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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. 10-FH-235
)	
Claimant.)	DPA Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a recipient of Food Stamp Program benefits (Ex. 2.0). The Claimant prepared and signed a Food Stamp recertification application (Eligibility Review Form – Form Gen. 72) dated May 11, 2010 (Exs. 2.0 through 2.5). The Claimant’s Eligibility Review Form was received by the State of Alaska Division of Public Assistance (DPA or Division) on June 7, 2010 (Ex. 2.0).

On July 8, 2010 the Division mailed to the Claimant a written notice advising that the Claimant’s Food Stamp recertification application had been denied on the grounds that the Claimant’s monthly income exceeded the Food Stamp Program’s applicable maximum monthly income limit (Ex. 5). The Claimant requested a fair hearing with regard to the Division’s denial of her Food Stamp recertification application on July 19, 2010 (Exs. 6.0, 6.2).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

A hearing was held as scheduled on August 11, 2010 before Hearing Examiner Jay Durych. The Claimant appeared in person, represented herself, and testified on her own behalf. ██████████, a Public Assistance Analyst with the Division, attended the hearing in person to represent and testify on behalf of the Division. The parties testimonies were received and all exhibits submitted were admitted into evidence. At the end of the hearing the record was closed except for the submission of certain post-hearing filings. The Claimant’s post-hearing filing was due filed by August 20, 2010. The Division’s post-hearing filing was due filed by August 27, 2010. No post-hearing filing was received from either party.

ISSUE

Was the Division correct when, on July 8, 2010, it denied the Claimant's recertification application for Food Stamp benefits dated May 11, 2010, based on the assertion that the Claimant's household's monthly income exceeded the Food Stamp Program's applicable monthly income limit for a household of six (6) persons?

SUMMARY OF DECISION

The Division's estimate of the Claimant's future (anticipated¹ or prospective²) gross ³ monthly income was made in accordance with applicable federal regulation 7 CFR § 273.10(c). Based on that estimate, the Claimant's household's monthly income exceeded the Food Stamp Program's applicable maximum income limit for a household of six (6) persons. Accordingly, the Division was correct when, on July 8, 2010, it denied the Claimant's Food Stamp recertification application dated May 11, 2010, on the basis that the Claimant's monthly income exceeded the Food Stamp Program's applicable monthly income limit for a household of six (6) persons.

FINDINGS OF FACT

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

1. The Claimant prepared and signed a Food Stamp recertification application (Eligibility Review Form – Form Gen. 72) dated May 11, 2010 (Exs. 2.0 through 2.5). The Claimant's Eligibility Review Form was received by the State of Alaska Division of Public Assistance (DPA or Division) on June 7, 2010 (Ex. 2.0).
2. At the time of her recertification application (May 11, 2010) and eligibility interview with DPA (June 17, 2010) the Claimant was employed by [REDACTED]; was paid \$7.75 per hour; worked 25 – 40 hours per week; and was paid bi-weekly (Ex. 3.0).
3. On June 17, 2010 the Claimant participated in a telephonic eligibility interview with a DPA Eligibility Technician (Ex. 3.0). At the time of her eligibility interview the Claimant indicated that she had a six (6) person household, consisting of herself and five (5) children (Ex. 3.0, DPA Hearing Representative testimony). The Claimant was able to provide sufficient information at the eligibility interview regarding her child support and expenses (Ex. 3.0).

¹ “Anticipate means expecting a future event; predicting an event. For example, an applicant anticipates receiving child support each month.” *See* Alaska Food Stamp Manual Section 600-2.

² A prospective eligibility determination is “[t]he determination of eligibility based on anticipated income and circumstances in the issuance month.” *See* Alaska Food Stamp Manual Section 600-2.

³ Black's Law Dictionary defines *gross income* as all income from whatever source derived. *See* Black's Law Dictionary (West Publishing, 5th Edition, 1979) at 632; *see also* United States Internal Revenue Code, Section 61(a).

4. The Division originally calculated the Claimant's unearned income from child support at the time of the Claimant's eligibility interview on June 17, 2010 (Ex. 3.0). At that time, the Division was able to access information from the State of Alaska's Child Support Enforcement Division (CSED) through a computer interface (Ex. 3.1). The information available to the Division through CSED included a record of all child support payments made to the Claimant during the period December 31, 2009 through June 10, 2010 (Ex. 3.1).

5. In order to estimate the amount of the Claimant's future (prospective or anticipated) child support, the Division averaged the amount of child support received by the Claimant during the months of March, April, and May 2010 (Ex. 3.0; DPA Position Statement; DPA Hearing Representative's testimony). Based on these three months, the Division arrived at an average gross monthly child support income figure of \$1,982.74. *Id.* The Division then applied a \$50.00 "pass through" exemption for a net countable / monthly child support figure of \$1,932.74. *Id.* This figure was arrived at on June 17, 2010. *Id.*

6. At the time of the Claimant's June 17, 2010 eligibility interview the Division's Eligibility Technician (ET) desired more accurate information regarding the Claimant's wages than the Claimant was able to provide on that date (Ex. 3.0). Accordingly, the ET put the Claimant's application in a "pending" status awaiting (among other things) verification of the Claimant's earnings. *Id.*

7. On July 7, 2010 the Division received information from the Claimant regarding her earnings from the [REDACTED] for the pay periods May 17 through May 30 and May 31 through June 13, 2010 (Exs. 4.0, 4.1). These pay periods corresponded to the paychecks issued on June 4, 2010 and June 18, 2010, respectively (Ex. 4.0).

8. On July 7, 2010 the Division proceeded to estimate the Claimant's future (prospective) earned income from employment based on the Claimant's paychecks dated June 4, 2010 and June 18, 2010 (Ex. 4.0; DPA Position Statement; DPA Hearing Representative's testimony). For the June 4, 2010 pay date, this resulted in gross income (counting tips) of \$1,413.45. *Id.* For the June 18, 2010 pay date, this resulted in gross income (counting tips) of \$1,011.95. *Id.* These figures were then divided by 2 and then multiplied by a conversion factor of 2.15 for a resulting monthly gross earned income figure of \$2,607.31. *Id.*

9. Based on the Claimant's average monthly gross employment income of \$2,607.31 (see Paragraph 7, above), and the Claimant's average monthly child support income of \$1,932.74 (see Paragraph 4, above), the Division calculated that the Claimant's average total gross monthly household income was \$4,540.05 (DPA Position Statement; DPA Hearing Representative's testimony). The Division then applied a \$4,001.00 gross income limit for a household the size of the Claimant's and concluded that the Claimant's gross income exceeded the applicable Food Stamp Program gross income limit by \$539.05. *Id.*

10. On July 8, 2010 the Division mailed to the Claimant a notice advising that the Claimant's recertification application for Food Stamp benefits (received by DPA on June 7, 2010) had been denied based on excess income (Ex. 5).

11. At hearing, the Claimant provided a longer wage payment history (Ex. A). *This more comprehensive wage payment history was not available to the Division at the time it made its decision (July 7) and at the time it sent its denial notice (July 8).*⁴ A summary of all pay statements in the record demonstrates the following:

a. On June 4, 2010 the Claimant received a check from her employer ([REDACTED]), for the pay period May 17 through May 30, 2010, in the net amount of \$474.63 (Ex. 4.1). The Claimant's tips during this period totaled \$823.25. *Id.* The Claimant's pre-tax gross for this pay period was \$1,413.05, and her total net income⁵ for this pay period was \$1,297.88 (Exs. 4.0, 4.1).

b. On June 18, 2010 the Claimant received a check from her employer for the pay period May 31, through June 13, 2010 in the net amount of \$303.47 (Ex. 4.1). The Claimant's tips during this period totaled \$626.00. *Id.* The Claimant's pre-tax gross for this pay period was \$1,011.95, and her total net income for this pay period was \$929.47 (Exs. 4.0, 4.1).

c. On July 2, 2010 the Claimant received a check from her employer for the pay period June 14, 2010 through June 27, 2010 in the net amount of \$289.99 (Ex. A). The Claimant's tips during this period totaled \$563.60. *Id.* The Claimant's pre-tax gross for this pay period was \$929.32, and her total net income for this pay period was \$853.59 (Ex. A).

d. On July 16, 2010 the Claimant received a check from her employer for the pay period June 28, 2010 through July 11, 2010 in the net amount of \$254.67 (Ex. A). The Claimant's tips during this period totaled \$570.55. *Id.* The Claimant's pre-tax gross for this pay period was \$898.45, and her total net income for this pay period was \$825.22 (Ex. A).

e. On July 30, 2010 the Claimant received a check from her employer for the pay period July 12, 2010 through July 25, 2010 in the net amount of \$311.78 (Ex. A). The Claimant's tips during this period totaled \$687.96. *Id.* The Claimant's pre-tax gross for this pay period was \$1,088.44, and her total net income for this pay period was \$999.74 (Ex. A).

12. Based on the Claimant's pay records as stated above, her average *gross* monthly earned income from employment, during the period June 1 – July 31, 2010, was \$2,607.31. Based on

⁴ The only pay records available to the Division at the time it made its eligibility determination were those set forth in sub-paragraphs (a) and (b) of this paragraph (11). The additional wage information set forth in sub-paragraphs (c), (d), and (e) of this paragraph is provided because it is relevant to the discussion of income averaging contained in the Analysis section, below.

⁵ Net income is income "remaining after all deductions and adjustments have been made." *See Webster's II New Riverside University Dictionary at 791; see also Black's Law Dictionary (West Publishing, 5th Edition, 1979) at 938 ("income . . . after allowable deductions and exemptions have been subtracted from gross or total income").*

the Claimant's pay records as stated above, her average *net* monthly earned income from employment (including tips) during the period June 1 – July 31, 2010, was \$2,452.95.

13. Records from the State of Alaska Child Support Enforcement Division (Exs. 3.1, 6.3) ⁶ indicate that the Claimant was paid the following amounts of child support during the period January 1, 2010 through July 31, 2010:

January 2010	\$1,948.73
February 2010	\$1,755.90
March 2010	\$1,862.38
April 2010	\$2,084.70
May 2010	\$2,001.14
June 2010	\$1,247.84
July 2010	\$1,813.55

14. During the hearing of August 11, 2010 the Claimant testified in relevant part that:

a. She started working at [REDACTED] at the end of April 2010. Her June 4, 2010 paycheck included her first 5 weeks of work and was therefore not typical (i.e. the amount of this check was significantly greater than normal). Her paychecks after her June 4, 2010 paycheck have all been "normal" or representative.

b. She usually receives an average of approximately \$1,700.00 per month in child support. However, she recently received (and the Division counted) two (2) child support payments which included back support for a significant period of time, and were thus larger than normal. At the present time she is involved in a child custody battle. She is now *paying* child support instead of *receiving* child support.

c. At the time she submitted her Fair Hearing Request she had an issue with the Division's calculations. However, after subsequently seeing the Division's calculations on paper, her only issues are the time and income periods which were used by the Division in prospectively estimating her future income. In other words, she believes that the Division used in its estimate a time period during which she received significantly more money than she normally receives.

15. At the hearing of August 11, 2010 the Division's Hearing Representative credibly testified in relevant part as follows:

a. There are two (2) income tests that a Food Stamp applicant or recipient must pass in order to qualify for benefits. First, the person must pass the *gross* income test.

⁶ These child support records were available to the Division at the time it made its eligibility determination. As discussed in Paragraph 5, above, the Division originally considered only the child support received during the months of March, April, and May 2010. The additional child support information for the months of January, February, June, and July 2010 is set forth above because it is relevant to the discussion of income averaging contained in the Analysis section, below.

Second, the person must pass the *net* income test. If a person passes both tests, he or she qualifies for benefits. However, if a person does not pass the first (gross income) test, the analysis ends there and the Division normally does not bother to determine whether the person would pass the net income test.

b. When prospectively estimating income, the Division normally averages at least two (2) months of income in an effort to arrive at an accurate, representative income estimate. The earned income which was counted by the Division in this case consisted of the wages from the Claimant's employment with the [REDACTED] (including tips). The total earned income figure used by DPA was \$2,607.31. This figure was arrived at by averaging the Claimant's two (2) June 2010 paychecks and by multiplying the average figure by a conversion factor of 2.15.

c. The unearned income which was counted by the Division consisted of child support income of \$1,932.74 per month. The Division arrived at this figure by averaging the child support received during the three (3) months of March, April, and May 2010, and by subtracting a \$50.00 "pass-through" deduction.

d. The Food Stamp Program maximum income limits for a household the size of the Claimant's are \$4,011.00 (gross) and \$3,078.00 (net).

e. If an unsuccessful applicant's income decreases, the applicant may reapply.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof.⁷ This case involves the denial of an application for recertification of Food Stamp Benefits. Food stamp recertification applications are considered to involve new and independent eligibility determinations (see *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983)). Accordingly, pursuant to applicable federal law, the Claimant is held to be attempting to change the existing status quo, and the Claimant therefore bears the burden of proof in these proceedings.

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated.⁸ Therefore, "preponderance of the evidence" is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not.⁹

⁷ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁸ *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

⁹ *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

II. The Food Stamp Program – In General.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 CFR Sections 271-274.

The Food Stamp Program has been delegated to the states for administration. 7 CFR Section 271.4. The Department of Health and Social Services administers the Food Stamp program in Alaska, and has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC 46.010 - 7 AAC 46.990.

III. The Food Stamp Program – Income Eligibility Standards.

7 CFR § 273.9 provides in relevant part as follows:

a. . . . Households which do not contain an elderly or disabled member shall meet *both the net income eligibility standards and the gross income eligibility standards* for the Food Stamp Program The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in 42 U.S.C. 9902(2). [Emphasis added].

* * * * *

(b) Definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include (i) All wages and salaries of an employee

(2) Unearned income shall include, but not be limited to (iii) Support or alimony payments made directly to the household from non-household members

* * * * *

7 CFR § 273.10(a) provides in relevant part as follows:

(2) Application for recertification. Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period

7 CFR § 273.10(c)(1-3) provides in relevant part as follows:

(1) Anticipating income.

(i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the

household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) Income only in month received. (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period

* * * * *

(3) Income averaging. (i) Income may be averaged When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income

* * * * *

The Alaska Food Stamp Manual, Addendum 4 (version effective October 1, 2009 through September 30, 2010) implements 7 CFR § 273.9(a) and calculates the Food Stamp Program's income limits for a household of six (6) during the period in question as \$4,001.00 (gross) and \$3,078.00 (net) (Ex. 12.0).

ANALYSIS

I. Introduction; Definition of Issue.

The ultimate issue in this case is whether the Claimant's household's monthly income exceeded the Food Stamp Program's applicable monthly income limit for a household of six (6) persons. Correctly determining this issue would normally entail resolving the following sub-issues:

1. Did the Division prospectively estimate the Claimant's income properly?
2. Did the Division apply the correct maximum gross income limit?
3. If the gross income limit was not exceeded, did the Division correctly apply the 20 percent earned income deduction in calculating net income?
4. If the gross income limit was not exceeded, did the Division correctly apply the correct standard deduction for the household's size and subtract that number from the total net income?
5. If the gross income limit was not exceeded, did the Division correctly apply the correct shelter deduction in calculating net income?
6. If the gross income limit was not exceeded, did the Division apply the correct maximum net income limit?

At hearing the Claimant stated that, at the time she submitted her Fair Hearing Request, she had an issue with the Division's calculations. This would have required resolution of each of sub-issues 1-6, above. However, the Claimant also stated at hearing that after reviewing the Division's calculations on paper, her only remaining issue or concern was with the periods of time, and specific paychecks and child support payments, which were averaged by the Division in prospectively estimating the Claimant's future income. Specifically, the Claimant asserts that the Division based its income estimates on non-representative time frames, which caused the Division to significantly over-estimate her prospective income from wages and child support.

Based on the Claimant's narrowing of the issues at hearing, it is not necessary to address all six of the sub-issues referenced above. Rather, it is only necessary to address the second issue, i.e. whether the methods that the Division used to prospectively estimated the Claimant's income from wages and child support were correct and in accordance with applicable regulations.

Because the Claimant is attempting to change the existing status quo by obtaining benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that the methods that the Division used to prospectively estimate the Claimant's income from wages and child support were not correct. *See* discussion in Principles of Law, above.

II. Did The Division Prospectively Estimate the Claimant's Future Income In Accordance With The Applicable Regulations?

The regulation which governs the way in which the Division must prospectively estimate or “anticipate” income is 7 CFR § 273.10(c)(1)(i-ii). That regulation generally requires that prospective income be estimated, at least initially, based on “income received during the past 30 days.” *Id.*

A. The Division's Prospective Estimate of the Claimant's Earned Income (Wages).

The Claimant's Eligibility Review Form was received by the Division on June 7, 2010 (Ex. 2.0). Thus, pursuant to 7 CFR § 273.10(c)(1)(i-ii), the Division would normally have been required to determine the Claimant's prospective income based on income that the Claimant had received from approximately May 7 through June 6, 2010 (i.e. “the past 30 days”).

In this case the Division did not receive complete earnings information from the Claimant until July 7, 2010 (see Findings of Fact at Paragraph 7). On that date the Division received information and/or documentation from the Claimant regarding her earnings from the [REDACTED] [REDACTED] for the pay periods May 17 through May 30 and May 31 through June 13, 2010 (Exs. 4.0, 4.1).¹⁰ The record does not indicate that *any other wage information had been provided to the Division at the time the Division made its eligibility determination on July 8, 2010*. Accordingly, the Division prospectively estimated the Claimant's income *based on the only evidence then available* (i.e. the Claimant's pay records for the period May 17 through June 13, 2010). Based on this limited information, the Division estimated the Claimant's gross monthly earned income as \$2,607.31 (DPA Hearing Representative's testimony).¹¹

In summary, the Division prospectively estimated the Claimant's earned income on July 8, 2010 based on the income received by the Claimant during the 27 day period beginning May 17 2010 and ending June 13, 2010 (Exs. 4.0, 4.1). The pay records for this 27 day period were *the only*

¹⁰ As discussed in footnote 4, above, additional wage information was provided by the Claimant at hearing. However, because this wage information involved *pay periods subsequent to the date of the Division's July 8, 2010 eligibility determination*, the Division did not include (and could not possibly have included) these subsequent pay periods in its calculations.

¹¹ As a matter of pure mathematics, the larger the number of months considered, the more accurate the average of a Claimant's monthly income will be. Pursuant to 7 CFR § 273.10(c)(1)(i-ii), the Division *could* have averaged the Claimant's wages over a longer period if the additional earnings information which was provided at hearing had been available to the Division at the time of its determination. However, even had the Division had pay records for additional pay periods available to it at the time of its decision, averaging these additional pay periods would not have changed the outcome of this case. The Claimant's gross pay for the period beginning May 17, 2010 and ending July 25, 2010 was \$5,341.21 (i.e. \$1,413.05 plus \$1,011.95 plus \$929.32 plus \$898.45 plus \$1,088.44). See Findings of Fact at Paragraph 11, above. There were 69 days during this period. Dividing \$5,341.21 by 69 gives an average daily wage of \$77.41 per day. Multiplying this average daily wage by the average 30.42 days in a month results in average monthly gross wages of \$2,354.81. This is \$252.50 less than the average figure determined by the Division. However, because the Claimant's total gross income exceeded the applicable Food Stamp Program gross income limit by \$539.05 (see Findings of Fact at Paragraph 9, above), the Claimant would still have exceeded the applicable gross income limit even had the Division been able to average a greater number of pay periods when it made its initial eligibility determination.

earned income information provided to the Division at that time. Under these circumstances, it is clear that the Division prospectively estimated the Claimant's earned income in compliance with 7 CFR § 273.10(c)(1)(i-ii).

B. The Division's Prospective Estimate of the Claimant's Child Support.

On June 17, 2010 the Claimant participated in a telephonic eligibility interview with a DPA Eligibility Technician (ET) (Ex. 3.0). During this interview the ET accessed information regarding the amount of child support received by the Claimant for the period December 31, 2009 through June 10, 2010 (Exs. 3.0, 3.1).

7 CFR § 273.10(c)(1)(i-ii) would have required the Division to prospectively estimate the Claimant's future child support, based on the amount received during the past 30 days, *as long as the amount received during the last 30 days was representative.* However, the regulation further provides that, "if income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income." *Id.*

In this case, the DPA Eligibility Technician (ET) excluded the amount of child support received in June 2010 because that month was incomplete (i.e. it was only half over at the time of the determination) (Ex. 3.0). Then, the ET took the child support received during the prior three months (March, April, and May 2010), totaled it, and divided that total by three (3) to obtain a monthly average of \$1,982.74. Finally, the ET subtracted the \$50.00 "pass-through" deduction, arriving at an average monthly gross unearned income figure of \$1,932.74 (Ex. 3.0; DPA Hearing Representative testimony).

In summary, the Division prospectively estimated the Claimant's child support (unearned income) based on an average of the child support received by the Claimant during a recent three (3) month period. This method of estimating prospective / anticipated future child support complied with the requirements of 7 CFR § 273.10(c)(1)(i-ii).¹²

¹² As a matter of pure mathematics, the larger the number of months considered, the more accurate the average of a Claimant's monthly income will be. Pursuant to 7 CFR § 273.10(c)(1)(i-ii), the Division could have averaged the Claimant's child support over a period longer than three months. However, even had the Division averaged the most recent seven (7) months of child support income instead of just the last three (3) months, this would not have changed the outcome of this case. The average monthly amount of child support paid to the Claimant during the seven (7) month period beginning January 1, 2010 and ending July 31, 2010 was \$1,816.32 (*see* Findings of Fact at Paragraph 13, above). If the Claimant's average gross monthly earned income of \$2,354.81 (calculated over the period beginning May 17, 2010 and ending July 25, 2010; *see* footnote 11, above) is added to the Claimant's average gross monthly unearned income (from child support) of \$1,816.32 (calculated over the period beginning January 1, 2010 and ending July 31, 2010), the resulting total gross monthly income (earned income plus unearned income) equals \$4,171.13. Although this figure is \$368.92 less than the \$4,540.05 arrived at by DPA, it is still \$170.13 more than the \$4,001.00 monthly gross income limit applicable to a household the size of the Claimant's.

III. Summary.

The methods used by the Division to estimate the Claimant's prospective / anticipated future income from employment / wages, and from child support, complied with the requirements of the applicable regulation (7 CFR § 273.10(c)(1)(i-ii)). The Alaska Food Stamp Program's gross monthly income limit for a household of six persons, during the period October 1, 2009 through September 30, 2010, was \$4,001.00 (Ex. 12.0). The Claimant's household's average gross monthly income as calculated by the Division (\$4,540.05) is mathematically greater, by \$539.05, than the Food Stamp Program's gross monthly income limit of \$4,001.00 for a household of six persons. Accordingly, pursuant to 7 CFR § 273.9(a),¹³ the Claimant's household was not financially eligible for Food Stamp benefits, based solely on gross income, at the time of the Division's determination.

CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden, and did not prove by a preponderance of the evidence:

(a) That the Division's method of estimating the amount of her prospective (anticipated or future) wages (earned income) violated the applicable regulation (7 CFR § 273.10(c)); or

(b) That the Division's method of estimating the amount of her prospective (anticipated or future) child support (unearned income) violated the applicable regulation (7 CFR § 273.10(c)).

2. Accordingly, the Division was correct when, on July 8, 2010, it denied the Claimant's recertification application for Food Stamp benefits dated May 11, 2010, because the Claimant's household's gross monthly income exceeded the Food Stamp Program's applicable gross monthly income limit for a household of six (6) persons.

DECISION

The Division was correct when, on July 8, 2010, it denied the Claimant's recertification application for Food Stamp benefits dated May 11, 2010, because the Claimant's household's gross monthly income exceeded the Food Stamp Program's applicable gross monthly income limit for a household of six (6) persons.

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:

¹³ Pursuant to regulation 7 CFR § 273.9(a), when a Claimant's household is financially ineligible for Food Stamp benefits based on *gross income*, the Division is not required to determine whether the Claimant's household would be financially eligible for Food Stamp benefits based on *net income* (see text of regulation quoted in Principles of Law, above).

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 this 4th day of October, 2010.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 4th day of October 2010 true and correct copies of the foregoing decision were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list via e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested
[REDACTED], DPA Fair Hearing Representative

[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

(signed)

J. Albert Levitre, Jr.
Law Office Assistant I