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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-413
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Food Stamp recipient in November 2010. (Ex. 1) On November 19, 2010, the Division of Public Assistance (Division) received her application, signed November 11, 2010, to renew her Food Stamp benefits (hereinafter referred to as her November 19, 2010 Food Stamp application). (Exs. 2.0 – 2.3) On December 6, 2010, the Division sent the Claimant written notice it was denying her November 19, 2010 Food Stamp application because she quit her job. (Ex. 4.0) The Claimant requested a fair hearing on December 9, 2010. (Ex. 5.0)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on January 11, 2011. The Claimant attended the hearing in person; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

ISSUE

Was the Division correct to deny the Claimant's November 19, 2010 Food Stamp application, on December 6, 2010, because she quit her job?

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits on November 19, 2010.

2. The Claimant became employed at the [REDACTED] motel (Motel) working as a housekeeper on November 23, 2010. (Ex. 3; Claimant testimony)

3. The Claimant testified as follows:

- a. She worked at the Motel on an on call basis, approximately 3 hours per day. She began work on November 23, 2010.
- b. The Motel has two portions to it, a main portion and an annex. The main portion has security personnel and cameras. The annex is across the street from the main portion. It does not have security personnel or cameras.
- c. The annex is extremely dirty. The rooms in it are filthy, with vomit and other human bodily waste. The Claimant found drug paraphernalia (needles) in the rooms. She also saw a mouse in the rooms.
- d. The annex was not secure. There were homeless people coming in through exit doors that were kept open.
- e. She was sent to clean the annex twice. The first time she went with another housekeeper. The second time, she was sent by herself. She did not feel safe working in the annex by herself. She left the annex to speak to the manager about her working conditions. He was not at the Motel. She then left work and tried to telephone him. She left several telephone messages for him the day she left work. She phoned him again the next day and left a message for him. The manager did not return the telephone calls until the next day (i.e. the second day after she left work), when he telephoned and told her that she had been replaced.
- f. She did not work on Thanksgiving (November 25, 2010) but worked the day before and the day after Thanksgiving. She left the job on December 1, 2010. During the 5 or 6 days she worked at the motel, she was only paid for 15.5 hours. She would have brought in a paystub to show the hours worked, but she only received a standard check for her time, with no taxes taken out from it.

4. The Claimant's demeanor indicated her testimony was credible. In addition, her testimony was internally consistent, and her answers to the questions were direct and not evasive.

5. The Division Eligibility Technician who processed the Claimant's November 19, 2010 Food Stamp application spoke to the manager of the motel on or about December 3, 2010. The Eligibility Technician's December 3, 2010 casenote states that the manager told her the Claimant was hired "to work between 30 and 40 hrs per week" and that the Claimant started work on November 23, 2010 and quit on December 1, 2010. (Ex. 3) The manager also informed the Eligibility Technician the reason the Claimant gave him for quitting was that "she couldn't handle the type of work." *Id.*

6. The Division Eligibility Technician who processed the Claimant's November 19, 2010 Food Stamp application determined that the Claimant did not have good cause for quitting her job at the motel. (Ex. 3) She imposed a 30 day job quit penalty. *Id.*

7. The Division sent the Claimant written notice on December 6, 2010 that her November 19, 2010 Food Stamp application was denied because:

You have been disqualified from the Food Stamp program for 30 days because you quit your job at the [REDACTED] Hotel. Your application has been denied and you may reapply for Food Stamps with a new application after your disqualification period is over.

(Ex. 4.0)

8. The Claimant had a prehearing conference with a Division Eligibility Technician on December 10, 2010. The Division Eligibility Technician's December 10, 2010 casenote indicated that the Claimant told her she was afraid about "working alone at one portion of the hotel, as the door was always left open and there were a lot of transient people around" and that the rooms were "very dirty, beyond normal dirt with human body fluids on the mattresses and in the rooms."

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 out in the Code of Federal Regulations (CFR).

The Food Stamp program has a work requirement. A person receiving or applying for Food Stamp benefits is required to be employed, looking for employment, or training for employment, unless that person is exempt from the work requirement. 7 CFR 273.7(a)(1).

As part of the work requirement, a person may "not voluntarily and without good cause quit a job of 30 or more hours a week." 7 CFR 273.7(a)(1)(vii).

A person who "[v]oluntarily and without good cause quits a job of 30 hours a week or more" within the 60 day time period immediately before her Food Stamp application "or at any time thereafter" is subject to a penalty. 7 CFR 273.7(j)(2) and (j)(2)(i); *Alaska Food Stamp Manual* §602-1I(2)(a). The penalty for the first violation of the work requirement disqualifies a person from receiving Food Stamp benefits for one month. 7 CFR 273.7(f)(2)(i)(B); *Alaska Food Stamp Manual* §602-1I(2)(c).

The State Agency is responsible for determining whether "good cause" exists for quitting a job. 7 CFR 273.7(i)(1). "Good cause" for quitting a job includes:

Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule.

7 CFR 273.7(i)(3)(ii).

Because of the manner in which the Food Stamp program is administered, each recertification application for Food Stamp benefits involves a new and independent eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

Hearsay evidence is defined in the Alaska Evidence Rules as:

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Alaska Evidence Rule 801(c).

The general rule is that credible testimony has greater evidentiary weight than hearsay evidence. “When resolving a conflict between first-hand testimony and the hearsay evidence, the majority rule is that the first-hand testimony will prevail.” *McNeil NJC Deskbook on Evidence for Administrative Law Judges* at 29 (National Judicial College, 2005)

ANALYSIS

The issue in this case is whether Division was correct to deny the Claimant’s November 19, 2010 Food Stamp application because she quit her job on December 1, 2010.

Because this case involves the denial of an application for Food Stamp benefits, the Claimant has the burden of proof by a preponderance of the evidence.¹

The only undisputed facts in this case are that the Claimant began working at the Motel on November 23, 2011 and walked off the job on December 1, 2011. On its face, this appears to be the Claimant quitting a job, shortly after her November 19, 2011 Food Stamp application. This would then require the Division to impose a job quit penalty, pursuant to federal regulations 7 CFR 273.7(j)(2), (j)(2)(i) and 7 CFR 273.7(f)(2)(i)(B), disqualifying the Claimant from receiving Food Stamp benefits for a one month period.

The Claimant’s testimony, however, presented two factual defenses to the imposition of the one month job quit penalty. The first defense is that her working conditions were unsafe. The second defense was that she was working less than 30 hours per week. Each of these is discussed below.

¹ Because of the manner in which the Food Stamp program is administered, each recertification application for Food Stamp benefits involves a new and independent eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

1. Unsafe Working Conditions.

The Claimant's testimony presented a picture of an unsafe working site. She was scared to work alone in the annex, which was physically separate from the remainder of the Motel for the following reasons: there were no security guards in the annex; there were no security cameras in the annex; there was uncontrolled access to the annex; the rooms were filthy with human waste; and there was drug paraphernalia present. *See* Finding of Fact 3(b) – (d) above.

The Claimant's testimony was not contradicted. In addition, she was a credible witness. Further, her hearing testimony was consistent with the statements she made to a Division Eligibility Technician on December 10, 2011. *See* Finding of Fact 8 above. Her testimony therefore established she was subject to unreasonable working conditions, specifically being required to work alone in an unsafe and hazardous work environment.

The Claimant being required to work alone in an unsafe and hazardous work environment falls within the federal regulatory definition of "good cause" for quitting her job at the Motel because it was a "[w]ork . . . condition[s] that render[ed] continued employment unreasonable." *See* 7 CFR 273.7(i)(3)(ii). The Claimant therefore met her burden of proof by a preponderance of the evidence and proved that she had good cause for quitting her job at the motel. As a result, the Division was not correct when it imposed a job quit penalty against the Claimant and denied her November 19, 2010 Food Stamp application on December 6, 2010.

2. Work Hours Per Week.

The Claimant testified that she worked for the Motel on an on call basis for approximately 3 hours per day. She testified that during the time period from November 23, 2010 through December 1, 2010, i.e. a total period of 8 days – which contained the Thanksgiving holiday, she was only paid for working a total of 15.5 hours. *See* Finding of Fact 3(e) above.

The Motel manager told a Division Eligibility Technician that the Claimant was hired to work for 30 to 40 hours per week. *See* Finding of Fact 5 above. The Motel manager did not testify at hearing. His statements to the Division Eligibility Technician (who also did not testify) were therefore hearsay. *See* Alaska Evidence Rule 801(c).

The Claimant testified at hearing and was a credible witness. *See* Finding of Fact 4 above. Her testimony was not hearsay. The general rule is that credible testimony has greater evidentiary weight than hearsay evidence. "When resolving a conflict between first-hand testimony and the hearsay evidence, the majority rule is that the first-hand testimony will prevail." *McNeil NJC Deskbook on Evidence for Administrative Law Judges* at 29 (National Judicial College, 2005)

The Claimant's credible testimony she only worked on call for approximately 3 hours per day is therefore accepted as more probable than the Motel manager's hearsay statements made to the Eligibility Technician. The Claimant, who had the burden of proof in this case by a preponderance of the evidence, met it and established that she worked for less than 30 hours per week at the Motel.

In order for the Division to impose a Food Stamp job quit penalty against the Claimant, she would have had to quit a job that employed her for “30 hours a week or more”. 7 CFR 273.7(j)(2)(i). Because the Claimant, as shown above, quit a job of less than 30 hours per week, she was not subject to a penalty for quitting that job. As a result, the Division was not correct when it imposed a job quit penalty against the Claimant and denied her November 19, 2010 Food Stamp application on December 6, 2010.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof by a preponderance of the evidence. She satisfied her burden of proof and established the following:
 - a. She was subject to unreasonable working conditions, specifically unsafe and hazardous working conditions, at the Motel, when she quit that job on December 1, 2010; and
 - b. She was working for less than 30 hours per week at the Motel when she quit that job on December 1, 2010.
2. Because the Claimant was subjected to unreasonable working conditions at the Motel, pursuant to 7 CFR 273.7(i)(3)(ii), she had good cause for quitting her job at the Motel.
3. Because the Claimant quit a job of less than 30 hours per week at the Motel, the job quit penalty contained in 7 CFR 273.7(j)(2)(i) did not apply to her.
4. As a result, the Division was not correct when it imposed a job quit penalty against the Claimant and denied her November 19, 2010 Food Stamp application on December 6, 2010.

DECISION

The Division was not correct when it imposed a job quit penalty against the Claimant and denied her November 19, 2010 Food Stamp application on December 6, 2010.

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 2nd day of February 2011

/Signed/

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 2nd day of February 2011, 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:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

J. Albert Levitre, Jr.
Law Office Assistant I