

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)
)
 [REDACTED],)
)
) OHA Case No. 11-FH-360
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant) completed and signed a Change Report Form, adding two children to her household, on September 14, 2011, which the Division of Public Assistance (Division) received the same day. (Ex. 2.0-2.1) On September 27, 2011, the Division determined Claimant was not eligible to receive Food Stamp benefits for the two additional members of her household until November 2011. (Exs. 4.0-4.2)

Claimant requested a Fair Hearing on September 28, 2011. (Ex. 5.1) This Office has jurisdiction under authority of 7 C.F.R. 273.15; 7 AAC 49.010 and Alaska Statute 47.25.980.

Claimant's Fair Hearing was held on October 27, 2011. Claimant appeared telephonically and testified on her own behalf. The Division was represented by Ms. [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division.

ISSUE

Did the Division improperly deny Claimant Food Stamp benefits for her two sons during October 2011?

FINDINGS OF FACT

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

1. Claimant's household was receiving Food Stamp benefits when Claimant submitted a Change Report Form on September 14, 2011. (Exs. 1; 2.0-2.1) Claimant reported that her two sons had returned to her home on September 13, 2011. (Ex. 2.0) The Division of Public Assistance received the report of change on September 14, 2011. (Ex. 2.0, 2.1)
2. On September 15, 2011, the Division received Claimant's Eligibility Review Form (Application) which she signed on September 15, 2011. (Exs. 3.0-3.5) The Eligibility Technician began processing this Application and Claimant's reported change on Monday, September 26, 2011.¹ (Ex. 4.0; Hearing Representative's testimony)
3. During the processing of the reported change, it was learned that previously, these two sons had been receiving Food Stamp benefits as members of another household. (Hearing Representative's testimony) Claimant's sons had been receiving public assistance benefits at their prior household without Claimant's authorization. (Claimant's testimony)
4. The Eligibility Technician was required to give the sons' prior household a minimum of 10 days notice before making a negative change in its Food Stamp benefit. (Hearing Representative's testimony)
5. On September 27, 2011, Claimant discussed with an Eligibility Technician that "the children could not be added to this case" for the October 2011 benefit period due to the need to provide 10 days notice to the prior household. (Ex. 4.2; Hearing Representative's testimony)
6. On September 28, 2011, Claimant requested a fair hearing because she thought she should receive Food Stamp benefits for the children for the month of October 2011. (Ex. 5.0-5.2)
7. On October 10, 2011, the Division informed Claimant her household was determined to consist of two persons for October 2011 and of four persons for November 2011 and would receive Food Stamp benefits accordingly. (Ex. 6.0; Hearing Representative's testimony)
8. In October 2011, the two children received Food Stamp benefits as members of their former household. (Hearing Representative's testimony) The Division could have paid the sons' Food Stamp benefits as members of Claimant's household in October 2011 if the 10 day notice of adverse action period elapsed no later than September 19, 2011. (Hearing Representative's testimony) The date on which the Division gave the sons' prior household 10 days advance notice of its intent to take adverse action was not submitted for the evidentiary record because it is not part of this case. (Hearing Representative's testimony)

¹ The Division's processing of Claimant's Application for recertification of her eligibility for Food Stamp benefits for her household coincided with its processing of Claimant's reported change. However, the two actions are separate from one another. Only the Division's action concerning the reported change will be addressed in this decision because its action on Claimant's Application has no effect in relation to the reported change.

PRINCIPLES OF LAW

I. Burden of Proof

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

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 in this case 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)).

III. Food Stamp Program

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC §§ 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 Code of Federal Regulations (C.F.R.) §§ 271-274.

Administration of the Food Stamp Program has been delegated to the states. 7 C.F.R. § 271.4. There are specific procedures for administering the Program in Alaska. 7 C.F.R. § 272.7. The Department of Health and Social Services administers the Food Stamp program in Alaska. AS 47.25.975 - AS 47.25.990. The Department’s regulations, 7 AAC 46.010 - 7 AAC 46.990, adopt the federal regulations (with certain minor variations as allowed by federal law). Thus, Alaska applies federal regulations, 7 C.F.R. § 271 et. seq., in its administration of the Food Stamp Program.

The Food Stamp Program allows a person to receive food stamps as a member of only one household each month, as provided by regulation 7 C.F.R. § 273.3(a).

Changes must be reported within 10 days of the date the change becomes known to the household. 7 C.F.R. § 273.12(a)(2). The Division is required to promptly determine if the change affects the household’s eligibility or benefit amount. 7 C.F.R. § 273.12(c). The Division’s Eligibility Technician must make this determination within 10 days of its receipt of the report of change. Alaska *Food Stamp Manual Section* 604-3C, accessed at: <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>.

When a household’s circumstances change and it becomes entitled to a different income eligibility standard, the Division is required to apply the different eligibility standard at the next

recertification or whenever the Division changes the household's eligibility, benefits level or certification period, whichever occurs first. 7 C.F.R. § 273.10(e)(2)(v).

For changes that will result in an increase in a household's benefits due to addition of a "new household member who is not a member of another certified household, ..." the agency is required to make the change effective no later than the first benefit allotment it issues 10 days after the date the change was reported. 7 C.F.R. § 273.12(c)(1)(ii).

For changes that will result in a decrease in a household's benefits or the household becomes ineligible as a result of the change, the Division must issue a notice of adverse action within 10 days of the date the change was reported. 7 C.F.R. § 273.12(d)(2)(i). When a notice of adverse action is used, the decrease in the benefit level is made effective no later than the month following the month in which the notice of adverse action 10 day period has expired, provided a fair hearing and continuation of benefits have not been requested. 7 C.F.R. § 273.12(d)(2)(i).

When a change in benefit amount is due to the addition of a new household member who is a member of another certified household, the agency must give notice of adverse action that it will terminate or reduce the Food Stamp benefits of that other certified household. 7 C.F.R. § 273.13(a). Regulation 7 C.F.R. § 273.13 provides, in relevant part:

(a) Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period ...includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective.

ANALYSIS

I. Issue

Did the Division improperly deny Claimant Food Stamp benefits for her two sons during October 2011?

II. Burden of Proof and Standard of Proof

"[T]he party seeking a change in the status quo has the burden of proof." *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). This case involves Claimant's report of change that she added two new members to her household. Because Claimant is attempting to change the status quo by receiving benefits for two new members of her household during the month of October 2011, and thereby seeking additional benefits, Claimant bears the burden of proving her household is eligible for the increase in benefits before November 2011.

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). The Claimant must meet her burden of proof by a preponderance of the evidence.

III. The Division Correctly Determined the Start Date for Claimant's Increased Household Size

A. Undisputed Facts

The facts of this case are not disputed. On September 14, 2011, Claimant reported the fact that her two minor sons had become members of her household. The Division processed her report of change on September 26, 2011.² While processing Claimant's reported change, the Eligibility Technician became aware Claimants two sons had been receiving Food Stamp benefits as members of another household. Therefore, the Division was required to give that household notice it intended to reduce that (prior) household's Food Stamp benefit amount as a consequence of terminating benefits to Claimant's sons. Because the Division gave that prior household 10 days notice of its impending adverse action during October 2011, the Division did not add Claimant's sons to her household until the November 2011 benefit payment.

B. Was the Division Correct to Not Provide October 2011 Food Stamp Benefits to Claimant's Two Children?

Claimant reported to the Division on September 14, 2011 that her household size had increased by the addition of her two sons. The Division is required to determine promptly if the change affects the household's eligibility or benefit amount. 7 C.F.R. 273.12(c). The Division's Eligibility Technician must make this determination within 10 days of its receipt of the report of change. Alaska *Food Stamp Manual Section 604-3C*, accessed at: <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>. Ten days after September 14, 2011 is September 24, 2011, which is a Saturday. The next business day is Monday, September 26, 2011. The Division began processing Claimant's reported change on September 26, 2011 as required. *See* Finding of Fact 2. Therefore, the Division acted timely on the report of change.

On September 27, 2011, the Division discussed Claimant's case by telephone with Claimant, including about her report of change and the fact that because it had to give notice to the other household, therefore Claimant would not receive Food Stamp benefits for her two sons in October 2011. *See* Finding of Fact 4.

Because Claimant's two sons had been receiving Food Stamp benefits while living in their previous household, the Division was required to give a 10 day notice of adverse action to the (prior) household. The Division was required to give the household notice that it would terminate the sons' receipt of Food Stamp benefits as members of that household, because the sons no longer lived there. 7 C.F.R. § 273.13(a)(1); 7 C.F.R. 273.12(d)(i). The Division also was required to offer that household an opportunity for a fair hearing about the termination of benefits. 7 C.F.R. § 273.15(a). Ten days from September 27, 2011, the earliest date that notice could have been given to the sons' prior household, is Friday, October 7, 2011.³

³ There is no specific date identified in the evidentiary record on which the Division gave the prior household notice of its impending adverse action. *See* Finding of Fact 8. Therefore, the first available date of September 27, 2011 is implied.

Thus, the Division was not required to act on its 10 day adverse action notice to the prior household until Monday, October 10, 2011. (Ex. 4.5⁴)

The Food Stamp Program allows a person to receive food stamps as a member of only one household each month, as provided by regulation 7 C.F.R. § 273.3(a). Food Stamp benefits are issued monthly at the beginning of the month and by October 10, 2011, the two sons had been issued Food Stamp benefits based on their participation in the Food Stamp Program as members of their prior household. They were paid as members of their prior household because the time for the prior household to respond to the notice of adverse action had not elapsed before the October 2011 benefits were issued.⁵

Additionally, when the Division is required to send a notice of adverse action, the decrease in the benefit level is made effective no later than the month following the month in which the notice of adverse action 10 day period has expired.⁶ 7 C.F.R. 273.12(d)(i). Therefore, because the 10 day period of the notice of adverse action expired in October, the Division was required to make the change of benefit amount effective with Claimant's November 2011 benefit month. The Division did include Claimant's two sons in Claimant's household for purposes of determining the benefit amount and paying benefits to the sons in November 2011. Consequently, the Division correctly effectuated the change reported by Claimant.

Finally, Claimant did not offer any proof supporting her assertion the Division's action was mistaken and therefore did not meet her burden of proving by a preponderance of the evidence that the Division erred.

CONCLUSIONS OF LAW

1. Claimant did not meet her burden of proving by a preponderance of the evidence that the Division erred when it included Claimant's two children in her November 2011 benefit payment and not in the October 2011 Food Stamp payment to Claimant's household.

2. The Division properly took action on Claimant's reported change within 10 days of when it received the reported change. 7 C.F.R. §273.12(c); Alaska *Food Stamp Manual Section* 604-3C. The Division properly gave the sons' prior household 10 days notice that it would take adverse

⁴ Exhibit 4.5 provides a chart describing when the Division is required to take action during September 2011 based on the number of days it has to take action in response to an event occurring on each calendar working day. For a report of change which the Division receives on September 14, 2011, it is required to take action by September 23, 2011. This is a specific exception from the 10 day processing rule which is described as applicable to reported changes in a sidebar notation on the exhibit. It is undisputed the Division did not process Claimant's reported change by September 23, 2011 but did take action on it on September 26, 2011. Therefore, according to the Division's calendar (Exhibit 4.5), the Division was one business day late in taking action. The one day delay is harmless error, in light of other facts pertaining to this case. However, the notation on the calendar does not appear to be part of the Division's policies concerning implementing reported changes. See Alaska *Food Stamp Manual* Section 604-3C "Acting on Reported Changes." See also, 7 C.F.R. 273.12(d)(i).

⁵ The fact that Claimant's submission of her Application for recertification of her Food Stamp benefits nearly coincided with her reported change did not delay the Division's issuance of the Food Stamp benefit for Claimant's sons.

⁶ Provided a fair hearing and continuation of benefits have not been requested. 7 C.F.R. 273.12(d)(i).

action by terminating the sons' Food Stamp benefits. 7 C.F.R. § 273.12(d)(2)(i); 7 C.F.R. § 273.13(a)(1).

3. The Division properly paid Food Stamp benefits for Claimant's sons as members of Claimant's household in November 2011 because the 10 day notice of adverse action period expired on October 10, 2011, after the October 2011 benefit had been paid. 7 C.F.R. 273.3(a); 7 C.F.R. 273.12(d)(2)(i).

DECISION

The Division of Public Assistance was correct when it paid Food Stamp benefits to Claimant's two children as part of Claimant's household in November 2011 and not in October 2011.

APPEAL RIGHTS

If for any reason Claimant is not satisfied with this decision, Claimant has the right to appeal by requesting a review by the Director. If 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. To appeal, 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 November 25, 2011.

 /signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on November 25, 2011 true and correct copies of the foregoing were sent to: Claimant by Certified Mail, Return Receipt Requested and to other listed persons by secure, encrypted e-mail:

- [Redacted], Public Assistance Analyst
- [Redacted], Public Assistance Analyst
- [Redacted], Policy & Program Development
- [Redacted], Staff Development & Training
- [Redacted], Administrative Assistant II

 /signed/
J. Albert Levitre, Jr., Legal Assistant I