

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Telephone: (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] )  
 )  
 )  
 ) OHA Case No. 10-FH-387  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Mr. [REDACTED], (Claimant), was a recipient of Food Stamps at all times relevant to this case. (Ex. 1) On November 16, 2010, the Division of Public Assistance (Division) received information from the Department of Labor that Claimant had resumed receiving unemployment benefits. (Exs. 2.1-2.2) The Division re-determined Claimant's household's Food Stamp<sup>1</sup> benefit based on the reported change in Claimant's income and determined his household's gross monthly income exceeded the gross monthly income limit to qualify for continued benefits. (Exs. 2.9-2.10) On November 17, 2010, the Division sent written notice to Claimant of the change and of its intention to close Claimant's food stamp case, so that Claimant's household would not get Food Stamps after November 30, 2010. (Ex. 3.0; Ex. 5.1)

On November 22, 2010, Claimant orally requested a Fair Hearing. (Ex. 5.0) On November 23, 2010, Claimant's written request for hearing was received by the Division. (Ex. 5.2-5.3)

This Office has jurisdiction under authority of 7 AAC 49.010 and 7 C.F.R. § 273.15.

Claimant's Fair Hearing took place on December 16, 2010. Claimant appeared telephonically, represented himself and testified on his own behalf. Ms. [REDACTED], the Division's Fair Hearing

---

<sup>1</sup> On October 1, 2008, the Food Stamp Program (FSP) was renamed the Supplemental Nutrition Assistance Program (SNAP). See, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The SNAP program is still commonly called the Food Stamp Program and will be referred to as the Food Stamp Program in this decision.

Representative and Public Assistance Analyst, appeared in person, and testified on behalf of the Division. All exhibits offered were admitted.

### ISSUE

Was the Division correct to terminate Claimant's receipt of Food Stamp benefits after November 30, 2010?

### FINDINGS OF FACT

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

1. Claimant's household of four persons was receiving Food Stamp benefits at all times relevant to this case in 2010. (Ex. 1; Ex. 2.8) Beginning September 14, 2010, the household's income consisted of the wife's unemployment benefits in the amount of \$1,586.70 monthly. (Ex. 2.0; Ex. 2.3)
2. Claimant had been receiving unemployment benefits of \$1,436.20 per month between August 16, 2010 through September 14, 2010. (Ex. 2.2) Beginning September 27, 2010 and continuing through October 24, 2010, Claimant was entitled to the same unemployment benefits but did not receive them because the Department of Labor withheld payment to offset a prior overpayment of benefits. (Ex. 2.2; Hearing Representative's testimony; Claimant's testimony)
3. During the period that Claimant did not receive the set-off amount of unemployment benefits, i.e., between September 27 and October 24, 2010, Claimant's household received Food Stamps because the household income met the eligibility standards. (Hearing Representative's testimony; Claimant's testimony)
4. On November 16, 2010, the Division of Public Assistance (Division) received information from the Alaska Department of Labor that Claimant was again receiving unemployment benefits because the offset had been fully paid. (Exs. 2.1-2.2) Claimant began receiving full unemployment benefits again on October 25, 2010 in the amount of \$334. per week. (Ex. 2.2)
5. The Division re-determined Claimant's household's Food Stamp benefit based on the change in Claimant's income reported by the Alaska Department of Labor. (Hearing Representative's testimony) It calculated the Claimant's household's income to consist of the unemployment benefits received by Claimant's wife (\$1,586.70) plus the unemployment benefits received by Claimant (\$1,436.20). (Ex. 2.5) The parties agreed these amounts constituted the household's income. Therefore, the total household gross monthly income was \$3,022.90. (Ex. 2.8-2.9)
6. The Division determined Claimant's household's gross monthly income of \$3,022.90 exceeded the maximum gross monthly income limit of the Food Stamp Program for a family of four to qualify for continued benefits. (Exs. 2.9-2.10) The Food Stamp maximum gross monthly income limit for a family of four is \$2,987.<sup>2</sup> (Ex. 2.9) The difference between Claimant's household's gross monthly income and the Food Stamp maximum gross monthly income limit is \$35.90. (Ex. 5.0)

---

<sup>2</sup> The notice advising Claimant his household monthly gross income exceeded the Food Stamp monthly income limit for his household of four persons shows the Food Stamp monthly income limit as "\$2298.00." (Ex. 3; Ex. 5.1) This is incorrect, as shown by Exhibit 2.9. However, the error is not material because Claimant's household monthly gross income exceeded the correct maximum gross monthly income limit.

7. On November 17, 2010, the Division notified Claimant of the change and of its intention to close Claimant's Food Stamp case so that his household would not get benefits after November 30, 2010. (Ex. 3.0; Ex. 5.1)

8. On November 22 and 23, 2010, Claimant requested a Fair Hearing. (Exs. 5.0; 5.2; 5.3)

9. Claimant's family suffered economic hardship from the loss of Food Stamps. (Ex. 5.2; Claimant's testimony)

## **PRINCIPLES OF LAW**

### **I. 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).

### **II. Standard of Proof**

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 is the preponderance of the evidence.

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)

### **II. The Food Stamp Program.**

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 C.F.R. § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations of 7 C.F.R. § 271 - 274. The purpose of the Food Stamp program is to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. 7 C.F.R. § 271.1(a).

Eligibility and the amount of Food Stamp benefits a household receives are based upon the countable income of all the household members. 7 CFR § 273.10(e)(1)(i)(A). The maximum gross monthly income for a family of four in fall 2010 was \$2,987. (Ex. 2.9)

Federal Food Stamp regulation 7 C.F.R. § 273.12(c) requires the state agency to take prompt actions on all changes to determine if the change affects the household's eligibility or benefit amount.

If the change results in a household becoming ineligible for benefits, the State must give notice of the change at least 10 days before initiating the proposed action. 7 C.F.R. § 273.12(c)(2). The agency must

give effect to the change no later than the month following the month in which notice is given. 7 C.F.R. § 273.12(c)(2).

## ANALYSIS

### I. Issue

Was the Division correct to terminate Claimant's receipt of Food Stamp benefits after November 30, 2010?

### II. Burden of Proof and Standard of Proof

"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). The Division seeks to change the status quo by terminating Claimant's household's benefits. Therefore, the Division has the burden of proof.

To prevail, the Division must prove by a preponderance of the evidence that Claimant's household's gross monthly income exceeded the Food Stamp maximum gross monthly income limit.

In this case, all the relevant facts are undisputed. The parties agreed the resumption of receipt of unemployment benefits by Claimant increased the household's gross monthly income to \$3,022.90. There is no dispute that, previously, Claimant's household qualified for Food Stamps because its household income was only \$1,586.70 monthly. During the period the household qualified for Food Stamps, Claimant was eligible for unemployment benefits but did not receive them. His benefits were being retained by the Department of Labor to set off an overpayment of unemployment benefits. Because this income was not being received, it was not included in household income when calculating eligibility for Food Stamps.

After Claimant began receiving unemployment benefits again on October 25, 2010, the unemployment income had to be included in household income. This caused the monthly household income to nearly double. The total household income increased to \$3,022.90, which is \$35.90 over the applicable Food Stamp maximum gross monthly income limit for a four person household. Claimant acknowledged he understood and agreed with this result.

Claimant argued persuasively during the hearing that the loss of Food Stamp benefit would cause economic hardship to his household. Claimant sought a "hardship" exception or some discretion which would allow his household to continue to receive Food Stamps until spring 2011, when he anticipated he and his wife could again be employed.

However, the Federal Food Stamp regulations are clear that once a change affecting eligibility for benefits or a benefit amount becomes known to the agency, the State agency must act promptly to give effect to the result of the change. 7 C.F.R. § 273.12(c)(2). There is no "hardship" exception or discretion permitted to the State agency.

## CONCLUSIONS OF LAW

The Division has met its burden of proof by a preponderance of the evidence:

