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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-187
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) as a member of a household which included her husband and minor child, received Alaska Temporary Assistance and Food Stamp benefits for the months of April, May, and June of 2010. (Ex. 1) Claimant requested a second set of Alaska Temporary Assistance and Food Stamp benefits for those same months because her husband did not share them with her. (Ex. 8 – 8.2) The Division of Public Assistance (Division) did not provide those benefits. (Ex. 8 – 8.2) The Claimant requested a fair hearing on June 2, 2010. (Ex. 10.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

A hearing began on July 6, 2010, but was continued until July 28, 2010. Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. [REDACTED] attended the hearing telephonically; she assisted in the representation of Claimant and testified on her behalf. [REDACTED] Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

ISSUE

Was the Division correct in not providing Claimant Food Stamp and Temporary Assistance benefits for the months of April, May, and June of 2010 because she already received benefits as a member of the household?

FINDINGS OF FACT

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

1. On April 1, 2010, Claimant and her husband applied for Food Stamp and Temporary Assistance benefits. (Ex. 2) The household also included their minor child. (Ex. 2 – 2.9)
2. On May 13, 2010, the Division approved Food Stamp and Temporary Assistance benefits for the household. (Ex. 4) Benefits were paid to this household for the months of April, May, and June 2010. (Testimony at hearing)
3. On June 2, 2010, Claimant reported to the Division that her husband moved out of the household on May 20, 2010. The Claimant remained and provided care to their minor child. (Ex. 5 and Testimony of Claimant)
4. On June 2, 2010, the Division closed the household's Food Stamp and Temporary Assistance benefits case and a new case was opened for the Claimant. In the new case, the household consists of Claimant and the minor child. (Ex. 5 – 7)
5. Claimant's husband took the household's Quest card¹, spent all the benefits, leaving Claimant and her child with none. (Ex. 8 and Testimony of Claimant)
6. On June 10, 2010, Claimant requested Temporary Assistance and Food Stamp benefits for herself and her child for the months of April, May, and June of 2010. The Division did not provide these benefits stating in a case note: "There is no eligibility for continued benefits since the household received FS already." (Ex. 8 – 8.2)

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. *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). "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, 495 (Alaska 2003).

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 forth in the Code of Federal Regulations (CFR). The Food Stamp regulations state that "[n]o individual may participate as a member of more than one household or in more than one project area, in any month." 7 CFR 273.3

To be eligible for Alaska Temporary Assistance benefits, "a dependent child must be living with a caretaker relative in the home of that caretaker relative." 7 AAC 45.225(a) A "caretaker relative" means an individual who provides the care and control of a dependent child" and must

¹ A Quest card is a card similar to a debit card, in which the Division electronically provides benefits to a public assistance recipient in possession of the card.

be amongst others, a biological relative. 7 AAC 45.990(8) “If a child leaves the home of a caretaker relative during a month, and the child is otherwise eligible, the department may pay benefits for the entire month as long as a payment has not already been made for that child in the same month that child was in the home of another caretaker relative.” 7 AAC 45.225(e)

ANALYSIS

This case presents the issue of whether the Division was correct in not providing Claimant Food Stamp and Temporary Assistance benefits for the months of April, May and June of 2010 because she had already received benefits as a member of a household.

Because this case involves the Claimant’s request for additional 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).

Food Stamps

During the months of April, May, and June of 2010, Claimant was a participant as a member of a household with her husband. (See, Finding of Fact #1) Claimant did not report any change in that household to the Division until June 2, 2010. (See, Finding of Fact # 4) Therefore, the household consisted of Claimant, her husband, and their child until that date. The Food Stamp regulations are clear. The Claimant may not participate as a member of more than one household in any month. 7 CFR 273.3.

Claimant was a participant as a member of a household with her husband in April, May, and June 2010. Therefore, during that time period, Claimant cannot be a Food Stamp program participant as a member in any other household during those same months. 7 CFR 273.3 Accordingly, she cannot receive benefits as a member of any other household during that same time. The Division was correct when it did not provide additional Food Stamp benefits to Claimant for the months of April, May and June 2010.

Temporary Assistance

Claimant was a member of a household with her husband from the time of application in April until the time she reported a change in household on June 2, 2010. (See, Findings of Fact 1-3)

The child did not leave that household during that time. The Division paid Temporary Assistance benefits to that household, with Claimant as a member and the caretaker relative, for the months of April, May, and June 2010. There are no other eligibility criteria for Claimant to receive additional benefits for that time. 7 AAC 45.225(e) Therefore, the Division was correct when it did not provide additional Temporary Assistance benefits to Claimant for the months of April, May and June 2010.

CONCLUSIONS OF LAW

1. Claimant failed to meet her burden of proof by a preponderance of the evidence that she was not a participant as a member of the household with her husband in the months of April, May, and June 2010.
2. Because Claimant was a participant as a member in a household with her husband, she could not receive duplicate Food Stamp benefits as a member of a household with just herself and child for the same period of time, April, May and June 2010. 7 CFR 273.3
3. Therefore, the Division was correct in not providing Claimant Food Stamp benefits for a household that only included herself and her child during the months of April, May and June 2010.
4. Claimant failed to meet her burden of proof by a preponderance of the evidence that she was not a member of a household which was receiving Temporary Assistance benefits during the months of April, May and June 2010.
5. Therefore, the Division was correct in not providing Claimant additional Temporary Assistance benefits for a household that only included herself and her child during the months of April, May and June 2010.

DECISION

The Division was correct in not providing Claimant Food Stamp and Temporary Assistance benefits for the months of April, May, and June of 2010 for a household that included only herself and her minor child.

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.



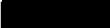



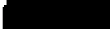
DATED this 29th day of September 2010.



Patricia Huna
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 29th day of September 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


Albert Levitre, Jr.
Law Office Assistant I