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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-508
) Division Case No. [REDACTED]

Claimant.)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant), was a recipient of Food Stamps at all times relevant to this case. (Ex. 1) On December 20, 2011, the Division of Public Assistance (Division) received information from the Department of Labor that an adult member of Claimant's household was receiving unemployment insurance income. (Exs. 2.1-2.2) The Division re-determined Claimant's household's Food Stamp¹ benefit based on the reported change in income. (Exs. 2.9-2.10) On December 21, 2011, the Division sent written notice to Claimant that her household's Food Stamp benefit would decrease, effective with the January 2012 allotment due to the unemployment income. (Ex. 3.0; Ex. 5.1)

On December 28, 2011, Claimant orally requested a Fair Hearing. (Ex. 5.0) This Office has jurisdiction under authority of 7 AAC 49.010 and 7 C.F.R. § 273.15.

Claimant's Fair Hearing took place on February 2, 2012, March 8, 2012, and April 5, 2012. Each time, Claimant participated telephonically, represented herself and testified on her own behalf. Each time, Mr. [REDACTED], the Division's Fair Hearing Representative and Public Assistance Analyst, participated in person and testified on behalf of the Division. Ms. [REDACTED], Eligibility Technician, (Eligibility Technician) participated telephonically on April 5, 2012 and testified on behalf of the Division. All exhibits offered were admitted.

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.

ISSUES

Claimant requested the Fair Hearing address two issues:²

- 1) Was the Division correct to decrease her household's Food Stamp allotment beginning January 2012 based on information received from the Department of Labor that her housemate was receiving unemployment insurance income?
- 2) Did the Division's letter dated December 21, 2011 provide Claimant with 10 days advance notice of the Division's intent to reduce her monthly Food Stamp amount beginning January 1, 2012?

FINDINGS OF FACT

The following facts have been proved by a preponderance of the evidence:

1. Claimant's household consists of four persons, including an adult male (housemate) who is the father of their two children. (Ex. 1; Claimant's testimony)
2. On August 5, 2011, the Division of Public Assistance (Division) received Claimant's application for Food Stamp Program eligibility. (Exs. 18.1, 18.3)
3. On August 8, 2011, the Division's Eligibility Technician determined Claimant's application was approved based on Claimant's income and the final (August) pay of her housemate, who terminated employment in August 2011. (Ex. 18.3) The approval of eligibility was for a six month certification period. (Ex. 18.3) Claimant was not required to report changes in household gross monthly income until it reached or exceeded \$2,987.00. (Ex. 19.1)
4. On August 9, 2011, the Division sent Claimant written notice that her Food Stamp Application had been approved, informing her she needed to report "when the monthly income of all persons receiving food stamp benefits in your case totals more than \$2,987.00." (Ex. 19.1) This notice also informed Claimant that the income counted to calculate the August Food Stamp benefit included her housemate's final pay in August, and that in September the Division did not count any income attributed to her housemate. (Ex. 19.1)
5. On December 20, 2011, the Division received an alert from the Department of Labor informing the Division that Claimant's housemate was receiving unemployment benefits of \$627.80 per month.

² The Fair Hearing was initiated because Claimant disputed that she had received timely notice of the reduction in the household's Food Stamp benefit amount. (Exs. 4, 5) Over the course of the three hearing segments, Claimant requested the decision to address additional issues. One issue is not within the scope of this case. It is whether Claimant was required to have her housemate obtain unemployment insurance income as a requirement for continued receipt of Transitional Medicaid benefits. Regulation 7 AAC 49.020 provides Fair Hearings when public assistance benefits have been denied, modified or terminated. Claimant's Transitional Medicaid benefits were a) not affected by the Division's action disputed in this case, and b) not identified as a subject at issue in Claimant's request for a Fair Hearing. (Transitional Medicaid benefits are wholly unrelated to Food Stamp benefits. *See* 7 AAC 100.200-210; 42 U.S.C.A. § 1396r-6.) Therefore, the question of if the Division did or did not properly advise Claimant that her household was required to acquire unemployment insurance benefits as a pre-condition to continued receipt of Transitional Medicaid is not addressed in this decision.

(Ex. 18.6) The Department of Labor alert included the date November 25, 2011.³ (Ex. 18) Claimant's housemate filed for unemployment insurance benefits on or about November 7, 2011. (Claimant's testimony) This information caused the Division's Eligibility Technician to recalculate the monthly amount of Food Stamp benefit for Claimant's household, resulting in a decrease of benefit. (Ex. 18.6)

6. The Division sent Claimant a written notice printed on December 21, 2011 titled "Food Stamp Benefit Amount Changes" informing her that in January 2012, her benefit amount would be \$382 per month, that she needed to report "when the monthly income of all persons receiving food stamp benefits in your case totals more than \$3,027.00" and that the action occurred because her housemate "is now receiving unemployment...." (Ex. 19.4)

7. On December 28, 2011, Claimant telephoned the Division and asked for a Fair Hearing because the notice of change in her benefits was not timely. (Ex. 18.7; Claimant's testimony)

8. The Division's Electronic Information System's historical summary of case notes for Claimant's case reveals that between June 8, 2011 and February 12, 2012 the Division's Eligibility Technician attempted to contact Claimant on October 8, 2011 and left a voice mail message after receiving a busy signal. (Ex. 18.2; Ex. 18) There are no other case notes documenting any other telephone calls to Claimant in 2011. However, on January 23 and January 27, 2012, the case note summary reveals contact with Claimant on each of those days. (Ex. 18) Furthermore, there are case note entries for August 5, 8, 9, and 12, 2011; December 20, 28, 29, 2011; January 3, 13, 23, 27, 30, 2012; and February 1, 2012 that do not indicate telephone calls or client contact in the title. (Ex. 18)

9. The Division's Electronic Information System's historical summary of notices sent to Claimant reveals that between August 9, 2011 and January 1, 2012 the following notices were printed:

- a) August 9, 2011 – Food Stamp Application approved
- b) August 10, 2011 – Retroactive Medicaid approved
- c) December 16, 2011 – Food Stamp recertification⁴
- d) December 21, 2011 - Food Stamp Benefit amount changes
- e) December 29, 2011 – Aid Paid pending fair hearing

10. The Division's Electronic Information System's historical summary of activity by the Division reveals that between August 9, 2011 and December 29, 2011, Claimant's public assistance case was addressed by the Division only on the following dates:

- a) August 9, 11, 12, 23, 25
- b) September 21 (relating to Medicaid only)
- c) December 1 (relating to Medicaid); 20, 28, 29 (Fair Hearing representative's inquiry)

11. The Division's Hearing Representative searched through all of Claimant's case file to try to find record of any notice informing Claimant that any household member needed to apply for unemployment insurance benefits and to find a report Claimant was informed by telephone to file for them. He did not find any such record. (Hearing Representative's testimony)

³ This is presumed to be the date benefits first were received by Claimant's household.

⁴ The notice informed Claimant she needed to submit a recertification application not later than January 15, 2012 if she wanted to continue receiving Food Stamp benefits. (Ex. 19.3)

12. The Division's Eligibility Technician provided the following facts through her testimony. The Eligibility Technician recalled that she spoke with Claimant about her Fair Hearing request in December 2011, and about Claimant's recertification application of January 2012. The Eligibility Technician checked the Claimant's case file for notices sent to Claimant between 2008 and March 14, 2012. She found no notice was sent to Claimant informing her that her housemate should apply for unemployment insurance benefits. All notices that are sent are recorded in the Eligibility Information System⁵ and there is no such notice in 2011.

13. After receiving Claimant's recertification application in January 2012, the Eligibility Technician did call Claimant on February 1, 2012 and during the conversation told Claimant that her housemate had to apply for unemployment benefits because Claimant was receiving Transitional Medicaid.⁶ That same day, the Eligibility Technician again called Claimant to tell her she was incorrect and that applying for unemployment insurance benefits (UIB) was not required for Transitional Medicaid recipients. (Eligibility Technician's testimony)

14. During the Fair Hearing, Claimant testified principally as follows:

a) She never would have had her housemate file for unemployment insurance benefits (UIB) of her own accord.

b) The only reason she filed⁷ for UIB was because she received a notice telling her she had to file for the additional income as a condition to continued receipt of Transitional Medicaid and because she was harassed day after day by her caseworker to file for the UIB. Claimant could not find the notice.⁸ Later, she was informed by the Division Eligibility Technician, who received her Fair Hearing request, that she was not required to apply for UIB to retain eligibility for public assistance and learned her caseworker had mis-informed her.

c) Even if she had filed for UIB, she would not have disclosed that income to the Division because she was not required to disclose changes in household income by Food Stamp Program rules until and unless her household monthly income reached \$3,027, and because the Transitional Medicaid Program did not require her to report changes in income.

d) The envelope containing the notice the Division printed on December 21, 2011, informing her of the change in her Food Stamp benefit amount, was postmarked December 23, 2011 at 1:30 p.m. Claimant did not receive it until December 28, 2011

⁵ The Eligibility Technician called the Electronic Information System the Eligibility Information System.

⁶ Claimant's testimony and the Eligibility Technician's testimony during the Fair Hearing seemed to indicate the Eligibility Technician was addressing Claimant's question concerning if it was correct that she had been informed in the past that she was required to apply for UIB. By February 2012, the consequences of receiving UIB had become manifest and Claimant was unhappy because her housemate was not contributing his UIB income to the household. It appears Claimant was seeking confirmation from the Eligibility Technician that she was required to add the UIB income to the household.

⁷ Claimant made clear that when she testified she filed for UIB, that it was her housemate who filed.

⁸ During the Fair Hearing, Claimant suggested she might supply telephone records documenting the calls from her caseworker but she did not request to supply them and did not.

because of the usual delay of mail during the Christmas holiday period. Claimant could not find the envelope.

e) The fact the Division delayed in informing her of the decrease in her Food Stamp benefit amount caused her great stress and difficulty because it affected her holiday meal planning and providing of food during the holidays.

PRINCIPLES OF LAW

I. Burden of Proof

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol 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 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)

II. The Food Stamp Program.

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 of 7 C.F.R. § 271 – 274. The purpose of the Food Stamp program is to promote the general welfare and to safeguard the health and well being of the Nation’s population by raising the level of nutrition among low-income households. 7 C.F.R. § 271.1(a).

Eligibility for the Food Stamp Program and the amount of monthly benefit received by a household is based on household size and financial need, after calculating the household’s gross monthly income, allowed deductions, and net monthly income. 7 C.F.R. §§ 273.1, 273.10.

Federal Food Stamp regulation 7 C.F.R. § 273.12(c) requires the state agency to take prompt action on all changes to determine if the change affects the household’s eligibility or benefit amount.

If the change results in a decrease in household benefits, the Division “shall issue a notice of adverse action within 10 days of the date the change was reported 7 C.F.R. § 273.12(c)(2)(i). The agency must give effect to the change no later than the month following the month in which “the notice of adverse action period has expired....” 7 C.F.R. § 273.12(c)(2)(i).

Food Stamp regulation 7 C.F.R. § 273.13(a)(1), pertaining to an agency giving notice of intent to take action, states, in relevant part:

The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective.

There is no remedy established in the Food Stamp regulations if the State agency does not meet the requirements of 7 C.F.R. § 273.13(a)(1).

Regulation 7 ACC 49.060 requires the Division to give “written notice to the client at least 10 days before the date the division intends to take action ...reducing... assistance....”

ANALYSIS

I. Issues

1) Was the Division correct to change Claimant’s Food Stamp benefit amount because it learned her household income had increased?⁹

2) Did the Division’s letter dated December 21, 2011 provide 10 days advance notice of the Division’s intent to reduce Claimant’s monthly Food Stamp benefit amount effective January 2012?

II. Burden of Proof and Standard of Proof

The Division sought to change the status quo by reducing Claimant’s household’s Food Stamp benefits and therefore has the burden of proving disputed facts by a preponderance of the evidence.

III. The Division was correct to change Claimant’s household’s Food Stamp benefit amount based on information received from the Department of Labor.

The undisputed fact is that Claimant’s housemate contributed additional gross monthly income to the household by receiving unemployment insurance benefits (UIB). The change in income became known to the Division on December 20, 2011 through a routine notice from the Department of Labor. Claimant did not report the additional household income when the UIB income was sought or received in November because she did not need to report it under the Food Stamp or Transitional Medicaid rules.

The Federal Food Stamp regulations are clear that once a change affecting eligibility for benefits or a benefit amount becomes known to the agency, the State agency must act promptly to give effect to the result of the change. 7 C.F.R. § 273.12(c). This regulation states, in relevant part: “The State agency shall take prompt action on all changes to determine if the change affects the household’s eligibility or allotment.” The Division is required to act on changes reported from sources other than the household.¹⁰

⁹ There is no dispute concerning the dollar amount of benefit or the calculation of Food Stamp benefit amount, either before or after the household’s receipt of unemployment insurance income.

¹⁰ This is consistent with other portions of 7 C.F.R. § 273.12(c) which state: “[t]he State agency shall only act on those changes in medical expenses that it learns about from a source other than the household” The regulations clearly
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Therefore, the Division was correct to act on the information it received from the Department of Labor that Claimant's household's income had increased.¹¹

IV. The Division's adverse action notice dated December 21, 2011 met the 10 day notice requirement of 7 C.F.R. § 273.13(a) and 7 AAC 49.060.

The facts are undisputed that the Division printed a letter dated December 21, 2011 to Claimant advising that her household's Food Stamp benefit would decrease effective January 1, 2012. The date of mailing of the notice printed December 21, 2011 (notice of adverse action) is disputed.

The Division argued it properly sent the notice 10 days in advance of January 1, 2012 by mailing it the day it was printed. The Division's evidence consisted of a Notice History Summary (Exhibit 19), a copy of the notice showing the date it was printed as December 21, 2011 (Exhibit 19.4), a copy of the "Action History" for Claimant showing that on December 20, 2011 an eligibility technician determined that a notice concerning a change was to be issued (Exhibit 20), and a copy of a calendar page for December 2011 showing 10 days between December 21, 2011 to December 31, 2011.

In contrast, Claimant testified that the envelope for the Division's December 21, 2011 letter was "stamped" by the post office with the date of December 23, 2011 and the time of 1:30 p.m. Claimant also testified she could not find the envelope. Claimant's assertion that she received this letter on December 28, 2011 is undisputed.

The Division is required to have mailed the notice of adverse action 10 days before the date the Division's action was to take place, i.e., 10 days before January 1, 2012. If the Division did not mail the notice on the day it was printed, i.e., December 21, 2011, it could not meet the required 10 day advance notice. Both December 21st and December 23rd in 2011 were business week days and the letter could have been mailed on either date.

The Division's evidence is more persuasive than is Claimant's. This determination is based on the following analysis.

First, the Division's evidence is derived from documentation recorded in its Electronic Information System (EIS). Once information is lodged in the EIS, it cannot be changed after the fact. The EIS documentation provided as evidence showed that the Division's Eligibility Technician determined a notice was required on December 20, 2011 and printed the written adverse action notice on December 21, 2011. There is no specific evidence from the Division regarding the date the letter was placed into the mail but the Division asserted the notice was sent on the date printed, December 21, 2011, ten days before December 31, 2011.

In contrast, Claimant recalled the notice envelope was "stamped" by the post office with the date of December 23, 2011 and the time of 1:30 p.m. Claimant relied exclusively on her memory and did not

contemplate that sources other than the household may provide information to the Division and which, in turn, compel the Division to act on the reported changes.

¹¹ Claimant's argument that she never would have sought UIB income absent mis-information from the Division does not undo the fact that the household received additional income. Food Stamp allotments are based on household income. When household income increases, Food Stamp allotments are decreased based on the presumption that the additional income is available to the household for its nutritional needs.

have the envelope. Claimant recalled receiving the letter on December 28, 2011 and attributed the delay in receipt to slowness of holiday mail.

However, Claimant's memory appeared faulty in regard to dates and events and concerning facts about which Claimant argued vehemently during the Fair Hearing. For example, Claimant repeatedly asserted she (meaning her housemate) would not have applied for unemployment benefits if she had not received a notice in the mail stating that she had no choice but to do so if she wanted to retain her eligibility for Transitional Medicaid, and because she was "hassled by [her] caseworker day after day." Claimant also argued she never would have filed for UIB income if she had not been mis-informed by her caseworker that she was required to apply. Claimant did not offer a copy of the notice informing her household to apply for UIB income and Claimant did not supply telephone records of the calls she received day after day that "hassled" her into applying for UIB.

The Eligibility Technician recalled 2 telephone calls with Claimant, based on a case note she wrote in February 2012, during which she first mis-informed Claimant that she had to apply for UIB and then corrected the mis-information and told Claimant she did not have to apply. But this occurred after 2011. During 2011, the period in question in this case, the Division's Notice History Summary for Claimant's case does not show any such notice was printed or sent, nor that repeated telephone calls were made to Claimant. A total of only three notices concerning Food Stamps were sent to Claimant between August 2011 and December 2011, none of which concerned unemployment benefits.¹²

Moreover, Claimant's statement that her caseworker repeatedly called her to compel filing for unemployment benefits is not corroborated by either of two other historical summaries routinely kept by the Division. The Division's "action history" printout from the EIS system records for Claimant's case do not corroborate repeated telephone calls and Claimant's case note summary does not show such calls. The Division provided a case note documenting one telephone call on August 8, 2011 during which the housemate's job loss in August was confirmed, the household's income for September was determined based on Claimant's income alone, and Food Stamp eligibility was approved.¹³ (Ex. 18.3)

Another example that Claimant's memory may not be as reliable as the Division's electronically stored documentation is Claimant's testimony that she was not required to report changes in household gross monthly income until it reached \$3,027. In fact, this is the amount Claimant was required to report after the decrease of her Food Stamp benefit had taken place. Before the re-determination of her household income, Claimant was required to report when the gross monthly household income reached \$2,987. It appears Claimant's recollection is confusing facts that occurred later than 2011 with those that occurred before the change in her Food Stamp allotment.

The documentary evidence of the Division is stronger and more persuasive than is Claimant's testimony from her memory. Therefore, the Division is determined to have met the requirement that it give Claimant 10 days advance notice of the reduction in her Food Stamp benefit amount by mailing its notice of adverse action on December 21, 2011.

¹² An August 9, 2011 notice informed Claimant her Food Stamp application was approved and noted her housemates' "ending income" in August. (Ex. 19-19.1) A December 16, 2011 notice urged Claimant to file an application seeking recertification of her Food Stamp eligibility. (Ex. 19; Ex. 19.3) The December 21, 2011 notice informed Claimant her Food Stamp benefit amount would decrease in January. (Ex. 19; Ex. 19.4)

¹³ Claimant applied for Food Stamps on or about August 5, 2011. (Ex. 1; Ex. 18.3)

CONCLUSIONS OF LAW

The Division has met its burden of proof by a preponderance of the evidence:

1. The Division was required to act, and did act, within 10 days on a report of change received from the Department of Labor on December 20, 2011 concerning Claimant's household's gross monthly income. 7 C.F.R. § 273.13(a); 7 C.F.R. § 273.12(c).
2. The Division provided 10 days advance notice of its intent to reduce Claimant's Food Stamp benefit amount when it issued a written notice on December 21, 2011. 7 AAC 49.060.

DECISION

The Division was correct on December 21, 2011 to issue an adverse action notice informing Claimant her household's Food Stamp benefit amount would be decreased, effective January 2012 due to the household's receipt of unemployment insurance benefit income.

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
PO 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 April 13, 2012.


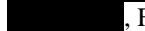
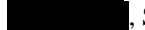
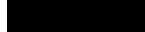
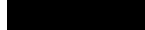

/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on April 13, 2012, true and correct copies of the foregoing were sent by U.S.P.S., by Certified Mail, Return Receipt Requested to:

Claimant

and to other listed persons by encrypted e-mail:

, Fair Hearing Representative
, Fair Hearing Representative
, Staff Development & Training
, Admin. Asst., Dir.
, Chief, Policy & Program Dev.
, Admin. Asst., Policy

/signed/

J. Albert Levitre, Jr. Law Office Assistant I