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

|                  |   |                        |
|------------------|---|------------------------|
| In the Matter of | ) |                        |
|                  | ) |                        |
| T. S.,           | ) | OHA Case No. 12-FH-114 |
|                  | ) |                        |
| Claimant.        | ) | Division Case No.      |
| _____            | ) |                        |

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

T. S. (Claimant) applied for Food Stamp<sup>1</sup> benefits on March 14, 2012. (Exs. 2 – 2.9) On March 15, 2012, the Division of Public Assistance (Division) sent the Claimant written notice it was denying his Food Stamp application because he quit his job. (Ex. 5) The Claimant requested a fair hearing on March 19, 2012. (Ex. 7)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant’s hearing was held on May 1, 2012. The Claimant appeared telephonically; he represented himself and testified on his own behalf. Jeff Miller, Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf. Lelan Day, an Eligibility Technician employed by the Division, testified telephonically for the Division.

**ISSUE**

Was the Division correct to deny the Claimant’s March 14, 2012 Food Stamp application, on March 15, 2012, because he quit his job?

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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 began working at No Name (Store) in June 2011. (Ex. 6.1) The last day he worked was XXXX 1, 2012. (Ex. 4) He did not return to work thereafter, quitting his job. (Claimant testimony) At the time he quit his job, he was paid \$11.95 per hour. (Ex. 6.2)
2. The Claimant testified that he quit his job due to the cost of transportation and the limited and erratic work schedule:
  - a. When he first started working at the Store, he was guaranteed 30 to 32 hours per week of work.
  - b. After October 2011, his work schedule and assigned hours became erratic. He sometimes would only be assigned to work for four hours a day. He was scheduled for as little as 16 hours per week. The only time he has not taken advantage of offered work hours was when he was ill and missed three days.
  - c. He does not drive. He lives 3.5 miles from the Store. When he began the job he biked to work. Beginning in October 2011, he started taking the bus to work, which required him to walk a long distance to the No Name bus stop. He started being assigned work shifts that ended after the busses stop running, which meant he had to take a cab home. It costs him \$15 per day for transportation costs when he had to take a cab. When he only worked a four hour shift and he had to take a cab, his take home pay for that day did not cover his transportation expenses and basic living costs.
  - d. He would not find out his work schedule for the work week, which began on Sunday, until the immediate preceding Friday. The schedule for his last week of work was five four hour days.
  - e. With the unpredictable schedule, he could not look for a more reliable job.
3. The Claimant applied for Food Stamp benefits on March 14, 2012. (Exs. 2 – 2.9)
4. The Division's Eligibility Technician spoke to the Claimant's former supervisor on March 14, 2012. (Day testimony) His notes of the conversation show that the Claimant's former supervisor told him that the Claimant was still employed but was not showing up for work, that the Claimant was guaranteed a minimum of 20 hours per week of work, and that he did not always take advantage of the work hours he was offered. (Ex. 3)
5. The Store payroll records show the Claimant as "[n]o longer employed as of 03/09/12." (Ex. 6.1) His work hours and gross wages for the six week period immediately preceding his leaving work are as follows:

| <u>Pay Period</u>             | <u>Hours Worked</u> | <u>Gross Wages</u> |
|-------------------------------|---------------------|--------------------|
| Week ending January 28, 2012  | 23.6                | \$282.02           |
| Week ending February 4, 2012  | 30.75               | \$367.46           |
| Week ending February 11, 2012 | 35.33               | \$427.03           |
| Week ending February 18, 2012 | 27.98               | \$335.79           |
| Week ending February 25, 2012 | 13.88               | \$184.32           |
| Week ending March 3, 2012     | 16.69               | \$199.45           |

(Ex. 6.2) His weekly average hours for that time period were 24.70.<sup>2</sup> His weekly average gross wages for that time period were \$299.34.<sup>3</sup>

6. The Division sent the Claimant notice on March 15, 2012 that his March 14, 2012 Food Stamp application was denied. (Ex. 5) The notice explained that the application was denied because he had quit his “most recent job without good cause” and that he was not eligible to receive Food Stamp benefits until after May 31, 2012. *Id.* On April 19, 2012, the Division sent the Claimant a supplemental notice that informed him that his Food Stamp disqualification period would end on June 8, 2012. (Ex. 9)

7. The Claimant has one prior Food Stamp program work requirement penalty, which was assessed against him on February 18, 2009. (Ex. 3.1)

### **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 rules that control an applicant’s eligibility and the application process are set out in the Code of Federal Regulations (C.F.R.).

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<sup>2</sup> Total hours of 148.23 for the six week period, divided by six weeks = 24.70 average hours per week.

<sup>3</sup> Total gross wages of \$1,796.07 for the six week period, divided by six weeks = \$299.34 average gross wages per week.

The Food Stamp program has a work requirement. A person receiving or applying for Food Stamp benefits is required to be employed, looking for employment, or training for employment, unless that person is exempt from the work requirement. 7 C.F.R. § 273.7(a)(1).

As part of the work requirement, a person may “not voluntarily and without good cause quit a job of 30 or more hours a week.” 7 C.F.R. § 273.7(a)(1)(vii). A person who voluntarily and without good cause quits a job of 30 or more hours a week (or the weekly wage equivalent of 30 hours at the federal minimum wage rate of \$7.25 per hour), during the 60 day time period immediately preceding his Food Stamp application, is not eligible to receive Food Stamp benefits. 7 C.F.R. § 273.7(j)(2)(i); 7 C.F.R. § 273.7(j)(3)(ii); *Alaska Food Stamp Manual* §602-1I(2)(a).

The State Agency is responsible for determining whether “good cause” exists for quitting a job. 7 C.F.R. § 273.7(i)(1). “Good cause” for quitting a job exists when:

The distance from the member’s home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment will not be considered suitable if daily commuting time exceeds 2 hours per day . . . Nor will employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

7 C.F.R. § 273.7(h)(2)(iv). “Good cause” for quitting a job also exists when there are “[w]ork demands or conditions that render continued employment unreasonable, such as working without being paid on schedule. 7 C.F.R. § 273.7(i)(3)(ii).

The penalty for the second violation of the work requirement disqualifies a person from receiving Food Stamp benefits for three months. 7 C.F.R. § 273.7(f)(2)(ii)(B); *Alaska Food Stamp Manual* §602-1I(2)(c). The disqualification period begins on the day the job was quit. *Alaska Food Stamp Manual* §602-1I(2)(d).

### ANALYSIS

The issue in this case is whether Division was correct to deny the Claimant’s March 14, 2012 Food Stamp application because he quit his job on March 1, 2012.

Because this case involves the denial of an application for Food Stamp benefits, the Claimant 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).

It is undisputed that the Claimant quit his job on March 1, 2012, the last day he worked. Because this was within the 60 day period before his March 14, 2012 Food Stamp application, this would require the Division to impose a penalty for quitting his job (job quit penalty), pursuant to federal regulations 7 C.F.R. § 273.7(j)(2), (j)(2)(i) and 7 C.F.R. § 273.7(f)(2)(ii)(B). This would

disqualify the Claimant from receiving Food Stamp benefits for a three month period, since this was his second penalty for violation of the Food Stamp program's work requirement. *Id.*

In order for the Division to apply the job quit penalty, the job must have been for 30 hours or more per week, or have had the wage equivalent of 30 hours per week multiplied by the federal minimum wage of \$7.25 per hour. 7 C.F.R. § 273.7(j)(2)(i); 7 C.F.R. § 273.7(j)(3)(ii); *Alaska Food Stamp Manual* §602-11(2)(a). 30 hours per week multiplied by the federal minimum wage of \$7.25 per hour comes to \$217.50. The Claimant did not argue that his job did not pay a minimum of \$217.50 per week, and the facts show that in the six week period immediately preceding his March 1, 2012 job quit, he earned an average of \$299.34 per week in gross wages. In other words, the Claimant quit a job that would normally cause him to be subject to a Food Stamp program job quit penalty.

The Claimant's testimony, however, presented two potential factual defenses to the imposition of the three month job quit penalty. The first defense is that the distance from his home to his workplace was unreasonable given the cost of transportation and his wage. The second defense was that his working conditions, specifically his limited work hours and erratic schedule, were unreasonable. Each of these is discussed below.

1. Distance From the Home.

The Food Stamp regulations do not allow the imposition of a job quit penalty if “[t]he distance from the [Claimant's] home to the place of employment [was] unreasonable considering the expected wage and the time and cost of commuting.” *See* 7 C.F.R. § 273.7(h)(2)(iv).

The facts of this case show that the Claimant does not drive. His transportation options are bicycling, walking, and public or private transportation. When he first began working at the Store, he bicycled to work. Beginning in October 2011, he started taking the bus to work. Taking the bus required him to walk a long distance to the No Name bus stop. If his shift ended after the busses stopped running, he would have to take a cab home. His daily cost for transportation, when he took a cab, was \$15. If he only had a 4 hour work day, his gross pay would only be \$47.80.<sup>4</sup> He testified that after costs of transportation were deducted, he did not take home enough money to meet his basic living costs.

While it is clear that on a four hour work day with a gross pay of \$47.80, the Claimant would not generate significant daily income after transportation costs of \$15 were incurred, he did not live a significant distance from the Store (only 3.5 miles per his testimony), and he would still have more income from working than if he did not work at all. Under these facts, the Claimant did not meet his burden of proof and prove that he had good cause for quitting his job because “the distance from the [his] home to the place of employment [was] unreasonable considering the expected wage and the time and cost of commuting.”

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<sup>4</sup> Four hours multiplied by the Claimant's hourly wage of \$11.95 = \$47.80.

2. Unreasonable Working Conditions

The Food Stamp regulations do not allow the imposition of a job quit penalty if the reason the Claimant quit his job was due to unreasonable working conditions: “good cause” for quitting a job exists when there are “[w]ork demands or conditions that render continued employment unreasonable, such as working without being paid on schedule.” 7 C.F.R. § 273.7(i)(3)(ii).

The Claimant testified that his work schedule was erratic and unpredictable, that he was scheduled for as little as 16 hours per week, and that his last week of scheduled work was for five four hour days. He also testified that his unpredictable work schedule did not allow him to look for another job.

However, as discussed above, the Claimant’s actual work hours fluctuated but still met the minimum pay level requirement (the equivalent of 30 hours per week times the federal minimum wage of \$7.25 per hour). Given that, the unpredictability of the Claimant’s schedule and the fact that he might have been scheduled for a work week of five hour days, cannot be said to constitute unreasonable working conditions. Nor can it be said to be unreasonable for an employer to set a working schedule that is not conducive to an employee’s job search efforts.

Consequently, the Claimant did not meet his burden of proof and establish that he had good cause for quitting his job because he was subjected to unreasonable working conditions.

**CONCLUSIONS OF LAW**

1. The Claimant last worked on XXXX 1, 2012 and then quit his job by not returning to work thereafter. He had the burden of proof by a preponderance of the evidence to establish that he had good cause for quitting his job. He did not meet his burden of proof.
2. Because the Claimant did not prove that he was justified in quitting his job, and because he had quit his job within the 60 day period preceding his March 14, 2012 Food Stamp application, the Division was correct when it imposed a job quit penalty against the Claimant and denied his March 14, 2012 Food Stamp application.

**DECISION**

Division was correct when it imposed a job quit penalty against the Claimant and denied his March 14, 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

DATED this 11th day of May, 2012.

/Signed/  
\_\_\_\_\_  
Larry Pederson  
Hearing Authority

Certificate of Service

I certify that on this 11th day of May, 2012, 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:  
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