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

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 12-FH-74
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) applied for Food Stamp<sup>1</sup> benefits on December 20, 2011. (Exs. 2 – 2.5) On January 5, 2012, the Division of Public Assistance (Division) sent him requests for information regarding his Food Stamp application. (Ex. 4) On February 10, 2012, the Division notified the Claimant that his Food Stamp application was denied. (Ex. 12) The Division received a Fair Hearing request from the Claimant on March 1, 2012. (Ex. 15.9)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on April 3, 2012. The Claimant did not appear. ██████████, the Claimant's wife, who was a co-applicant on the December 20, 2011 Food Stamp application, appeared telephonically; she represented herself and her husband and testified on their behalf. ██████████, Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf.

**ISSUES**

Was the Division correct to deny the Claimant's December 20, 2011 Food Stamp application on February 10, 2012 because he did not comply with the Division's request for information?

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<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 were proven by a preponderance of the evidence:

1. The Claimant and his wife applied for Food Stamp benefits on December 20, 2011<sup>2</sup> for their five person household. (Exs. 2 – 2.5)
2. The December 20, 2011 Food Stamp application stated that the Claimant was self-employed. (Ex. 2.1)
3. The Claimant participated in a telephonic interview with the Division on January 4, 2012. (Ex. 3) During that interview, he was informed that he would need to supply the Division with copies of his Social Security award letter, his wife's paycheck stubs, and his 2010 federal tax return Schedule C.<sup>3</sup> *Id.*
4. The Claimant's adult daughter was handling the Social Security and Alaska Dept. of Health and Social Services paperwork for the Claimant. (██████████ testimony)
5. On January 4, 2012, the Claimant's adult daughter sent the Division two separate faxes. (██████████ testimony; Exs. 5 – 5.2, 6 – 6.4, 7, 8 – 8.8) The faxed documents consisted of the Claimant's December 16, 2011 Social Security award letter, his wife's pay information for December 2011, and his business bank account statements for September, October, and November 2011. *Id.* The faxed information did not include the Claimant's 2010 federal tax return Schedule C.
6. On January 5, 2012, the Division sent the Claimant notice that his Food Stamp application was being held until he supplied the Division with additional information. (Ex. 4) The information request was for copies of the Claimant's Social Security award letter, his wife's paycheck stubs, and his 2010 federal tax return Schedule C. *Id.* The deadline for providing the information was January 17, 2012. *Id.*
7. On January 20, 2012, the Claimant's adult daughter sent the Division an additional fax. (██████████ testimony; Exs. 9 – 9.4) The faxed documents consisted of the first two pages of the Claimant's December 16, 2011 Social Security award letter, and his wife's pay information. *Id.*
8. On February 2, 2012, the Claimant's wife telephoned the Division asking about Food Stamp benefits. (Ex. 10) In that conversation, the Claimant's wife stated that she would scan and email the requested 2010 federal tax return Schedule C to the Division. *Id.*
9. On February 9, 2012, the Division made the decision to deny the Claimant's Food Stamp application because it had not yet received the 2010 federal tax return Schedule C. (Ex. 11) On

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<sup>2</sup> The application is dated December 10, 2011. (Ex. 2.4) It is date stamped as having been received by the Division on December 20, 2011. (Ex. 2)

<sup>3</sup> A federal tax return Schedule C is a profit and loss statement for a sole proprietorship business. *See, e.g.*, Exs. 15.10 – 15.11.

February 10, 2012, the Division sent the Claimant notice that his December 20, 2011 Food Stamp application was denied because he did not provide it with a copy of his 2010 federal tax return Schedule C. (Ex. 12)

10. On February 10, 2012, the Claimant's wife telephoned the Division asking about the status of the Food Stamp application. (Ex. 13) In that conversation, the Division Eligibility Technician told her that the application was denied because the Division did not receive the 2010 federal tax return Schedule C. *Id.* The Claimant's wife told the Division Eligibility Technician that she had tried to email the 2010 federal tax return Schedule C to the Division but was unsuccessful. *Id.*

11. On February 14, 2012, the Division received a fax from the Claimant consisting of the second page of a 2009 federal tax return Schedule C (Ex. 14.1), and fax transmittal sheets showing documents were faxed to the Division on an unspecified date (Exs. 14.2 – 14.3) and on the afternoon of February 10, 2012 (Exs. 14.4 – 14.5).

12. On March 1, 2012, the Claimant provided the Division with a copy of his 2010 federal tax return Schedule C along with his hearing request. (Exs. 15.8 – 15.11)

13. At hearing, the Claimant's wife testified that her adult daughter told her that she had faxed the Division many times with copies of the Claimant's 2010 federal tax return Schedule C.

### **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 (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 rules that control an applicant's eligibility and the application process are set out in the Code of Federal Regulations (C.F.R.). The Alaska State implementation of the federal Food Stamp regulations, including its adoption of state optional Food Stamp requirements, is set out in 7 Alaska Administrative Code 46.010 *et. seq.*

An applicant's household income is a factor used in determining Food Stamp eligibility and benefit levels. 7 C.F.R. § 273.10. The agency is entitled to request verification of an applicant's information to determine his eligibility for the Food Stamp program. 7 C.F.R. § 273.2(d)(1).

A refusal to cooperate with the Division is grounds for denial of a Food Stamp application; a mere *failure to cooperate* is not:

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the

household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section.

7 C.F.R. § 273.2(d)(1). 7 C.F.R. § 273.2(c)(5) requires that the agency notify Food Stamp applicants that it is responsible “to assist the household in obtaining required verification provided the household is cooperating with the State agency.”

### **ANALYSIS**

Because this case involves the Claimant having applied for benefits, he seeks to change the status quo. Accordingly, he has the burden of proof on this issue 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). Therefore in order to prevail, the Claimant must prove, by a preponderance of the evidence, that the Division was either not entitled to request the information at issue, or that he did not refuse to provide it.

After receiving the Claimant’s December 20, 2011 Food Stamp application, the Division notified the Claimant on January 4, 2012, both verbally and in writing, that it required a copy of his Social Security award letter, his wife’s paycheck stubs, and his 2010 federal tax return Schedule C. The deadline for providing the information was January 17, 2012.

The Food Stamp program uses household income as a factor in determining Food Stamp eligibility and benefit levels. 7 C.F.R. § 273.10. The Division was therefore justified in making the request for the Claimant’s Social Security award letter, his wife’s paycheck stubs, and his 2010 federal tax return Schedule C, because all of these documents contained information about the household’s income .

The facts show that the Claimant supplied his Social Security award letter and his wife’s paycheck stubs. He even supplied his businesses bank account statements, which had not been requested. However, it is disputed whether he timely supplied his 2010 federal tax return Schedule C.

The Claimant’s wife testified that her adult daughter was handling the Claimant’s paperwork and that her daughter told her that she had faxed the Division a copy of the 2010 federal tax return Schedule C many times. The Division’s records indicate that the Claimant’s wife contacted the Division on February 2, 2012 and told the Eligibility Technician that she would scan and email the 2010 federal tax return Schedule C.

The Division then made the decision to deny the Claimant's Food Stamp application on February 9, 2012 because it had yet to receive the 2010 federal tax return Schedule C. On February 10, 2012, the Division sent the Claimant notice that his Food Stamp application was denied. That same day, the Claimant's wife called the Division and told the Eligibility Technician that she had unsuccessfully tried to email the Division a copy of the 2010 federal tax return Schedule C. On February 14, 2012, the Division received the second page of a 2009 federal tax return Schedule C. On March 1, 2012, the Division received the Claimant's 2010 federal tax return Schedule C.

As the above recitation demonstrates, there is some ambiguity in the evidence regarding whether the Claimant actually provided the Division with a copy of the requested 2010 federal tax return Schedule C by either the Division's January 17, 2012 deadline or by February 9, 2012, the date the Division made its decision to deny the Claimant's Food Stamp application. The Claimant's wife's daughter told her mother that she had. That daughter did not testify. The Division, on the other hand, provided documentation that it did not receive the 2010 federal tax return Schedule C until March 1, 2012.

The weight of the evidence shows that the Division did not receive the Claimant's 2010 federal tax return Schedule C until March 1, 2012, which was after both the Division's January 17, 2012 deadline and February 9, 2012, the date the Division made its decision to deny the Claimant's Food Stamp application. This factual conclusion is reached based upon the fact that the Claimant's wife did not have personal knowledge of what documents were actually transmitted by the daughter to the Division, and the daughter did not testify. In contrast, the Division supplied copies of what documents it actually received along with the date those documents were received. Those documents are more reliable than the Claimant's wife's hearsay testimony.

However, the facts of this case do not show a refusal by the Claimant to provide the requested 2010 federal tax return schedule C. The facts instead show multiple attempts to provide the Division with the requested documents. The 2010 federal tax return Schedule C happened was not received by the Division until March 1, 2012, after the Food Stamp application was denied. Regardless, the federal Food Stamp program distinguishes between a "refusal to provide" and a "failure to provide."

For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section.

7 C.F.R. § 273.2(d)(1). There is no indication in the record that the Division assisted the Claimant in providing the Division with a copy of his 2010 federal tax return Schedule C.<sup>4</sup>

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<sup>4</sup> The record does contain a casenote indicating the Claimant's wife called the Division on February 2, 2012 and said she would scan and email the requested 2010 federal tax return Schedule C to the Division. (Ex. 10) However, the casenote is devoid of any indication that the Division offered to assist the Claimant with providing the document to the Division.

Because there is, at the minimum, a “question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate,” with the Division’s information request by not timely providing the Claimant’s 2010 federal tax return Schedule C, and because there is no evidence that the Division assisted the Claimant with providing it the 2010 federal tax return Schedule C, the Claimant has met his burden of proof. The Division was therefore not correct to deny the Claimant’s December 20, 2011 Food Stamp application.

### **CONCLUSIONS OF LAW**

1. The Division was entitled to request a copy of the Claimant’s 2010 federal income tax return Schedule C.
2. Claimant had the burden of proof by a preponderance of the evidence to establish that he either provided the requested 2010 federal income tax return Schedule C or that, if not, that he failed to provide it instead of refusing to provide it. Although the weight of the evidence shows that the Claimant did not timely provide the Division with the requested 2010 federal income tax return, the Claimant has met his burden of proof, and demonstrated that he did not “refuse” to timely provide the 2010 federal income tax return, but instead “failed” to timely provide it and the Division did not assist him in providing the information.
3. The Division was therefore not correct to deny the Claimant’s December 20, 2011 Food Stamp application, because when there is a “question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied.” 7 C.F.R. § 273.2(d)(1).

### **DECISION**

The Division was not correct to deny the Claimant’s December 20, 2012 Food Stamp application.

### **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

