

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Telephone: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
) OHA Case No. 11-FH-183
)
)
) Division Case No. [REDACTED]
)
)
)
)
)
)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) applied for recertification of her eligibility for Food Stamps¹ and signed the application on March 29, 2011. (Ex. 2.3) The Division of Public Assistance (Division) date stamped Claimant's application as received on March 31, 2011. (Ex. 2.0) On April 21, 2011 the Division notified the Claimant, in writing, that her March 31, 2011 application was approved and informed her that her benefit amount would be \$72.00 beginning in May 2011. (Ex. 4)

Claimant requested a Fair Hearing on April 29, 2011 because she was unhappy about the benefit amount, which was less than the benefit amount she had received in the prior certification period. (Ex. 5.0)

This office has jurisdiction pursuant to 7 AAC 49.010 and 7 AAC 49.020.

The Fair Hearing (hearing) was held June 9, 2011 and continued to June 23, 2011. On both days, Claimant attended the hearing telephonically through her power of attorney and daughter, Ms. [REDACTED]. Ms. [REDACTED] represented Claimant and testified in her behalf.² Ms. [REDACTED], a Public Assistance Analyst with the Division, attended in person, represented the Division and testified on its behalf on both days of the hearing.

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.

² All references to Claimant's testimony refers to the testimony of her power of attorney, Ms. [REDACTED].

ISSUE

Is Claimant entitled to a hardship exception from the Food Stamp rules for the purpose of increasing her Food Stamp benefit from the amount determined by the Division on April 21, 2011?³

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence:

1. Claimant applied to recertify her eligibility for Food Stamps by submitting an application which the Division of Public Assistance (Division) received on March 31, 2011. (Ex. 2.0-2.5) Claimant disclosed her rent amount was \$400, which was a reduction from her prior rent amount of \$450. (Ex. 2.2 and Ex. 5.2; Claimant's testimony) Claimant pays rent to her daughter and power of attorney, Ms. [REDACTED], who lowered Claimant's rent because Claimant needed to spend less and have more money to live on. (Claimant's testimony)
2. On April 20, 2011, the Division processed Claimant's application following a telephone call to Claimant's daughter /power of attorney and learning that Claimant's rent was \$350 and she paid \$50 for gas heat. (Ex. 3.0) The Division determined Claimant was eligible for \$72.00 monthly Food Stamp benefits beginning May 2011 by adding Claimant's income and deducting her rent and utility amounts. (Ex. 3.0)
3. On April 21, 2011, the Division sent Claimant written notice her recertification application had been approved and that she would receive \$72.00 per month Food Stamp benefits beginning May 2011. (Ex. 4)

PRINCIPLES OF LAW

I. Burden of Proof

The 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).

II. Standard of Proof

"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).

III. Applicable Law

The purpose of the Food Stamp Program is to raise the nutrition levels among low-income households to safeguard Americans' health and well being. 7 C.F.R. § 271.1(a). The Food Stamp Program is a federal program whose administration is delegated to state administrative agencies. 7 C.F.R. § 271.4(a). The rules for determining if an applicant is eligible for Food Stamp benefits are in the Code of Federal

³ This statement of the issue was requested at the hearing by Claimant.

Regulations (C.F.R.), which includes other regulations concerning the Food Stamp Program. *See*, 7 C.F.R. § 271 – 273.

The Alaska legislature has enacted statutes implementing the Alaska food stamp program at AS 47.25.975-AS 47.25.990. The Alaska “food stamp program” means the federal Food Stamp Program authorized by 7 U.S.C. 2011-2036. AS 47.25.990(4). The duties of the Alaska Department of Health and Social Services, in regard to the food stamp program, include “comply[ing] with the requirements of 7 U.S.C. 2011-2036 (Food Stamp Program).” AS 47.25.980(a)(3). Therefore, the Alaska Department of Health and Social Services applies the federal regulations and rules for the Food Stamp Program.

In Alaska, the Division of Public Assistance (Division or DPA), a part of the Department of Health and Social Services, administers the state food stamp program. Alaska regulations for the food stamp program are found at 7 AAC 46.010-.990. These regulations provide that the Division of Public Assistance will follow the federal regulations for the Food Stamp Program. 7 AAC 46.010-.990.

The amount of Food Stamps received by a household is calculated based on income and deductions allowed from income. 7 C.F.R. § 273.9(b) & (d).

A. General Legal Principles

“Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P3d 851, 868-869 (Alaska 2010).

Alaska regulation 7 AAC 49.170, which applies to Fair Hearings conducted by the Office of Hearings and Appeals, provides, in relevant part:

Except as otherwise specified in applicable federal regulations...the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.

ANALYSIS

I. Issue

Is there any legal basis for increasing Claimant’s Food Stamp benefit from the amount determined by the Division on April 21, 2011?

II. Burden of Proof and Standard of Proof

As an applicant seeking to recertify eligibility for benefits, Claimant must meet the eligibility requirements for the Food Stamp Program. In this case, Claimant is not asserting the Division erred in awarding her Food Stamp benefits. Instead, Claimant is seeking to increase the benefit amount to which she is entitled as determined by the Division. Therefore, Claimant is seeking to change the status quo. Consequently, Claimant has the burden of proving by a preponderance of the evidence that she is entitled to the increase in benefit amount that she seeks.

III. Facts

There are no disputed facts in this case. Claimant agrees with the Division's calculations of income and deductions it used to determine the amount of Food Stamp benefit she receives. Claimant also does not dispute the outcome of her application for recertification; that is, Claimant does not dispute she is eligible for \$72.00 in monthly benefits. It is not disputed that Claimant has a significant need for Food Stamp benefits. It also is not disputed that Claimant's household's financial resources are limited.

The outcome Claimant is seeking from the Fair Hearing process is to obtain an increase in her Food Stamp benefits, notwithstanding the result the Division reached in applying the Food Stamp rules when calculating her benefits. Claimant seeks this increase in Food Stamp benefits because she has too little money. In other words, Claimant seeks an increase in her benefits based on a hardship exception.

The concept that applicants for Food Stamps have little money or insufficient money to buy food is the foundation of the Food Stamp Program. In fact, the purpose of the Food Stamp Program is provide economic assistance to raise the nutrition levels among low-income households to safeguard Americans' health and well being. 7 C.F.R. § 271.1(a) Therefore, the Food Stamp Program eligibility limits are set in contemplation of the low income of families who apply for benefits and of their financial hardships in obtaining nutritious food. No additional or separate hardship provision exists in the federal Food Stamp regulations by which a Food Stamp recipient can obtain more than is permitted under the Food Stamp regulations.

Alaska regulations 7 AAC 46.010 - .990 provide that the Alaska Division of Public Assistance will follow the federal regulations for the Food Stamp Program. There is no provision in Alaska regulation or statute permitting Alaska to waive the application of Food Stamp law or rules for reasons of hardship. The Division must abide by the applicable law and regulations. "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P3d 851,868-869 (Alaska 2010).

Neither can the Fair Hearing process result in an exception from the consequences of the federal or state Food Stamp laws. The authority of the Office of Hearings and Appeals is limited to the scope of action identified in regulation 7 AAC 49.170 that provides, in relevant part:

Except as otherwise specified in applicable federal regulations...the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.

Therefore, the Office of Hearings and Appeals cannot deviate from its application of the facts to the statues and regulations governing the administration of the Food Stamp program. The Office of Hearings and Appeals has no authority to create exemptions from the requirements of the law for any reason(s).

Claimant did not meet her burden of proof by a preponderance of the evidence that she is entitled to more Food Stamp benefits.

CONCLUSIONS OF LAW

There is no federal or state Food Stamp regulation or statute authorizing the Division to award Claimant greater Food Stamp benefits than the amount due her as calculated by the Division on April 20, 2011. The Office of Hearings and Appeals is not authorized to provide a hardship exception to the Food Stamp Program laws.

DECISION

On April 21, 2011, the Division of Public Assistance was correct when it determined Claimant's March 31, 2011 application for recertification of eligibility for Food Stamp benefits resulted in a benefit amount of \$72.00, beginning May 2011.

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. 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. 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

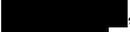
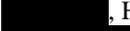
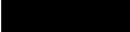
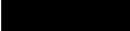
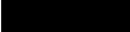
DATED July 5, 2011.

/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on July 5, 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