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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-161
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Alaska Temporary Assistance, Medicaid, and Food Stamp Program benefits (Programs) on March 24, 2010. (Ex. 2) On April 1, 2010, the Division of Public Assistance (Division) notified Claimant his application was denied because his household had resources in excess of the limit allowed to qualify for benefits under the Programs.¹ (Ex. 5)

Claimant signed and submitted a Fair Hearing Request on May 12, 2010, which the Division received the same day. (Ex. 6) This office has jurisdiction pursuant to 7 AAC 49.010. A Fair hearing was set for June 15, 2010 and on June 4, 2010 rescheduled for June 24, 2010.

The Division filed a motion entitled "Petition to Deny Fair Hearing Request" on June 4, 2010, asserting Claimant's fair hearing request was untimely and should be denied as to the Alaska Temporary Assistance and Medicaid Programs. The Division did not Petition for denial of the Fair Hearing as to Claimant's application for Food Stamp benefits because the time limitations are different for that program. On June 22, 2010, this office issued a decision dismissing Claimant's hearing regarding his Alaska Temporary Assistance and Medicaid benefits.

On June 24, 2010 the hearing proceeded on the Claimant's Food Stamp benefits. The Claimant attended the hearing telephonically, testified on his own behalf, and represented himself. The Claimant's wife, [REDACTED], also appeared telephonically and testified on the household's behalf. [REDACTED] Public Assistance Analyst with the Division, attended in person and represented the Division.

¹ His child's eligibility for Denali Kid Care had yet to be determined. (Ex. 5)

At the beginning of the hearing, the Division conceded on the original resource issue, but stated it was denying Claimant's application for Food Stamp benefits because Claimant's household received room and board. Division gave notice to the Claimant regarding this denial only the previous day.

ISSUE

Was the Division correct to deny Claimant's March 24, 2010 application for Food Stamp benefits?

FINDINGS OF FACT

The following facts have been proven by a preponderance of the evidence. These facts only pertain to the Food Stamp issue, as the issues regarding Claimant's Alaska Temporary Assistance and Medicaid benefits have been dismissed.

1. Claimant applied for Food Stamp benefits on March 24, 2010. (Ex. 2)
2. On April 1, 2010, the Division denied Claimant's application because the household's countable resources were over the limit for the program. (Ex. 5)
3. On May 12, 2010, the Claimant filed a fair hearing request. (Ex. 6)
4. On June 21, 2010, the Division sent Claimant its position statement. The Division position statement reiterated the issue set forth in the Division's April 1, 2010 denial notice. Specifically, the position statement stated the Division denied Claimant's Food Stamp benefits as the household had more than \$2,000.00 in the bank accounts.
5. On June 23, 2010, a day prior to the hearing, the Division realized it was in error regarding the excess resource issue. However, the Division determined Claimant was still ineligible for Food Stamp benefits because the household was receiving room and board. On that day the Division sent notice to Claimant regarding this change in issue. (Testimony of ██████████)
6. The Division faxed more information to Claimant regarding this new issue on June 24, 2010, the date of the hearing. At the hearing Claimant agreed to go forward with the new issue, despite receiving information regarding his right to a continuance. (Testimony of ██████████)
7. At the hearing, the Division changed its position regarding its reasoning for the decision. The Division asserted the denial should be based on household composition. The Claimant objected to the Division changing its position.

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.

“Due process requires that benefit recipients be given ‘timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend’ before their benefits are reduced or terminated, in order to afford them protection from ‘agency error and arbitrariness.’” *Allen v. Dept. of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1167 (Alaska 2009) (citation omitted)

7 AAC 49.060 states the Division is required to give written notice to the Claimant at least 10 days before the Division intends to take action denying assistance. 7 AAC 49.080 states: “Unless otherwise specified in applicable federal regulations, written notice to the client must detail the reasons for the proposed adverse action, including the statute regulation, or policy upon which that action is based.”

Federal regulation 7 CFR § 273.10(g)(1)(ii) states if an application is denied, the State agency shall provide the household with written notice explaining the basis for the denial.

ANALYSIS

The issue in this case is whether the Division was correct to deny Claimant’s March 24, 2010 application for Food Stamp benefits.

This case involves Claimant’s application for Food Stamp benefits. 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.

The Division determined the initial justification for denial (excess resources) was not a valid reason for denial. The Division then raised an additional reason for denial of the Claimant’s benefits one day prior to the hearing, and then a second one at hearing. The first additional reason was that Claimant

was receiving room and board. The second one was the household composition. The Division did not include these reasons in the termination notice sent to the Claimant.

“Due process requires that benefit recipients be given ‘timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend’ before their benefits are reduced or terminated, in order to afford them protection from ‘agency error and arbitrariness.’” *Allen v. Dept. of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1167 (Alaska 2009) (citation omitted) State regulations require the Division to send written notice to Claimant detailing the reasons for the denial, including the statute, regulation or policy upon which the action is based. This notice must be sent to Claimant ten days before the Division takes action. 7 AAC 49.060 and 7 AAC 49.070.

Because the Division’s April 1, 2010 denial notice did not inform the Claimant his benefits were being denied due to his room and board and/or household composition, it did not satisfy the standard expressed in *Allen*. At the start of the hearing, Claimant seemed to waive the notice requirement regarding the room and board issue. However, as the hearing progressed he seemed less comfortable with the room and board issue and objected to the introduction of any new issues. Accordingly, the new issues not in the April 1, 2010 notice will not be considered here because Claimant did not receive proper notice.

CONCLUSIONS OF LAW

1. The Division is required to provide ten day advanced notice to the Claimant before denial of a claim, which includes the reason for that denial.
2. The Division did not provide Claimant with adequate notice when it gave additional reasons for denial of his March 24, 2010 application the day before the hearing and at the hearing.

DECISION

The Division was not correct when it denied Claimant’s March 24, 2010 Food Stamp benefit 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

An appeal request must be filed within 15 calendar days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of the Hearing Authority’s decision.

DATED this 30th day of June 2010.



Patricia Huna
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 30th day of June 2010, true and correct copies of the foregoing was sent:

By First Class Mail, Certified, Return Receipt Request to the Claimant

and to the following by electronic mail:

[REDACTED] Division Hearing Representative
[REDACTED] Director
[REDACTED] Director's Office
[REDACTED] Policy & Program Development
[REDACTED] Policy & Program Development
[REDACTED] Staff Development & Training



Al Levitre, Law Office Assistant I