the child's receipt of Food stamp benefits in her prior residence, the Division was required to provide that prior household with notice 10 days before modifying its Food Stamp benefits. 7 AAC 49.060. In this case, with the 10-day notice requirement and given that there are fewer than 10 days between April 26, 2010 and May 1, 2010, the Division could not have given notice to the child's former household in time to modify its May 2010 Food Stamp benefits. This meant that the child, for purposes of this case, was effectively issued

Food Stamp benefits as part of her former household for the month of May 2010, regardless of the fact she no longer resided there.

Because the child could not receive Food Stamp benefits in two households simultaneously, she could not also receive Food Stamp benefits for May 2010 as part of the Claimant's household. This meant that even though the child was residing with the Claimant, she was not properly countable as part of the Claimant's household. As a result, the Claimant's household, for Food Stamp calculation purposes for the month of May 2010, was only two persons. As noted above, Claimant's gross monthly income exceeded the Food Stamp Program's gross monthly income limit for 2 persons. Therefore, Claimant's household is not entitled to Food Stamp benefits for May 2010.

Consequently, the Division correctly determined Claimant's household was not eligible to receive Food Stamp benefits for the child for the months of April and May 2010.

CONCLUSIONS OF LAW

1. The Claimant proved by a preponderance of the evidence that on April 7, 2010, at the time of application for Food Stamp benefits, the Claimant's minor child resided with her, which meant the Claimant had a household of three persons.
2. However, because the Claimant's child had already been issued Food Stamp benefits for the month of April 2010 in her former household, given the prohibition against issuing duplicate benefits, the Division was correct to deny the Claimant's application for Food Stamp benefits for the month of April 2010.
3. Even though the Division timely processed the Claimant's application, it was not able to modify the child's former household's benefits before it was issued Food Stamp benefits for the month of May 2010. As a result, given the prohibition against issuing duplicate benefits, the Division was correct to deny the Claimant's application for Food Stamp benefits for the month of May, 2010.

DECISION

The Division was correct to deny the Claimant's April 7, 2010 Food Stamp 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, 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

