

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
 [REDACTED] [REDACTED],) OHA Case No. 10-FH-288
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] [REDACTED] (Claimant) applied for Food Stamp benefits on June 7, 2010. (Exs. 2.0 – 2.9) The Division of Public Assistance (Division) received her application that same day. (Ex. 2.0) On July 27, 2010, the Division sent the Claimant written notice it was denying her application for Food Stamp benefits because she did not comply with the Division’s request for information. (Ex. 7) The Claimant requested a fair hearing on July 18, 2010. (Exs. 8 - 8.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant’s request, a hearing was held on September 16 and 22, 2010. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf. [REDACTED] [REDACTED], an Eligibility Technician employed by the Division, appeared telephonically on September 22, 2010 and testified on the Division’s behalf.

ISSUE

Was the Division correct to deny the Claimant’s June 7, 2010 Food Stamp application because she did not comply with the Division’s request that she include all household members in her application and provide proof of their income?

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits on June 7, 2010 for her 5 person household that consisted of herself, three minor children, and her boyfriend. (Exs. 2 – 2.9) This was a recertification application. (██████████ testimony)

2. The Claimant participated in an in person eligibility interview on July 8, 2010. (Ex. 4) In that interview, she disclosed the following:

- a. That she, her children, and her boyfriend, resided with her parents. *Id.*
- b. That her boyfriend was expecting to be called for a seasonal job. *Id.* It was unknown how long the job would last, and that he would have more information when he was called for the job. *Id.* The name and phone number of the job superintendant was provided at the interview. *Id.*

3. The Eligibility Technician who conducted the July 8, 2010 interview testified that he asked the Claimant if she (her household) purchased food and prepared meals together with her parents. (██████████ testimony) He said the Claimant was “adamant” that she (her household) purchased food and prepared meals together with her parents. *Id.*

4. The Eligibility Technician prepared a casenote on July 8, 2010 memorializing his interview with the Claimant. (Ex. 4) The casenote states they (Claimant and parents) “all buy and share food together” and that the Claimant “wanted to just sign a statement for her case like she always does.” *Id.* The casenote then states the Claimant would not add the others (i.e. parents) and does not claim separate economic unit status. *Id.*

5. On July 9, 2010, the Division sent the Claimant written notice that it required the following information by July 19, 2010 or her application might be denied:

As we discussed during your interview, other members of the household that purchase and prepare food as one household are mandatory members of the Food Stamp household and must be included on the application. I’ve mailed a copy of the application form for you to complete and return if you wish to continue the Food Stamp application process. Be sure to include proof of all income as requested on the form. If paystubs are not available an employer statement to show the gross pay and pay dates expected may work.

(Ex. 5) That notice was not returned to the Division by the Postal Service. (██████████ testimony) As of July 26, 2010, the Claimant had not responded to the notice. (Ex. 6)

6. On July 27, 2010, the Division sent the Claimant written notice her June 7, 2010 Food Stamp recertification application was “denied because you did not give us all the items we asked for in a previous notice.” (Ex. 7) That notice then specifies “the completed application form to include all household members and proof of all income.” *Id.*

7. At hearing, the Claimant testified as follows:
- a. She answered the Eligibility Technician’s question asking “how the household buys and uses food” with “we all do buy food but we don’t share it.” She stated that the Eligibility Technician just assumed that they all shared food. She purchases and prepares food for her household (herself, her children, and boyfriend) separately from her parent’s household. The two households do not eat together.
 - b. That her boyfriend was not employed at the time of the interview. They were waiting on the supervisor to call him, but that did not occur. The only income they had at the time was unemployment, and the Division already had the information on their unemployment benefits.
 - c. She did refuse to add her parents to her Food Stamp case. She refused because she has always only had to list herself and her children: she has always signed the “separate eating thing” in the past without any problems.
 - d. She has never been required to include her parents as part of her Food Stamp case in the past.
 - e. She never received the Division’s July 9, 2010 notice (Ex. 5) asking for information and advising her that her application could be denied. However, she verified it was sent to the correct address and that she did not normally have trouble receiving mail.

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, Alcohol 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 CFR 271.4(a). The rules that control an applicant’s eligibility and the application process are set out in the Code of Federal Regulations (CFR).

Each recertification application for Food Stamp benefits involves a new and independent eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983)

When determining an applicant’s financial eligibility for the Food Stamp program, the Division is required to anticipate a household’s income and determine what income a household is “reasonably certain will be received.” 7 CFR 273.10(c)(1)(i). A Food Stamp household consists of those individual “who live together and customarily purchase food and prepare meals together for home consumption.” 7 CFR 273.1(a)(3). If an individual lives with other individuals, but

purchases food and prepares meals separately from the other individuals, she is a separate Food Stamp household, and those other individuals' income and resources are not counted in determining financial eligibility and benefit levels. 7 CFR 273.1(a)(2); *Alaska Food Stamp Manual* 602-1A(4).

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 CFR 273.2(d)(1).

The Alaska Supreme Court has held that when properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered. *Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974).

Courts have also stated that the fact that the United States Postal Service fails to return a piece of first class mail to the sender creates a rebuttable presumption that the mail was received by the addressee. See *N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6th Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

Numerous courts have held that credible testimony by the addressee that he or she did not receive the allegedly mailed item rebuts the mailbox rule's presumption of delivery. See *Williams v. Gelt Fin. Corp.*, 237 B.R. 590, 595 (E.D.Pa.1999); *Williams v. BankOne, N.A. (In re Williams)*, 291 B.R. 636, 648 (Bankr.E.D.Pa.2003); and *Stutzka v. McCarville*, 420 F.3d 757, 762 (8th Cir. 2005).

ANALYSIS

The issue in this case is whether Division was correct to deny the Claimant's June 7, 2010 Food Stamp application because she did not comply with the Division's request that she include all household members in her application and provide proof of their income.

Because this case involves the Claimant having applied for benefits, she seeks to change the status quo.¹ Accordingly, she has the burden of proof in this case by a preponderance of the evidence. *State, Alcohol 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).

After receiving the Claimant's Food Stamp application and after her July 8, 2010 interview, the Division sent the Claimant notice that she was required to include other members of her household, i.e. her parents, in her application. (Ex. 5) That notice also required the Claimant to provide proof of the household members' income. *Id.* The Claimant admittedly did not provide this information. She stated that she had always been able to maintain the "separate eating thing," i.e. be considered a separate Food Stamp household from her parents in the past, while living with them. The Claimant also did not provide income information.

There is a marked disparity between the Eligibility Technician's testimony and the Claimant's testimony. The Eligibility Technician is clear that he asked the Claimant if she and her parents purchased food and prepared meals together, and that she answered yes. The Claimant is also quite clear that she told the Claimant they all bought food but did not share it.

When assessing credibility in this case, it is important to note that the Eligibility Technician does not have an economic motive to be less than truthful, while the Claimant does. The Eligibility Technician's testimony is also consistent with his July 8, 2010 casenote. (Ex. 4)

The Claimant's testimony explained she actually told the Eligibility Technician at the July 8, 2010 interview that "we all do buy food but we don't share it." *See* Finding of Fact 7(a) above. However, the Claimant has been a Food Stamp recipient in the past, as a separate Food Stamp household, while living with her parents. She is therefore aware that in order to be a separate Food Stamp household, she (and her household members) must purchase food and prepare meals separately from the other people who reside in the same house, i.e. there must be no joint purchasing of food and no sharing of the purchased food.

The purpose behind the Claimant's testimony was to distinguish her earlier statement to the Eligibility Technician and make it appear that she told him at the interview that she and her parents were separate households for Food Stamp purposes. The Claimant's explanation of her actual statements to the Eligibility Technician is strained; it is improbable she would respond "we all do buy food but we don't share it" to the question "do you purchase food and prepare meals together" given her prior experience as Food Stamp recipient claiming separate household status. Her testimony on this point is therefore less credible than the Eligibility Technician's.

The Claimant has the burden of proof by a preponderance of the evidence. This means that even if she and the Eligibility Technician were equally credible, she would not prevail. However, because her testimony is less credible than that of the Eligibility Technician, combined with the fact that she has an economic motive to be less than truthful, she has not met her burden of proof.

¹ Because of the manner in which the Food Stamp program is administered, each recertification application for Food Stamp benefits involves a new and independent eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

It is therefore established that the Claimant told the Eligibility Technician she and her parents purchased food and prepared meals together.

Because the Claimant told the Eligibility Technician that she and her parents purchased food and prepared meals together, the Claimant's parents were mandatory members of her Food Stamp household. 7 CFR 273.1(a)(3). The Food Stamp application specifically asks for a listing of all individuals in the household and their income information. (Exs. 2.1 – 2.3) A Food Stamp applicant is required to cooperate with the Division in completing the Food Stamp application, and providing necessary information. 7 CFR 273.2(d)(1). The Claimant undisputedly did not do this. She admittedly refused to add her parents to her Food Stamp application. *See* Finding of Fact 7(c) above.

The Division sent the Claimant a new application form on July 9, 2010, along with a notice that she needed to include all her household members in the application along with proof of their incomes. *See* Finding of Fact 5 above. The Claimant disputes having received this notice. However, she verified the address and testified that she does not normally have trouble receiving her mail. *See* Finding of Fact 7(e) above. The Eligibility Technician testified that he did not receive the July 9, 2010 notice back from the Postal Service. *See* Finding of Fact 5 above. These facts, combined with the fact that the Claimant has an economic motive to be less than truthful, result in the Claimant's testimony about non-receipt of the July 9, 2010 notice, to be less credible than that of the Eligibility Technician. The Claimant therefore did not rebut the presumption that mail sent out and not returned is assumed to have been received. Accordingly, the Claimant received the Division's July 9, 2010 notice asking her to complete the application listing all of the household members and their incomes.

It is undisputed that the Claimant did not complete the application listing all of the household members and their incomes. Her hearing testimony, where she acknowledged that she would not add her parents to her Food Stamp household, demonstrates that this was a definite refusal on her part, and not a mere failure to cooperate. *See* Finding of Fact 7(c) above. As a result, the Claimant refused to cooperate with the Division on completing her application, listing all of her Food Stamp household members, and their incomes.

A refusal to cooperate with the Division in completing an application and providing requested information is grounds for denying a Food Stamp application. 7 CFR 273.2(d)(1). The Division was therefore correct to deny the Claimant's June 7, 2010 Food Stamp application because she refused to comply with the Division's request she include all household members in her application and provide proof of their income.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof by a preponderance of the evidence. She did not meet it; she failed to establish that her parents were not part of her Food Stamp household.

2. The Claimant was required to provide the Division with an application that listed her parents as part of her Food Stamp household and their income information. She refused to comply with the Division's request that she do so.
3. As a result, the Division was correct to deny the Claimant's June 7, 2010 Food Stamp application.

DECISION

The Division was correct when it denied the Claimant's June 7, 2010 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. To do this, the Claimant 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

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 this 25th day of October 2010.

/Signed/

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 25th day of October, 2010, true and correct copies of the foregoing were sent to: Claimant by Certified Mail, Return Receipt Requested and to other listed persons by e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I
[REDACTED], Chief of Field Services

Larry Pederson