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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. 11-FH-39
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) signed and submitted an Application for Services on January 14, 2011 for receipt of Food Stamp benefits.¹ (Ex. 2.0-2.9) The Division of Public Assistance (Division) received it on January 14, 2011 (Ex. 2.0) and denied Claimant's application on January 17, 2011. (Ex. 3)

The Division notified Claimant of its denial in a written notice issued on January 18, 2011. (Ex. 4) Claimant requested a Fair Hearing on January 26, 2011. (Ex. 5)

This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010, *et. seq.*

The Fair Hearing was held on February 24, 2011. Claimant appeared telephonically, represented herself and testified on her own behalf. Mr. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division.

¹ On October 1, 2008, the Food Stamp Program (FSP) was renamed the Supplemental Nutrition Assistance Program (SNAP). *See*, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The SNAP program is still commonly called the Food Stamp Program and will be referred to as the Food Stamp Program in this decision.

ISSUE

Was the Division correct to deny Claimant's January 14, 2011 application for Food Stamp Program benefits because her residence provides her meals?

FINDINGS OF FACT

1. Claimant, a pregnant woman with gestational diabetes, applied for Food Stamps on January 14, 2011. (Ex. 2.0-2.9)
2. On January 17, 2011, Claimant participated in an eligibility interview during which she explained that she was living at [REDACTED] ([REDACTED]) where meals are provided. (Ex. 3) The Division's Eligibility Technician at that time determined Claimant was not eligible for Food Stamps because her meals were provided. (Ex. 3)
3. On January 18, 2011, Claimant was given written notice she was not eligible for Food Stamps because her meals were provided. (Ex. 4) The Division's denial notice references Alaska Food Stamp Manual Section 605 and states "You are not eligible for Food Stamps as your meals are provided." (Ex. 4)
4. Claimant's evidence during the fair hearing included:
 - a) The [REDACTED] is like a "ministry" and not a boarding facility because the [REDACTED] is not operated for profit and provides housing and food for homeless people and people in need. (Claimant's testimony)
 - b) Adults pay \$150 per month and children pay \$75 per month rent, which includes food if a resident cannot afford to buy his or her own food. However, any resident can cook his or her own food. Breakfast, lunch and dinner are served Sunday through Friday after being prepared by one or more residents for those residents not cooking their own food. On Saturday, residents prepare their meals from left-over foods, if they do not cook their own food. (Claimant's testimony)
 - c) Residents are required to do certain things as a condition of living at the [REDACTED], including attending daily chapel, attending two church services on Sundays, doing some chores, and following the rules. If a resident cannot pay their rent in money, the resident may substitute completing additional chores to set-off the unpaid rent, including cooking for the other residents as one of the chores. Therefore, the quality of food varies by cook and available food stocks. (Claimant's testimony)
 - d) Claimant is seeking Food Stamps because:
 1. The food cooked communally at the [REDACTED] is purchased with limited funds of the Fellowship and they cannot afford to buy the kind of food she needs;

2. She believes the food is inadequate for her because she has gestational diabetes which has required medication and was not controlled simply by diet;

3. She needs fresh fruits, vegetables and proteins that she is not offered or not sufficiently offered at [REDACTED] meals. (Claimant's testimony)

e) During the time she has been living at the [REDACTED], there have been about 35 persons, comprised mainly of families and a few individuals in addition, who were eating at the [REDACTED]. Some persons living at the [REDACTED] were homeless persons or persons living in a tent. (Claimant's testimony)

PRINCIPLES OF LAW

I. Burden of Proof

Applicants for Food Stamp Program benefits must meet the eligibility requirements of the Program for each period they are certified to receive benefits. *Banks v. Block*, 700 F.2d 292, 296-97 (6th Cir. 1983). Therefore, Claimant, as an applicant for Food Stamps, has the burden of proving eligibility for Program benefits.

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

“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) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

Consequently, Claimant has the burden of proving by a preponderance of the evidence that she is eligible to receive Food Stamps in this case.

III. Food Stamp Program

The Food Stamp Program is a federal program administered by the States. 7 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining whether individuals qualify for Food Stamp benefits. *See*, 7 C.F.R. § 271 – 273.

A. The Purpose of the Food Stamp Program, Its Administration

Congress created the Food Stamp Program: “[t]o alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet...” 7 CFR § 271.1(a) (quoting Section 2 of the Food Stamp Act of 1977 in part). The regulation establishing the purpose and scope of the Food Stamp Program, states in part, the Program is to

“promote the general welfare and safeguard the health and well being of the nation’s population by raising the levels of nutrition among low-income households.” 7 CFR § 271.1(a).

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 C.F.R. § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp Program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations in 7 C.F.R. § 271 – 274.

B. Special Household Eligibility Requirements

Regulation 7 C.F.R. § 273.1(b)(3) Boarders.

Regulation 7 C.F.R. § 273.1(b)(3)(i) provides that boarders of a commercial boarding house are not eligible for the Food Stamp Program (Program). This regulation defines a commercial boarding house as “an establishment licensed to offer meals and lodging for compensation... [or, in areas without licensing] a commercial establishment that offers meals and lodging for compensation with the intent of making a profit.” 7 C.F.R. § 273.1(b)(3)(i). If an applicant lives in a commercial boarding house, the applicant may not obtain Food Stamps separately from the household operating the boarding house. 7 C.F.R. § 273.1(b)(3)(ii).

C. Certain Households Not Eligible, with Exceptions

Regulation 7 C.F.R. §273.1(b)(7)(vi) disqualifies “[r]esidents of an institution, with some exceptions” as among those individuals not eligible to participate in the Program. Regulation 7 C.F.R. § 273.1(b)(7)(vi) states:

Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution’s normal services.² Exceptions to this requirement include only the individuals listed in paragraphs (b)(7)(vii)(A) through paragraphs (b)(7)(vii)(E) of this section.³ The individuals listed in paragraphs (b)(7)(vii)(A) through paragraphs (b)(7)(vii)(E) can participate in the Program and must be treated as separate households from the other with whom they reside....

Regulation 7 C.F.R. § 273.1(b)(7)(vi)(E) excepts individuals from being required to be considered residents of an institution, and therefore not eligible for Food Stamps, if they are: “Individuals who are residents of public or private nonprofit shelters for homeless persons.”

² The regulation next states additional exceptions are made for a) residents of federally subsidized housing for the elderly; b) residents at a facility obtaining treatment for narcotics addiction; c) disabled or blind residents of a group living arrangement; women with children temporarily living in a shelter for battered women and children and individuals living in shelters for the homeless.

³ The regulation specifically references subsection (vii). However, subsection (vii) does not contain paragraphs (A) through (E); it contains only one sentence providing individuals convicted of a drug-related felony are not eligible. A reasonable inference is that a typographical or editorial error occurred and the regulation relates to subsection (vi), which does contain paragraphs (A) through (E).

ANALYSIS

I. Issue

The Division denied Claimant's January 14, 2011 application for Food Stamp Program benefits because her meals were provided at her place of residence. However, as explained below, the issue is to be determined is what type of facility, within the parameters of the Food Stamp Program regulations, is the [REDACTED]. Because the evidentiary facts describing the [REDACTED] are undisputed in this case, there remains only the legal issue of applying the undisputed facts to the law.

II. The Burden of Proof

Because Claimant is applying for Food Stamp benefits, she has the burden of proving that she meets the eligibility requirements for the Food Stamp Program. Furthermore, Claimant must meet this burden of proof by the preponderance of the evidence. In this case, Claimant must prove she is not disqualified from receiving Program benefits because of the circumstances of her residence.

III. Undisputed facts

Claimant's description of her residence as a "ministry" was not disputed. The parties agreed that Claimant's residence, [REDACTED], provides three meals a day, seven days a week. Other undisputed facts are that the [REDACTED] is a private, nonprofit, religion oriented facility that charges \$150 monthly rent per adult or the completion of chores, including cooking food for other residents. It is also undisputed the [REDACTED]'s residents are needy persons who cannot afford housing or have been homeless or living in tents.

The Division's Eligibility Technician referenced Alaska Food Stamp Manual 605⁴ and denied Claimant's January 14, 2011 application for Food Stamps because Claimant's residence provides her three meals a day. The Division's hearing representative testified that Claimant was denied Food Stamps based on 7 C.F.R. § 273.1(b)(3), applying to boarders, or based on 7 C.F.R. § 273.1(b)(7)(vi), which provides individuals must be considered residents of an institution if the resident is provided meals as part of the institution's normal services. Thus, the Division alleges Claimant is not eligible because a) regulation 7 C.F.R. § 273.1(b)(7)(vi) precludes her eligibility as a resident of an institution or, alternatively, b) regulation 7 C.F.R. § 273.1(b)(3) precludes her eligibility as a resident of a boarding house.

The dispute is whether Claimant's residence (the [REDACTED]) is an institution (that serves more than 50 percent of 3 meals daily) or a commercial boarding house. If the [REDACTED] is such an institution, (and not subject to an exception), then the fact Claimant gets her meals at the [REDACTED] makes her not eligible for Food Stamps and the Division is correct. If the [REDACTED] is categorized as a commercial boarding house, then Claimant also is not eligible, and the Division is correct. However,

⁴ The Division's position statement and packet of evidence accompanying it provided Claimant with copies of 7 C.F.R. § 273.1(a)-(c) (Exs. 6-6.2) and Alaska Food Stamp Manual excerpt "605-1C. 1. Boarders", and "6. Ineligible Households a. and b." (Exs. 7, 8)

if Claimant proves the [REDACTED] qualifies as an exception to the “institution” category, then the Division was incorrect to deny her application.

A. The [REDACTED] is not a commercial boarding house.

Regulation 7 C.F.R. § 273.1(b)(3)(i) defines a commercial boarding house as “an establishment licensed to offer meals and lodging for compensation. ... [or, in areas without licensing] [a] commercial establishment that offers meals and lodging for compensation with the intent of making a profit.”

The [REDACTED] does collect monetary rent (\$150 per adult) from its residents. However, those residents who do not pay rent in money are not turned out. If one or more residents cannot pay money, they “pay” their rent by doing chores benefitting the [REDACTED]’s facilities and other residents. Clearly, the operating arrangements of the [REDACTED] preclude it from having profit making as its intent. The \$150 per month charged per adult for housing and fully provided meals is not a realistic offset of the costs of providing shelter and food. In addition, the mandatory duties expected of residents (attending daily chapel, attending two Sunday church services, doing chores and following rules) are outside the customary expectations of residents of a commercial boarding house. Therefore, the [REDACTED] is not operated as a profit making venture even though it does receive compensation, either in money or in services.

Therefore, the [REDACTED] is not a commercial boarding house and 7 C.F.R. § 273.1(b)(3) does not apply to make Claimant not eligible for Food Stamps.

B. The [REDACTED] is a private shelter for homeless persons.

Regulation 7 C.F.R. § 273.1(b)(7)(vi) provides that residents of an institution, with certain exceptions, are “not eligible to participate as separate households or as a member of any household.” Regulation 7 C.F.R. § 273.1(b)(7)(vi) states in relevant part:

Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution’s normal services. Exceptions to this requirement include only the individuals listed in paragraphs (b)(7)(vii)(A) through paragraphs (b)(7)(vii)(E) of this section.⁵ The individuals listed in paragraphs (b)(7)(vii)(A) through paragraphs (b)(7)(vii)(E) can participate in the Program and must be treated as separate households from the other with whom they reside....

It is undisputed the [REDACTED] provides its residents with over 50 percent of three meals daily. Therefore, the [REDACTED] is an institution and Claimant necessarily is disqualified from eligibility for Food Stamps as a consequence. However, the [REDACTED] is a private, religion oriented facility, which provides food and shelter to those who otherwise would be homeless.

⁵ The regulation specifically references subsection (vii). However, subsection (vii) does not contain paragraphs (A) through (E); it contains only one sentence providing individuals convicted of a drug-related felony are not eligible. A reasonable inference is that a typographical or editorial error occurred and the regulation relates to subsection (vi), which does contain paragraphs (A) through (E).

In this case, regulation 7 C.F.R. § 273.1(b)(7)(vi)(E) exempts individuals from being classified as residents of an institution if they are: "Individuals who are residents of public or private nonprofit shelters for homeless persons."

Regulation 7 C.F.R. § 273.1(b)(7)(vi)(E) provides an exception to the prohibition from participation in the Food Stamp Program by persons living in institutions. Regulation 7 C.F.R. § 273.1(b)(7)(vi) clearly provides that if an individual is subject to an exception, even though residing in an institution, that individual must be treated as a separate household from the others with whom they reside. Claimant is a resident of the [REDACTED], which is a shelter for homeless persons. Regulation 7 C.F.R. § 273.1(b)(7)(vi)(E), exempting residents of institutions if the institution is a shelter for the homeless, applies to the [REDACTED]. Therefore, Claimant is not disqualified from eligibility for Food Stamps by operation of regulation 7 C.F.R. § 273.1(b)(7)(vi)(E).

The Division was not correct to determine Claimant's residence at the [REDACTED] was a) a commercial boarding house; or b) an institution not excluded from by regulation 7 C.F.R. § 273.1(b)(7)(vi)(E).

CONCLUSIONS OF LAW

1. Claimant met her burden of proving by a preponderance of the evidence that the [REDACTED] is private, nonprofit shelter for homeless persons subject to the exception from classification as an institution provided by regulation 7 C.F.R. § 273.1(b)(7)(vi)(E). Consequently, Claimant is eligible to receive Food Stamps.
2. Claimant met her burden of proving by a preponderance of the evidence that the [REDACTED] is not a commercial boarding house as described by Food Stamp regulation 7 C.F.R. § 273.1(b)(3).
3. The Division was not correct to deny Claimant's January 14, 2011 application for Food Stamps on January 18, 2011 because Claimant's residence provides her meals.

DECISION

The Division erred in denying Claimant's January 14, 2011 application for the Food Stamp Program based on her receipt of three meals a day at the [REDACTED], a private nonprofit shelter for homeless persons.

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 this March 25, 2011

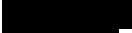
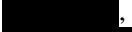
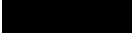
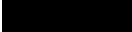
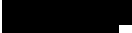

/signed/

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 25th day of March 2011 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.
and to other listed persons (via e-mail), as follows:

, Hearing Representative
, Hearing Representative
, Chief, Policy & Program Dev.
, Administrative Assistant II
, Eligibility Technician I
, Staff Development & Training

/signed/

J. Albert Levitre, Jr., Law Office Assistant I