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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-364  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a Food Stamp<sup>1</sup> recipient in July 2011. (Ex. 1) Her Food Stamp benefits expired after July 31, 2011. (Ex. 3) The Division did not renew the Claimant's Food Stamp benefits after July 31, 2011 because the Claimant allegedly did not submit a timely Food Stamp recertification application. (Ex. 4; [REDACTED] testimony) The Claimant requested a fair hearing on September 26, 2011. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on November 1, 2011. The Claimant attended the hearing telephonically; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended in-person; he represented the Division and testified on its behalf.

**ISSUE**

Was the Division correct to not renew the Claimant's Food Stamp benefits after July 31, 2011 because she allegedly did not submit a timely recertification application?

<sup>1</sup> Congress amended the Food Stamp Act in 2008. See Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, the common usage refers to the program as the Food Stamp Program, which usage this decision also follows.

## FINDINGS OF FACT

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

1. The Claimant was a Food Stamp recipient in July 2011. (Ex. 1) Her Food Stamp benefits were scheduled to expire, unless renewed, at the end of July 2011. (Ex. 3)
2. The Division did not renew the Claimant's Food Stamp benefits after July 31, 2011. The reason the Division gave for not renewing these benefits was that the Claimant did not submit a Food Stamp recertification application.<sup>2</sup> (Ex. 4; ██████ testimony)
3. ██████ is a Division employee who represents the Division at this Office's Fair Hearings. He credibly<sup>3</sup> testified that he spoke to Division employees who informed him that they were unable to locate a Food Stamp recertification application for the Claimant. He further credibly testified that he personally reviewed the Claimant's public assistance case file and was unable to locate a Food Stamp recertification application for the Claimant.
4. The Claimant credibly<sup>4</sup> testified as follows:
  - a. She received the Food Stamp recertification application in the mail.
  - b. She filled out the Food Stamp recertification application and deposited it in the Division's Muldoon office's outside drop box. She did this towards the end of July 2011.
  - c. After she got the Division's notice that her Food Stamp case was not renewed, she filled out another Food Stamp recertification application. She took it to the Division's Muldoon office and went inside. There was a long line so she placed the Food Stamp recertification application in the office's inside drop box. This probably occurred towards the end of August 2011.
  - d. The Claimant has had problems with the Division's Muldoon office misplacing her paperwork in the past. Specifically, she had her Medicaid benefits denied because she had supposedly not turned in a child support form. However, when she had a supervisor review her file, the child support form was in her file.

## 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, Alcoholic 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

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<sup>2</sup> The record does not contain a copy of the Food Stamp case closure notice sent the Claimant.

<sup>3</sup> Mr. ██████ testified in person. His testimony was credible based upon an observation of his demeanor.

<sup>4</sup> Because the Claimant testified telephonically, it was not possible to assess her physical demeanor. Nothing in her testimony, telephonic demeanor, or voice tone suggested or indicated that she was less than credible: her testimony was clear and consistent; she was not evasive; she testified and answered questions in a direct manner.

(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).

The Food Stamp program is a federal program which is administered by the State of Alaska. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for determining if an applicant is eligible for Food Stamp benefits.

A Food Stamp recipient who wishes to renew her Food Stamp benefits is required to submit a new Food Stamp application (recertification application). 7 CFR 273.14(a). The recipient must file the recertification application before her current Food Stamp certification period expires. 7 CFR 273.14(b)(ii)(B); *Alaska Food Stamp Manual* Section 604-2(a).

Each Food Stamp application involves an independent and new eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6<sup>th</sup> Cir. 1983). An application to renew Food Stamp benefits is treated similar to a new application; a person who applies to renew Food Stamp benefits “has no protectable property interest in the continuous entitlement to food stamps beyond the expiration of its certification period.” *Id.* at 297.

### ANALYSIS

The issue in this case is whether the Division was correct to not renew Claimant’s Food Stamp benefits after July 31, 2011 because she allegedly did not submit an application to renew her Food Stamp benefits.

Because this case involves non-renewal of a Food Stamp benefit case due to an alleged failure to file a renewal application,<sup>5</sup> the Claimant is the party who is seeking to change the status quo. She, therefore, has the burden of proof by a preponderance of the evidence. *State, Alcoholic 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).

The case can be summarized as follows:

1. The Claimant was receiving Food Stamp benefits in July 2011. *See* Finding of Fact 1 above.
2. The Claimant’s Food Stamp benefits were scheduled to expire at the end of July 2011. *See* Finding of Fact 1 above.
3. The Claimant needed to file a recertification application for Food Stamp benefits before the end of her Food Stamp certification period, which was the end of July 2011, in order

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<sup>5</sup> An application to renew Food Stamp benefits is treated similar to a new application; a person who applies to renew Food Stamp benefits “has no protectable property interest in the continuous entitlement to food stamps beyond the expiration of its certification period.” *Banks v. Block*, 700 F.2d 292, 297 (6<sup>th</sup> Cir. 1983).

to continue receiving Food Stamp benefits. 7 CFR 273.14(b)(ii)(B); *Alaska Food Stamp Manual* Section 604-2(a).

4. The Division did not renew the Claimant's Food Stamp benefits after July 31, 2011, because it alleged that she did not file a timely Food Stamp recertification application. *See* Finding of Fact 2 above.
5. The Claimant disagreed with the Division, testifying she timely submitted her Food Stamp recertification application. *See* Finding of Fact 4(b) above.

The only issue here is a factual one: did the Claimant timely file a recertification application for Food Stamp benefits?

Mr. [REDACTED], the Division representative, testified that the Division did not receive a Food Stamp recertification application from the Claimant. His testimony was partially hearsay, since it recounted what he was told by other Division employees. He also testified, based on his personal knowledge, that there was no Food Stamp recertification application present in the Claimant's Public Assistance file. *See* Finding of Fact 3 above.

The Claimant testified that she submitted not one but two Food Stamp recertification applications to the Division. The first was placed in the Division's Muldoon office's outside drop box towards the end of July 2011, which was before her Food Stamp benefits were scheduled to expire. The second was placed in the Division's Muldoon office's inside drop box toward the end of August 2011. *See* Findings of Fact 4(b) and (c) above.

Both Mr. [REDACTED] and the Claimant were credible witnesses. *See* Findings of Fact 3 and 4 above. However, Mr. [REDACTED]'s testimony only establishes that the Division was unable to locate the Claimant's Food Stamp recertification application, not that the Claimant failed to submit the Food Stamp recertification application. The Claimant's testimony establishes that she submitted the Food Stamp recertification application to the Division by the end of July 2011. Given that both Mr. [REDACTED] and the Claimant were credible, the only possible inference to be drawn from the evidence is that the Claimant timely submitted her Food Stamp recertification application and the Division misplaced it.

The Claimant has therefore met her burden of proof by a preponderance of the evidence and established that she timely submitted her Food Stamp recertification application to the Division. As a result, the Division was not correct to close her Food Stamp benefit case at the end of July 2011.

### CONCLUSIONS OF LAW

1. The Claimant has the burden of proof by a preponderance of the evidence. She met her burden of proof and established that she timely submitted her Food Stamp recertification application to the Division.

2. The Division was therefore not correct when it did not renew the Claimant's Food Stamp benefits after July 31, 2011.

**DECISION**

The Division was not correct when it did not renew the Claimant's Food Stamp benefits after July 31, 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. 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. 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 this 17th day of November, 2011.

/Signed/  
Larry Pederson  
Hearing Authority

**Certificate of Service**

I certify that on this 17th day of November, 2011, true and correct copies of the foregoing were sent to:  
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested  
and to the following by secure e-mail:

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

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J. Albert Levitre, Jr.  
Law Office Assistant I