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

In the Matter of)
)
 [REDACTED])
)
)
)
 Claimant.) OHA Case No. 10-FH-139
) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) filed a recertification application for Food Stamp benefits on March 2, 2010. (Ex. 2) On May 3, 2010, the Division of Public Assistance (Division) approved the renewal of Food Stamp benefits for a household size of nine. (Ex. 9.1) Claimant requested a Fair Hearing on May 3, 2010 claiming her household consisted of seven members, not nine. (Ex. 9.30)

This Office has jurisdiction under authority of 7 AAC 49.010 and Alaska Statute 47.25.980.

Claimant's Fair Hearing was held on June 9, 2010. Claimant appeared telephonically and testified on her own behalf.¹ The Division was represented by [REDACTED] Fair Hearing Representative, who appeared in person and testified on behalf of the Division. [REDACTED] and [REDACTED] appeared telephonically and testified on behalf of the Claimant. [REDACTED] and [REDACTED] both Fraud Investigators with the Division, appeared telephonically and testified on behalf of the Division.

¹ Claimant testified through the interpreter service Insync Interpreters. Interpreter [REDACTED] initially participated, but when the phone connection was lost, [REDACTED], from the same service, replaced her.

ISSUE

Was the Division correct to include Claimant's daughter [REDACTED] and Claimant's ex-husband [REDACTED] as members of Claimant's household when processing Claimant's March 2, 2010 Food Stamp benefits recertification application?

FINDINGS OF FACT

The following facts have been proven by a preponderance of the evidence:

1. Claimant was receiving Food Stamp benefits when she filed an Eligibility Review Form on March 2, 2010.² (Ex. 2.0). As Claimant does not speak English, her daughter [REDACTED] completed the form. (Ex. 2.3, testimony of Claimant) The Form listed the household members as Claimant and her seven children, including her daughter [REDACTED] who is 19 years old. (Ex. 2.0) [REDACTED] is also known as [REDACTED]. (Ex. 3)
2. On April 5, 2010, Claimant participated in an interview with Division personnel. (Ex. 3) Claimant's son [REDACTED] translated for Claimant. During the interview, daughter [REDACTED] bank account balance, schooling, and employment were discussed. (Id.) Division personnel told Claimant she needed to submit [REDACTED] paystubs. (Id.)
3. On April 6, 2010, the Division sent Claimant notice her recertification application for Food Stamp benefits was pended until Claimant submitted [REDACTED] last three paystubs. (Ex. 4)
4. On April 14, 2010, Claimant met with Division personnel and reported her daughter [REDACTED] move from her home. Claimant could not identify the move date. (Ex. 5)
5. On April 15, 2010, Claimant again met with Division personnel. The following Division case note reflects what occurred at the meeting:

[REDACTED] came into office today and turned in roc stating [REDACTED] had moved out of the hh. Explained to client we would still need verification from [REDACTED] current ll to confirm this, and explained all other verification required. [REDACTED] then claimed [REDACTED] moved out of h on 3/1/10 and was not able to get income verification from her. Explained to [REDACTED] we would need this information to process case. After explaining this to [REDACTED] several times she pulled income verification out of her purse and gave it to me.

(Ex. 6)

² The Claimant signed the Form on March 3, 2010.

6. On April 15, 2010, the Division sent Claimant a request for information. (Ex. 7.0). The information requested was primarily regarding [REDACTED] move and income. (Id.)

7. On April 19, 2010, Claimant and [REDACTED] met with Division personnel. (Ex. 7.1). [REDACTED] stated she was living elsewhere and provided the name of her roommate. (Ex. 7.1) Claimant also provided a written statement from the roommate stating [REDACTED] moved in on March 1, 2010. (Ex. 8)

8. On April 20, 2010, at 8:00 a.m., a Division Fraud Investigator visited Claimant's home. The Investigator testified [REDACTED] answered the door wearing pajamas. (Testimony of [REDACTED]) [REDACTED] told the Investigator she had not yet moved, but would provide an address of where she was living when she did move. (Id.)

9. Claimant also testified regarding the April 20, 2010 visit. The Claimant testified [REDACTED] was not wearing pajamas. Claimant stated the night before was very cold and she had called [REDACTED] and asked her to take the younger children to school. (Testimony of Claimant) Claimant earlier had stated in an interview with Division personnel that [REDACTED] comes to the home every morning to pick up the children. (Ex. 9.30 – 9.31)

10. During the April 20, 2010 visit, the Investigator also found [REDACTED] hiding under blankets on a couch or small bed in the living room. (Id.) [REDACTED] was identified as the Claimant's ex-husband. The Claimant told the Investigator [REDACTED] did not reside in her household. (Id.)

11. On May 3, 2010, the Division included [REDACTED] as a member of the household. (Ex. 9.1)

12. On May 26, 2010, a Division Fraud Investigator visited the trailer across the street from Claimant's household. [REDACTED] answered the door and stated that [REDACTED] lived with him but was currently not home. (Testimony of [REDACTED])

13. [REDACTED] Claimant's daughter, testified that [REDACTED] lives with her, [REDACTED] and other members across the street from Claimant's household. (Testimony of [REDACTED]) This testimony was corroborated by Division documents submitted after the hearing which stated [REDACTED] is receiving Food Stamp benefits as part of [REDACTED]'s household.

14. Claimant testified that the March 2, 2010 Eligibility Review Form lists [REDACTED] as a household member was because her child, who filled out the form, did not know [REDACTED] had moved. Claimant further testified that when she went into the Division office for interviews, her interpreter also did not know [REDACTED] had moved, and therefore, identified her as part of the household.

PRINCIPLES OF LAW

Ordinarily the party seeking a change in the status quo has the burden of proof. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

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. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

“Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 493 (Alaska 2003).

Therefore, the “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.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC §§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 Code of Federal Regulations (CFR) §§271-274.

Administration of the Food Stamp Program has been delegated to the states. 7 CFR §271.4. There are specific procedures for administering the Program in Alaska. 7 CFR §272.7. The Department of Health and Social Services administers the Food Stamp program in Alaska. AS 47.25.975-AS 47.25.990. The Department’s regulations, 7 AAC 46.010 - 7 AAC 46.990, adopt the federal regulations (with certain minor variations as allowed by federal law). Thus, the State applies federal regulations, 7 CFR §271 et. seq., in the administration of the Food Stamp Program.

When looking at a group of individuals, the federal regulations consider a household “a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.” 7 CFR § 273.1(a)(3).

ANALYSIS

The issue in this case is whether the Division was correct to include Claimant’s daughter [REDACTED] and Claimant’s ex-husband [REDACTED] as members of Claimant’s household when processing Claimant’s March 2, 2010 Food Stamp benefits recertification application.

This case involves Claimant's Application to be recertified as eligible for continued Food Stamp benefits. Pursuant to Food Stamp regulations, each recertification application requires a new and independent eligibility determination. *Banks v. Block*, 700 F.2d 292,296-97 (6th Cir. 1983). Because Claimant is attempting to change the status quo by applying for another period of eligibility for Food Stamp benefits, Claimant bears the burden of proof by a preponderance of the evidence.

Claimant must prove by a preponderance of the evidence that Bee Vang and Maisee Vang did not live with her and purchase and prepare meals together. 7 CFR § 273.1(a)(3)

██████████ is receiving Food Stamp benefits as a member of another household. (Division documentation and Testimony of ██████████) Therefore, he cannot be considered a member of Claimant's household. Claimant has met her burden of proof in demonstrating ██████████ did not live with her and purchase and prepare meals with her.

The membership in the household of ██████████ Claimant's daughter, is less clear. Claimant argues ██████████ moved from the household on March 1, 2010. However, there is substantial evidence to contradict this testimony.

Before the Claimant understood the ramifications of ██████████'s income to the Food Stamp benefits, the Claimant listed ██████████ as a household member. The Claimant listed ██████████ on the March 2, 2010 Eligibility Review Form. (Ex. 2) During the April 5, 2010 interview, it appears Claimant had an extensive conversation with Division personnel regarding ██████████ bank account balance, schooling, and employment. (Ex. 3) It is assumed Claimant would not have participated in this conversation if she did not consider ██████████ a part of the household. It was only sometime after this that Claimant told the Division ██████████ was not a member of the household. This change in position makes Claimant's testimony less credible.

Claimant testified it was the interpreters that she was using which erred in reporting ██████████ as part of the household. The interpreter listed ██████████ as a household member on the March 2, 2010 Eligibility Review Form and another interpreter took part in the April 5, 2010 interview where ██████████ was discussed as a member of the household. (Ex. 2 & 3) However, those interpreters were Claimant's children, and should have been able to recognize independently where ██████████ was living. Their position was that ██████████ was a member of Claimant's household. Since these interpreters did not understand the ramifications of ██████████'s effect on the household, their position is more credible. Furthermore, there were two different interpreters that held the same position, making them more credible than the Claimant.

Claimant's argument that it was the interpreters that were mistaken fails for another reason. During the April 5, 2010 interview, it appears Claimant was engaged in the conversation regarding [REDACTED]'s bank account balance, schooling, and employment. (Ex. 3)

Claimant's inconsistent statements also make her position less credible. On April 14, 2010 she could not identify [REDACTED]'s moving date. (Ex. 4) On April 15, 2010 she would not produce [REDACTED]'s pay stubs until after she was told her application would not be processed. (Ex. 5)

Finally, Division investigator testimony proves Claimant's statements are not credible. When an investigator visited Claimant's home on April 20, 2010, they discovered [REDACTED] in her pajamas. At that time [REDACTED] told the investigator she was living in the household. (Testimony of [REDACTED]) She also told the investigator she had not yet moved, but would provide an address of where she was living when she did move.

Based on the foregoing, Claimant's testimony lacks credibility. In contrast, the Division has credible evidence indicating [REDACTED] was a member of the household when Claimant submitted the March 2, 2010 Eligibility Review Form. The Claimant has the burden of proof in demonstrating [REDACTED] did not live with her and did not purchase and prepare meals together. Claimant has failed to meet that burden by a preponderance of the evidence.

CONCLUSIONS OF LAW

1. Claimant met her burden by a preponderance of the evidence in proving [REDACTED] was not a member of her household when she submitted her March 2, 2010 Eligibility Review Form.
2. Claimant has failed to meet her burden by a preponderance of the evidence in proving [REDACTED] was not a member of her household when she submitted her March 2, 2010 Eligibility Review Form.

DECISION

1. The Division erred when it included [REDACTED] as a member of Claimant's household during the processing of Claimant's March 2, 2010 Eligibility Review Form.
2. The Division did not err when it included [REDACTED] as a member of Claimant's household during the processing of Claimant's March 2, 2010 Eligibility Review Form.
3. As of the time of Claimant's March 2, 2010 Eligibility Review Form, Claimant's household consists of eight members, with the exclusion of [REDACTED] and the inclusion of [REDACTED]

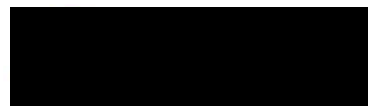
APPEAL RIGHTS

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
P.O. Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the 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 June 29, 2010



Patricia Huna
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 29th day of June 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy set via e-mail to the following:

██████████ Fair Hearing Representative
██████████, DPA Director
██████████, DPA Director's Office
██████████ DPA director's Office
██████████, Chief of Field Services
██████████ Policy & Program Development
██████████ Staff Development & Training

J. Albert Levitre, Jr.
Law Office Assistant I