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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. 10-FH-283
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) completed, signed and submitted an Application for Food Stamp benefits (Application) on July 26, 2010, which the Division received that same day.¹ (Ex. 2.0-2.9) The Division of Public Assistance (Division) sent Claimant written notice on July 27, 2010 it had denied this Application because Claimant had been convicted of a drug-related felony for an offense that occurred on or after August 22, 1996. (Ex. 4) The Division determined he consequently was permanently not eligible to receive Food Stamp benefits. (Ex. 4, 4.1)

Claimant requested a Fair Hearing on August 2, 2010. (Ex. 5-5.1) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010 and 7 CFR § 273.15.

The Fair Hearing was held on September 8 and September 15, 2010. Claimant appeared in person, represented himself and testified on his own behalf. Mr. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division. All exhibits offered were admitted.²

¹ On the Application, Claimant wrote "8-26-10." (Ex. 2, 2.7) However, the Division stamped the date it received the application as July 26, 2010 and Claimant participated in an eligibility interview on July 26, 2010. (Ex. 2, Ex. 3) Therefore the August date appears to be a mistake.

² Subsequent to the closure of the evidentiary record, Claimant provided a copy of an Alaska Supreme Court Order dated [REDACTED] 10, 2010 denying the State's Petition for Rehearing filed [REDACTED] 20, 2010. During the hearing, Claimant had testified vaguely concerning litigation subsequent to the Supreme Court Order of [REDACTED] 20, 2010. From Claimant's testimony, the Hearing Authority was unable determine whether this litigation was relevant to this case and asked Claimant if he had documentation of it. Claimant said he did not and did not arrange to supplement the record. Claimant *sua sponte* provided the [REDACTED] 10, 2010 Supreme Court Order. The Division objected to admission of this Order. This Order has not been considered in the determination of this case: a) the evidentiary record was closed prior to Claimant's submission; b) the Order offers no information relevant to this case.

ISSUE

Was the Division correct to deny Claimant's Application for Food Stamp benefits on grounds that Claimant is permanently disqualified from receiving food stamps because he had been convicted of a drug-related felony for behavior occurring after August 22, 1996?

FINDINGS OF FACT

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

1. Claimant completed, signed and submitted an Application for Food Stamp benefits (Application) on July 26, 2010. (Ex. 2.0-2.9) The Division received this application on July 26, 2010. (Ex. 2.0)
2. Claimant disclosed in his response to Application question 4 that he had been convicted of a drug-related felony after for an offense August 22, 1996. (Ex. 2.1)
3. On July 27, 2010, the Division gave written notice to Claimant his July 26, 2010 Food Stamp Application had been denied because of his prior felony drug conviction.³ (Exs. 4-4.1)
4. Claimant requested a Fair Hearing on August 2, 2010. (Ex. 5; Ex. 5.1)
5. Claimant had been convicted of a drug-related felony for an offense occurring on [REDACTED] 2003 as shown on a certified Judgment and Commitment dated [REDACTED] 2006. (Ex. 8-8.1)
6. On [REDACTED] 20, 2010, the Alaska Supreme Court decided Claimant was required to have been given a pre-trial evidentiary hearing at the trial court level before Claimant could be tried for alleged offenses occurring [REDACTED], 2003. (Ex. C) The Supreme Court sent the case back to the Superior Court for such an evidentiary hearing. (Ex. C)

PRINCIPLES OF LAW

I. Burden of Proof

This case involves Claimant's Application for Food Stamp Program benefits. 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). An Application seeks a change from the status quo, therefore, Claimant has the burden of proof.

II. Standard of Proof

³ On July 27, 2010 and September 3, 2010, Claimant was advised by written notice that his July 26, 2010 Application was denied because he was permanently disqualified from eligibility from the Food Stamp Program due to his drug-related felony conviction after August 22, 1996. (Exs.4-4.1) The written notice of September 3, 2010 provided more detailed information to supplement the July 27, 2010 notice.

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 in this case is the preponderance of the evidence standard and Claimant must prove he is eligible for Food Stamp benefits by a preponderance of the evidence.

Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

III. Food Stamp Program

The Food Stamp Program (Program) is a federal program administered by the states. 7 CFR § 271.4(a). The State of Alaska has adopted regulations to implement the federal Food Stamp Program. Those regulations are found at 7 AAC 46.010-990.

Title 7 of the Code of Federal Regulations (CFR) § 273.1(b)(7)(vii) and 7 CFR § 273.11(m) are regulations which address the permanent disqualification from participation in the Food Stamp Program by persons who have been convicted of drug-related felony offenses occurring after August 22, 1996.

The federal Food Stamp Program regulations specify certain persons are ineligible for Program benefits. Persons convicted of drug-related felony crimes are ineligible by authority of 7 CFR § 273.1(b)(7)(vi) which states:

(7) Ineligible household members. The following persons are not eligible to participate as separate households or as a member of any household:

....

(vii) Individuals who are ineligible under § 273.11(m) because of a drug-related felony conviction.

The regulation concerning individuals who are ineligible because of a drug-related felony conviction is 7 CFR § 273.11(m) which states:

(m) Individuals convicted of drug-related felonies. An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to such legislation. Ineligibility under this provision is only

limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c)(1) of this section. (Emphasis added.)

ANALYSIS

I. Issue

Was the Division correct to deny Claimant's Application for Food Stamp Program benefits on grounds that Claimant is permanently disqualified because he had been convicted of a drug-related felony for behavior occurring after August 22, 1996?

II. 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). Because Claimant's Application seeks to change the status quo, Claimant has the burden of proof in this case.

III. Application of 7 CFR § 273.1(b)(7)(E)(vii)

Claimant was convicted on [REDACTED] 2006 of a drug-related felony crime for conduct occurring after August 22, 1996, that is on [REDACTED], 2003. (Ex. 2.1; Ex. 8-8.1) Accordingly, regulations 7 CFR § 273.1(b)(7)(vii) and 7 CFR § 273.11(m) pertaining to applicants for Food Stamp Program benefits who are convicted of drug-related felony crimes apply in this case and Claimant would be permanently disqualified from the Food Stamp Program.

IV. Alaska Supreme Court Opinion

In this case, when Claimant applied for Food Stamps on July 26, 2010, he had been convicted of a drug-related felony, although he knew his case was being reviewed on appeal by the Alaska Supreme Court. Claimant was honest in noting his conviction on his Application. The Division, relying on Claimant's statements, denied his Application and informed him he was permanently disqualified from receiving Food Stamp benefits. Given the information which the Division had at the time, the Division acted correctly according to the law.

At the hearing the Division relied on the assertions Claimant made in his Application, and on a certified copy of an [REDACTED] 2006 Judgment and Conviction, proving Claimant had been convicted of a drug-related felony after August 22, 1996.

However, also at the hearing, Claimant supplied unequivocal proof that the Alaska Supreme Court rendered his [REDACTED] 2006 conviction on drug-related felony charges null. The Supreme Court held Claimant was entitled to an evidentiary hearing before trial. The Supreme Court remanded the case to the Superior Court for a pre-trial evidentiary hearing *as an accused, but not convicted, individual*. The Alaska Supreme Court clearly held that before Claimant could be tried for the alleged criminal acts, he was protected by constitutional provisions which required the Superior Court hold a

pre-trial evidentiary hearing. Exhibit A, pp. 4, 5, 9. Otherwise stated, Claimant's conviction was "undone" because the criminal procedures employed did not accord him constitutionally protected rights to which he was entitled before trial.

Claimant's evidence outweighs that of the Division. Claimant did meet his burden of proving by a preponderance of the evidence that Claimant is eligible to apply for Food Stamp benefits because he has not convicted⁴ of a drug-related felony for behavior occurring after August 22, 1996.

The Division erred in denying Claimant's July 26, 2010 Application for Food Stamp benefits on grounds that Claimant was permanently disqualified from the Food Stamp Program because he had been convicted of a drug-related felony after August 22, 1996.

CONCLUSIONS OF LAW

1. Claimant did meet his burden of proving by a preponderance of the evidence that the Division erred in applying 7 CFR § 273.11(m) and 7 CFR § 273.1(b)(7)(vii) to determine Claimant is permanently disqualified from receiving Food Stamp Program benefits and thereby denying his July 26, 2010 Application.

2. Claimant may not be disqualified from receiving Food Stamp benefits because of the alleged [REDACTED], 2006 drug-related felony conviction because the conviction has been rendered null by the Alaska Supreme Court on [REDACTED], 2010.

3. The Division erred in denying Claimant's July 26, 2010 Application for Food Stamp benefits on grounds Claimant is permanently not eligible as a consequence of a drug-related felony conviction occurring on [REDACTED], 2006.

DECISION

The Division was not correct to deny Claimant's July 26, 2010 Application for Food Stamp benefits because it determined he had been convicted of a drug-related felony on [REDACTED], 2006.

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
P.O. Box 110640
Juneau, AK 99811-0640

⁴ Although Claimant's conviction has been nullified, the Supreme Court's remand to the Superior Court for an evidentiary hearing means he still is accused of the offense but has not been convicted.

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 24th September 2010.

/signed/


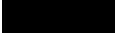
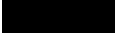
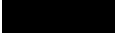
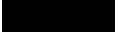
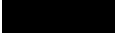
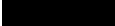
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 24th day of September 2010 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

, Fair Hearing Representative
, Director
, Administrative Assistant II
, Policy & Program Development
, Eligibility Technician I
, Staff Development & Training
, Chief of Field Services

/signed/

J. Albert Levitre, Jr.
Law Office Assistant I