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

In the Matter of)	
)	
A W,)	OHA Case No. 12-FH-94
)	
Claimant.)	DPA Case No.
_____)	

FAIR HEARING DECISION and ORDER

I. Introduction

There are two issues in this case. The first is whether A W's February 28, 2012 Food Stamp¹ application should be denied because she and her fiancée were fulltime students. The second is whether the Division should have provided Ms. W with ongoing Food Stamp benefits while this case was pending.

On March 7, 2012, the Division sent Ms. W written notice it was denying her February 28, 2012 Food Stamp application.² The Division received her fair hearing request on March 13, 2012.³

The Office of Hearings and Appeals held a hearing on May 2, 2012. Ms. W appeared telephonically; she represented herself and testified on her own behalf. Jeff Miller, Public Assistance Analyst with the Division, appeared in-person and represented the Division. Leslie Blake, an Eligibility Technician employed by the Division, testified telephonically on behalf of the Division. The hearing was recorded.

This decision concludes that Ms. W is not entitled to receive Food Stamp benefits and the Division's decision to deny Ms. W's February 28, 2012 application is **AFFIRMED**. In addition,

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"). This decision follows the common usage of referring to SNAP as the Food Stamp program.

² Ex. 4.

³ Ex. 5.

the Division's decision to not provide Ms. W with ongoing Food Stamp benefits while this case was pending is AFFIRMED.

II. Facts⁴

Ms. W received Food Stamp benefits in February 2012.⁵ There are only two people in her household: Ms. W and her fiancée.⁶ They are both adults and are less than 50 years old.⁷ They are both fulltime students at No Name College.⁸ Ms. W works part-time, less than 20 hours per week, and her fiancée is not employed.⁹

Ms. W's Food Stamp benefits expired at the end of February 2012.¹⁰ She went to a Division office to add her fiancée to her Food Stamp case on February 28, 2012. She was told that she needed to reapply to renew her Food Stamp benefits, which she did that same day.¹¹ She was initially told her benefits would be renewed and that she would not need to participate in an interview. When her Food Stamp benefits were not immediately renewed, she contacted the Division and was told she needed to participate in an interview.

Ms. W was interviewed by Division personnel on March 6, 2012.¹² She was not given a decision on her application during the interview. The following day, the Division sent Ms. W notice her application was denied because she and her fiancée were "enrolled in a program of higher education and do not meet student eligibility requirements for the Alaska Food Stamp program."¹³

The Division received Ms. W's fair hearing request on March 13, 2012.¹⁴ As part of her hearing request, she requested that her Food Stamp benefits be continued pending the results of her hearing.¹⁵ The Division then authorized Ms. W to continue receiving Food Stamp benefits

⁴ All facts are based on Ms. W's testimony unless otherwise noted.

⁵ Ex. 1.

⁶ W testimony; Exs. 2, 3.

⁷ Ex. 2.

⁸ Exs. 2, 3.

⁹ Exs. 2.1, 3.

¹⁰ Ex. 11.

¹¹ W testimony; Exs. 2 – 2.5.

¹² Ex. 3.

¹³ Ex. 4.

¹⁴ Ex. 5.

¹⁵ Ex. 5.

for March and April 2012.¹⁶ On March 19, 2012, however, the Division notified Ms. W that she would not receive Food Stamp benefits for April 2012.¹⁷

On April 18, 2012, which was after the Division received Ms. W's fair hearing request, the Division sent her a supplemental notice that explained since she and her fiancée were enrolled "at No Name College and . . . not working at least 20 hours a week, they [did] not qualify for Food Stamp benefits."¹⁸

III. Discussion

A. Food Stamp Application

The first issue is whether Ms. W's February 28, 2012 Food Stamp application should be denied because she and her fiancée were fulltime students. Ms. W has the burden of proof by a preponderance of the evidence case because she is the party applying for benefits.¹⁹

Food Stamps is a federal program administered by the State.²⁰ 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. The Food Stamp program has numerous eligibility requirements, which an applicant must satisfy in order to qualify for benefits.

One of the general eligibility requirements is that an applicant may not be "enrolled at least half-time in an institution of higher education."²¹ Ms. W and her fiancée are both enrolled as fulltime students at No Name College. As a general matter, they are therefore both not eligible for Food Stamp benefits. However, there are a number of exceptions to the requirement that an applicant may not be "enrolled half-time or more at an institution of higher education." These exclusions include such items as being under 17 years of age, physical or mental unfitness, and having a child under the age of 6 years.²² Based upon the evidence presented at hearing, the only potential exception available to Ms. W is one that allows an applicant to be enrolled as a half-

¹⁶ Exs. 9, 12.

¹⁷ Ex. 9.

¹⁸ Ex. 10.

¹⁹ The 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).

²⁰ 7 C.F.R. § 271.4(a).

²¹ 7 C.F.R. § 273.5(a).

²² See 7 C.F.R. § 273.5(b) for a complete list of the exceptions to the requirement that an applicant not be "enrolled at least half-time in an institution of higher education."

time or more student, if the applicant is also working for at least 20 hours per week.²³ Ms. W, however, does not fall within this exception because she works less than 20 hours per week and because her fiancée is not employed.

B. Ongoing Food Stamp Benefits

Ms. W requested that she receive Food Stamp benefits while this case was pending. The Division initially granted her request and then reversed itself. As a result, she was approved to receive Food Stamp benefits for March 2012, which approval was then rescinded for April 2012.

The question of whether Ms. W should have received ongoing Food Stamp benefits is a purely legal one. Food Stamp benefits are issued only for a certain period of time. Ms. W's Food Stamp benefits expired at the end of February 2012. She then reapplied for Food Stamp benefits for the succeeding period. Because each Food Stamp recertification application is for a new period, and involves a new eligibility determination, a Food Stamp recipient is not entitled to continued benefits pending the outcome of a fair hearing when the issue involves a Food Stamp recertification.²⁴ Continued benefits pending a hearing are only potentially available when benefits are terminated for some reason during the course of a previously approved certification period. Consequently, Ms. W was not entitled to ongoing Food Stamp benefits while she was challenging the denial of her February 28, 2012 application.

IV. Conclusion

The Division's decision to deny Ms. W's February 28, 2012 Food Stamp application is AFFIRMED. The Division's decision to not provide Ms. W with continuing Food Stamp benefits while this case was pending is also AFFIRMED.

V. Appeal Rights

Ms. W has the right to appeal this decision by requesting a review by the Director. To do this, she must 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

²³ 7 C.F.R. § 273.5(b)(5).

²⁴ *Holman v. Block*, 823 F.2d 56, 59 (4th Cir. 1987); *Banks v. Block*, 700 F.2d 292, 296 – 297 (6th Cir. 1983)

An appeal 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: June 11, 2012.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 11th day of June, 2012, true and correct copies of the foregoing were sent to:

Ms. W by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

Jeff Miller, Public Assistance Analyst
Terri Gagne, Public Assistance Analyst
Erin Walker-Tolles, Policy & Program Development
Joy Dunkin, Staff Development & Training
Kari Lindsey, Administrative Assistant II
Courtney Wendel, Policy & Program Development

/Signed/
J. Albert Levitre, Jr.
Law Office Assistant I