

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (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-408
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Food Stamp¹ benefits on September 21, 2011. (Exs. 2.0 – 2.6) On September 23, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that his application was denied in its entirety. (Ex. 16) The September 23, 2011 denial notice specifically denied the Claimant Food Stamp benefits for both September 2011 (the month of application) and October 2011. (Ex. 16) On October 7, 2011, the Division sent the Claimant a further written notice that would be required to submit a new Food Stamp application if he wished to receive Food Stamp benefits after October 31, 2011. (Ex. 5)

The Claimant requested a fair hearing on October 27, 2011. (Ex. 7.0)

This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 C.F.R. § 273.15.

The Claimant's hearing was held on December 6, 2011. The Claimant appeared telephonically; he represented himself, and testified on his own behalf. **[REDACTED]**, a Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

The record was left open after the hearing, until December 16, 2011, for the Division to submit additional information, and the Claimant to file a response. The Division's information was received on December 7, 2011. The Claimant's response was received on December 13, 2011.

¹ 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.

EVIDENTIARY ISSUES

The Division supplemented the record on December 7, 2011 with several documents. They consisted of a notice sent to the Claimant on September 23, 2011 (Ex. 16), the Claimant's October 26, 2011 Eligibility Review form (form Gen 72, Exs. 17.0 – 17.3), an October 28, 2011 casenote (Ex. 17.4), a page from the *Alaska Food Stamp Manual* (Ex. 17.5), a copy of 7 C.F.R. § 273.2(g)(3), and a note dated December 6, 2011 from Eligibility Technician [REDACTED].

The Claimant did not object to the September 23, 2011 notice. He, however, did object to the other documents included in the Division's supplement. The Claimant cited to 2 AAC 64.310 as the basis for his objection. First, 2 AAC 64.310 applies only to proceedings before the Office of Administrative Hearings, not this Office (DHSS Office of Hearings and Appeals). *See* 2 AAC 64.100(b). Second, 2 AAC 64.310 provides the Hearing Examiner with discretion to admit supplemental evidence after allowing the other party to rebut the supplemental evidence. As announced at the close of the December 6, 2011 hearing, the record was left open to allow the Division to provide additional documents, and for the Claimant to submit a written rebuttal.

The Claimant's objection, however, has merit. The Division expanded upon the directions at hearing. The Division supplied the September 23, 2011 notice requested at hearing. It also provided additional information not requested at the hearing. Those additional documents were the Claimant's October 26, 2011 Eligibility Review form (form Gen 72, Exs. 17.0 – 17.3), an October 28, 2011 denial notice (Ex. 17.4), a page from the *Alaska Food Stamp Manual* (Ex. 17.5), a copy of 7 C.F.R. § 273.2(g)(3), and a note dated December 6, 2011 from Eligibility Technician [REDACTED] (Ex. 17.7).

The Claimant's October 26, 2011 Eligibility Review form (form Gen 72, Exs. 17.0 – 17.3) is admitted, over the Claimant's objection, because it was signed by the Claimant and is his own application, i.e. it is a statement by a party to the case.

The October 28, 2011 casenote (Ex. 17.4) is not admitted. The Claimant did not have the opportunity to cross-examine the author. Similarly, the statement dated December 6, 2011 from Eligibility Technician [REDACTED] (Ex. 17.7) is not admitted. It is an unsworn statement from a person who did not testify as a witness, made after the hearing, to explain her October 6, 2011 casenote (Ex. 4.0). The Claimant has not had an opportunity to cross-examine this witness regarding her non-contemporaneous statement created after the hearing.

The page from the *Alaska Food Stamp Manual* (Ex. 17.5) and the copy of 7 C.F.R. § 273.2(g)(3) (Ex. 17.6) are admitted. This Office is allowed to take judicial notice of the *Alaska Food Stamp Manual* and the federal regulations.

STATEMENT OF ISSUES

Was the Division correct to deny the Claimant's September 21, 2011 Food Stamp application?²

² The Claimant's testimony raised an ancillary issue: whether he applied for Food Stamp benefits as part of his October 26, 2011 public assistance renewal application form (Eligibility Review form - Gen 72, Exs. 17.0 – 17.3). Given the disposition of this case, it is not necessary to address this issue.

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits for his two-person household (the Claimant and his wife) on September 21, 2011. (Exs. 2.0 – 2.6) They both receive federal disability benefits and Adult Public Assistance benefits. (Exs. 3.1 – 3.4)

2. The Claimant's household is categorically eligible for Food Stamp benefits. ([REDACTED] testimony)

3. The Claimant and his wife received the following income in September 2011:

Claimant:	SSDI ³ income \$798	Adult Public Assistance \$264
Wife:	SSI ⁴ income \$674	Adult Public Assistance \$264

Their total combined income for September 2011 was \$2,000. (Exs. 3.1 – 3.4)

4. The Claimant and his wife were expected to receive the following income in October 2011:

Claimant:	SSDI income \$798	Adult Public Assistance \$44	PFD \$1,174
Wife:	SSI income \$674	Adult Public Assistance \$43	PFD \$1,174

Their total combined expected income for October 2011 was \$3,907. (Exs. 3.0 – 3.4)

5. The reason the Claimant and his wife's Adult Public Assistance benefits decreased between September and October 2011 is because they became married. (Claimant testimony)

6. The Claimant's monthly rental payment is \$675. (Ex. 2.4) The Claimant also pays for his phone. *Id.*

7. The Division sent the Claimant notice on September 23, 2011 informing him that his September 21, 2011 Food Stamp application was denied for the month of September 2011, because the total household income exceeded the Food Stamp program's income limit of \$1,973. (Ex. 16)

8. The Division's September 23, 2011 notice also informed the Claimant that his Claimant's September 21, 2011 Food Stamp application was denied for the month of October 2011, because the Claimant and his wife's PFDs caused them to "exceed the income or resource limit." (Ex. 16) However, the Claimant and his wife were issued \$61 in PFD Hold Harmless benefits, in lieu of Food Stamp benefits, for the month of October 2011. *Id.* That same

³ Social Security Disability Insurance.

⁴ Social Security Supplemental Security Income.

September 23, 2011 notice further informed the Claimant that when his PFD Hold Harmless benefits ended, he would have to “complete a new application” for Food Stamp benefits. *Id.*

9. On October 6, 2011, the Division’s Eligibility Technician handling the Claimant’s public assistance benefits spoke to the Claimant and told him that he would have to reapply for Food Stamp benefits for the month of November 2011. (Ex. 4.0) On October 7, 2011, the Division sent the Claimant notice that he would not receive PFD Hold Harmless benefits after October 31, 2011 and that he would “need to reapply if [he was] interested in receiving additional Food Stamp benefits.” (Ex. 5)

10. The Division calculated, based on the Claimant’s September and October 2011 income, that the Claimant was not eligible for any amount of Food Stamp benefits during either of the months of September and October 2011 because the countable household income for those months was \$1,757 and \$3,655, respectively. (Exs. 4.3 – 4.4, 4.8 – 4.9) The Division’s calculations counted the Claimant’s gross income for each of the two months, and provided the Claimant with the standard income deduction (\$243 for September 2011 and \$252 for October 2011), a rent deduction (\$675) and a standard telephone deduction (\$27 for September 2011 and \$29 for October 2011). *Id.* The Claimant did not disagree with the Division’s calculations.

PRINCIPLES OF LAW

A party who is 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). The normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *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 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining whether a Food Stamp household is eligible to receive Food Stamp benefits. Food Stamp benefit amounts are calculated based upon the gross amount of monthly income received by all household members and upon the number of people living in the household. 7 C.F.R. § 273.9(e); 7 C.F.R. 273.10(e)(2)(ii)(a).

If a household is categorically eligible⁵ for Food Stamp benefits, the household does not have to satisfy the Food Stamp program’s financial eligibility rules (income and resource limits). 7 C.F.R. § 273.8(a); 7 C.F.R. § 273.9(a). However, the Food Stamp benefit computation rules contained in 7 C.F.R. § 273.10 apply to categorically eligible households. 7 C.F.R. § 273.2(j)(2)(xi).

In order for a financially eligible household to receive Food Stamp benefits, 30 percent of its net income (income after deductions) must normally be less than the maximum Food Stamp allotment for its household size. 7 C.F.R. § 273.10(e)(1) and (2). The maximum Food Stamp

⁵ See 7 C.F.R. § 273.2(j)(2) and (j)(4) for the Food Stamp program’s categorical eligibility requirements.

allotment amount for a two person household is \$438. *Alaska Food Stamp Manual* Addendum 4. However, the minimum monthly Food Stamp payment for a Food Stamp eligible household, which applies to categorically eligible households, in Alaska would be \$19. 7 C.F.R. § 273.10 (e)(2)(ii)(C); *Alaska Food Stamp Manual* Addendum 4. This payment is made to the eligible household unless benefits for the initial month of application, which are prorated based upon the date of application, are less than \$10, in which case no payment is made. 7 C.F.R. § 273.10(a)(1)(ii), (e)(2)(ii)(B) and (C).

The Alaska Permanent Fund payment presents a special case. The Division suspends Food Stamp payments to categorically eligible households who receive PFDs, if the PFDs would make them only eligible for the minimum Food Stamp benefit amount. 7 CFR § 273.21(n); 7 AAC 46.021(a)(52). “Eligible one and two-person households who would receive the minimum Food Stamp benefit when counting the *PFD* as income will have their Food Stamp cases suspended and be issued a *PFD* hold harmless benefit instead of the minimum Food Stamp benefit and partial *PFD* hold harmless payment.” *Alaska Food Stamp Manual* § 605-7 A(3) (emphasis in original).

The *Alaska Food Stamp Manual* explains the possible scenarios when a person applies for Food Stamp benefits during the month immediately preceding receipt of the PFD:

2. Applicant Households: *PFD* Receipt Expected During the Month Following Application

When an applicant household is expected to receive a *PFD* in the month following the month of application, process the first two months as follows:

- a. **Application Month:** Determine food stamp eligibility for this month.
 - If eligible, approve this month and authorize the food stamp benefit.
 - If ineligible, deny this month.
 - In either situation, determine food stamp eligibility for the following month.
- b. **Month Following Month of Application:** Determine food stamp eligibility counting the *PFD* as income.
 - If eligible for a reduced food stamp benefit, approve this month and authorize the food stamp benefit.
 - If ineligible but the household is eligible for the application month, suspend the food stamp case for this month.
 - If ineligible for food stamps for both this month and the application month, deny the application. A new application and interview is required

before food stamps can be issued following the issuance of *PFD* hold harmless benefits.

Alaska Food Stamp Manual § 605-7 B(2) (emphasis in original).

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant's September 21, 2011 Food Stamp application. The Division denied the Claimant's application in its entirety: it specifically denied Food Stamp eligibility for September and October 2011, and then told the Claimant he would have to submit a new application if he wished to receive Food Stamp benefits after October 31, 2011. (Exs. 5, 16)

The Claimant has the burden of proof, by a preponderance of the evidence, because he is the party who applied for benefits, i.e. sought to change the status quo. *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 Division agreed that the Claimant's household was categorically eligible for the Food Stamp program. *See* Finding of Fact 2 above. As a result, the normal financial eligibility rules for the Food Stamp program do not apply to the Claimant's household. 7 C.F.R. § 273.8(a); 7 C.F.R § 273.9(a). However, the monthly Food Stamp benefit calculation rules do apply. C.F.R. § 273.2(j)(2)(xi).

The Division issued a notice to the Claimant that his September 21, 2011 Food Stamp application was denied because his household income was greater than that allowed by the Food Stamp program. *See* Findings of Fact 7 and 8 above. This denial was not correct because the Food Stamp income limits do not apply to categorically eligible households. 7 C.F.R § 273.9(a).

However, a review of the facts demonstrates that although the Claimant was technically eligible for the Food Stamp program, he was not actually eligible to receive any amount of Food Stamp benefits during the month of September, as explained below.

During September 2011, the Claimant's net household income was \$1,757. *See* Finding of Fact 11 above. In order for him to receive more than the minimum amount (\$19) of Food Stamp benefits, 30 percent of his net household income would have to have been less than \$438. 7 C.F.R. § 273.10(e)(1) and (2); *Alaska Food Stamp Manual* Addendum 4. 30 percent of \$1,757 is \$527.10, which exceeds \$438. This meant that \$19 was the maximum amount of Food Stamp benefits he could have received for September 2011. Because the Claimant did not apply for Food Stamp benefits until September 21, 2011, his \$19 minimum benefit was prorated for September 2011. 7 C.F.R. § 273.10(a)(1)(ii). Because the proration resulted in less than a \$10⁶ payment, his actual Food Stamp benefit amount was zero. 7 C.F.R. § 273.10(e)(2)(ii)(B) and (C). This means that while the Claimant was categorically eligible for the Food Stamp program in September 2011, he was not entitled to receive any benefits for that month.

⁶ There are 30 days in September. The Claimant applied on September 21, 2011. This means that he was only entitled to receive Food Stamp benefits for one-third of the month (10 remaining days in September divided by 30 days). One-third of \$19 is \$6.33.

The Claimant, however, was entitled to receive Food Stamp benefits during October 2011. The Claimant's net household income for October 2011 was \$3,655. *See* Finding of Fact 10 above. If his household was not categorically eligible for Food Stamp benefits, in order for him to receive Food Stamp benefits, 30 percent of his net household income would have to have been less than \$438. 7 C.F.R. § 273.10(e)(1) and (2); *Alaska Food Stamp Manual* Addendum 4. 30 percent of \$3,655 is \$1,096.50, which exceeds \$438. However, because the Claimant's household was categorically eligible for the Food Stamp program, his household's October 2011 income caused him to only be entitled to receive the minimum amount of \$19 in Food Stamp benefits for October 2011. 7 C.F.R. § 273.10(e)(2)(ii)(C); *Alaska Food Stamp Manual* Addendum 4.

The State of Alaska has elected to issue a PFD Hold Harmless payment to eligible households who would otherwise only be entitled to receive the minimum payment as a result of receiving PFD income. "Eligible one and two-person households who would receive the minimum Food Stamp benefit when counting the *PFD* as income will have their Food Stamp cases suspended and be issued a *PFD* hold harmless benefit instead of the minimum Food Stamp benefit and partial *PFD* hold harmless payment." *Alaska Food Stamp Manual* § 605-7 A(3).

The Division issued the Claimant a PFD Hold Harmless payment of \$61 for October 2011. *See* Finding of Fact 8 above. However, it did not suspend the Claimant's Food Stamp case for October 2011. It, instead, denied his application for October 2011. *Id.* The Division's denial action was not correct for two reasons. First, the Claimant was eligible for Food Stamp benefits in October 2011, albeit for the minimum \$19 amount. Second, the Division, according to its own standard practices, was not supposed to deny Food Stamp application for October 2011, but rather to suspend the Food Stamp case and issue a PFD Hold Harmless payment in lieu of the minimum Food Stamp payment. *Alaska Food Stamp Manual* § 605-7 A(3).

The procedure the Division should have followed in this case was to not deny the Claimant's September 21, 2011 Food Stamp application. Because the Claimant's household is categorically eligible, the Division should have approved the application, issued no benefits for September 2011, suspended benefits for October 2011 because of the PFD Hold Harmless payment, and reinstated the case as of November 2011. *See Alaska Food Stamp Manual* §§ 605-7 A(3) and 605-7 B(2). Instead, the Division denied the Claimant's September 21, 2011 Food Stamp application for both September and October 2011 and instructed him that he needed to reapply for Food Stamp benefits if he wished to receive them after October 2011. *See* Findings of Fact 8 and 9 above.

In summary, the Division should not have denied the Claimant's September 21, 2011 Food Stamp application.

CONCLUSIONS OF LAW

The Claimant had the burden of proof in this case by a preponderance of the evidence. He satisfied his burden of proof and established that the Division was not correct to deny his September 21, 2011 Food Stamp application for the following reasons:

