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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-422
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

On December 7, 2010 [REDACTED] (Claimant) completed and signed an application for Food Stamp Program benefits (Exs. 2.0 – 2.10). The Claimant's application was received by the State of Alaska Division of Public Assistance (DPA or Division) on December 8, 2010 (Ex. 2.0). On December 10, 2010 the Division mailed a notice to the Claimant stating that her application for Food Stamp benefits had been denied (Ex. 4.0). On December 20, 2010 the Claimant telephonically requested a fair hearing to contest the Division's denial of her application for Food Stamp benefits (Ex. 5.1). This Office has jurisdiction to resolve this matter pursuant to 7 AAC § 49.010 and 7 CFR § 273.15.

The Claimant's hearing was held on January 19, 2011 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. [REDACTED], a Case Manager with the [REDACTED] Native Association's Women and Children's Center for Inner Healing, also participated by telephone and testified on the Claimant's behalf. Public Assistance Analyst [REDACTED] attended the hearing in person, represented the Division, and testified on its behalf. The parties' testimonies were received and all exhibits offered were admitted into evidence. At the end of the hearing the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on December 10, 2010 it notified the Claimant that her application for Food Stamp benefits dated December 7, 2010 had been denied based on the

assertion that the Claimant was a “fleeing felon” as defined by the Food Stamp Program’s statutes and regulations?

SUMMARY OF DECISION

The Division was not correct to determine that the Claimant was a “fleeing felon” because, based on recent amendments to the federal Food Stamp statutes, a person is not considered to be “fleeing” from prosecution, for purposes of the Food Stamp Program, unless law enforcement authorities are *actively seeking* the person. Accordingly, the Division was not correct when, on December 10, 2010, it notified the Claimant that her application for Food Stamp benefits dated December 7, 2010 had been denied, based on the assertion that the Claimant was a “fleeing felon” as defined by the Food Stamp Program’s applicable statutes and regulations.

FINDINGS OF FACT

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

1. On August 31, 2001 the prosecutor for ██████ County, Washington filed criminal charges against the Claimant with the ██████ County Superior Court of the State of Washington (Ex. 3.2). The matter was assigned Case No. ██████ (Ex. 3.2). The offenses with which the Claimant was charged were “burglary in the second degree,” and “theft in the second degree” (Ex. 3.2). These offenses were classified as Class B felonies in the State of Washington and carried a maximum penalty of 10 years’ imprisonment and/or a \$20,000.00 fine (Ex. 3.2).
2. On December 12, 2003 the Claimant failed to appear at a scheduled court hearing in the above-referenced case (Ex. 3.1). Accordingly, on December 15, 2003 the ██████ County Superior Court of the State of Washington issued a bench warrant for the arrest of the Claimant in Case No. ██████ (Ex. 3.4).
3. On December 7, 2010 the Claimant completed and signed an application for Food Stamp Program benefits (Exs. 2.0 – 2.10). At page 2, item 5 of the application, the Claimant responded “no” to the question “[i]s any adult in your household fleeing from prosecution, custody, confinement, for a felony or a Class A misdemeanor from any state?” (Ex. 2.1).
4. The Claimant’s application was received by the State of Alaska Division of Public Assistance on December 8, 2010 (Ex. 2.0).
5. On December 10, 2010 the Division mailed a notice to the Claimant stating that her application for Food Stamp benefits received on December 8, 2010 had been denied (Ex. 4.0). The notice stated that “[p]ersons fleeing to avoid prosecution . . . for a felony . . . are ineligible for the Food Stamp Program.” The notice also stated that the Division’s denial of the Claimant’s application was supported by Alaska Food Stamp Manual Section 602-1A.
6. On December 20, 2010 the Claimant telephonically requested a fair hearing to contest the Division's denial of her application for Food Stamp benefits (Ex. 5.1).

7. At the hearing of January 19, 2011 the Claimant credibly testified in relevant part as follows:

a. She was never arrested or held in custody as a result of the criminal charges at issue. She received the charging documents (complaint or information) in the mail.

b. She was not fleeing prosecution when she left Washington to come to Alaska. She was in Alaska when the arrest warrant was issued by the Washington court.

c. A felony case was filed against her in Washington and the charges are still pending, but she has not been convicted of anything.

d. She is currently in a long-term treatment program in Fairbanks. She expects to be in this treatment program for two more years.

e. She has contacted the Washington court several times. She has advised the court that she is currently not allowed to leave the Fairbanks-North Star Borough and will probably not be able to do so for about two years.

f. She has asked the Washington court if there is any way that she can resolve the warrant over the phone or by sending the court money for a bail deposit, but has been advised that she needs to appear before the court in person.

g. She is not really “fleeing” from anything. The State of Washington knows where she is, and the State of Alaska also knows where she is. The State of Washington has advised her that if she appeared in court there the judge might or might not put her in custody, but that, in any event, the State of Washington does not intend to go to the trouble of extraditing her from Alaska.

h. She continues to be in regular contact with the authorities in Washington and has asked that the arrest warrant be quashed based on her attendance / participation in the long-term treatment program.

8. At the hearing of January 19, 2011, [REDACTED], a Case Manager with the [REDACTED] Native Association, Women and Children’s Center for Inner Healing, credibly testified that she witnessed the Claimant telephoning the prosecutor and the court clerk, with regard to the Washington case, to see if she could resolve the arrest warrant.

9. At the hearing of January 19, 2011, the DPA Hearing Representative credibly testified in relevant part as follows:

a. On December 23, 2010 she personally contacted the Clerk of the [REDACTED] County Superior Court of the State of Washington and was advised that the bench warrant for the arrest of the Claimant, issued in Case No. [REDACTED] in 2003, was still active.

b. The Clerk of the ██████ County Superior Court further stated that, although no extradition proceedings were contemplated, the Claimant was still expected to appear before the ██████ County Superior Court to answer the charges pending against her.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the denial of an initial application for Food Stamp benefits. The party seeking a change in the status quo or existing state of affairs generally bears the burden of proof.¹ The Claimant is considered to be attempting to change the status quo by obtaining benefits. The Claimant therefore bears the burden of proof in these proceedings.

The “preponderance of the evidence” standard is the default standard of proof in an administrative proceeding.² The regulations applicable to this case do not specify any particular standard of proof. Accordingly, the “preponderance of the evidence” standard 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.³

II. The Food Stamp Program – In General.

Congress established the federally funded, state-administered Food Stamp Program in 1964 to “safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households” (7 U.S.C. § 2011). The Food Stamp Program is codified at 7 U.S.C. §§ 2011 – 2029.

The Food Stamp Program is administered nationally by the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA). *See* 7 C.F.R. § 210.2 and 7 C.F.R. § 271.3(a). The Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act; these regulations are codified primarily at 7 C.F.R. §§ 271-274.

States wishing to participate in the Food Stamp Program must designate an agency responsible for administration (7 U.S.C. § 2012(n)), and must operate the program in compliance with the Food Stamp Act and its implementing regulations (7 U.S.C. § 2020(e)(5-6)).

The Department of Health and Social Services (DHSS) administers the Food Stamp Program in Alaska. *See* A.S. § 47.25.975 – A.S. § 47.25.990. DHSS has promulgated regulations which adopt the federal regulations with certain minor variations as allowed by federal law. *See* 7 C.F.R. § 272.7; 7 A.A.C. § 46.010 - 7 A.A.C. § 46.990.

¹ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

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

³ *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

III. The Food Stamp Program – Program Disqualification Based on “Fleeing Felon” Status.

Federal Food Stamp Program regulation 7 C.F.R. § 273.1(b)(7)(ix) states that the following are not eligible to participate as separate households in the Food Stamp program: “Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under §273.11(n).”

Federal Food Stamp Program regulation 7 C.F.R. § 273.11(n) states in relevant part as follows:

Individuals who are *fleeing to avoid prosecution or custody* for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members. [Emphasis added].

The above regulations do not define the term “fleeing.” On April 13, 1998, the Food and Nutrition Service (FNS) issued a policy which stated in relevant part that “[a] fleeing felon is usually determined by the existence of an outstanding warrant for the individual’s arrest; the individual is assumed to be fleeing as of the date the warrant is issued.” See FNS website at <http://www.fns.usda.gov/snap/rules/Memo/2001/Fleeingfelons.htm> (date accessed February 16, 2011).

Three years later, on November 9, 2001, [REDACTED], then Director of FNS’ Program Development Division, issued an updated policy statement on the “fleeing felon” issue. See FNS website at <http://www.fns.usda.gov/snap/rules/Memo/2001/Fleeingfelons.htm> (date accessed February 16, 2011). That statement provided in relevant part as follows:

. . . [W]e have received several questions concerning what constitutes “fleeing” for the purposes of 7 C.F.R. 273.11(n) It has since come to our attention that Federal courts have interpreted Federal law to require that, in order for an individual to be fleeing, that individual must be acting with the intent to avoid prosecution. For cases where a warrant has been issued, the individual must have knowledge that a warrant has been issued for his arrest in order to be considered “fleeing.” Therefore, if a State agency determines that an individual has a warrant out for his arrest, the State agency should verify that the individual has knowledge of the warrant. Once the individual has knowledge of the warrant, either by having received the warrant personally, or by being advised of its existence by the State agency, he is technically at that time, “fleeing.”

Seven years later the 110th Congress passed House Resolution 6124, which became the Food, Conservation, and Energy Act of 2008. Section 4112 of that Act, titled “Technical Clarification Regarding Eligibility,” amended Federal Food Stamp Program statute 7 U.S.C. § 2015(k). That statute now provides in relevant part as follows:

(1) In general. No member of a household who is otherwise eligible to participate in the supplemental nutrition assistance program [formerly known as the Food Stamp Program] shall be eligible to participate in the program as a member of that or any other household during any period during which the individual is--

(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the individual is fleeing . . . or

(B) violating a condition of probation or parole imposed under a Federal or State law.

(2) Procedures. The Secretary shall--

(A) define the terms “fleeing” and “actively seeking” for purposes of this subsection; and

(B) ensure that State agencies use consistent procedures established by the Secretary that disqualify *individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual.* [Emphasis added].

ANALYSIS

I. Introduction; Definition of Issues.

It was not disputed that (a) the Claimant has been charged with a felony; (b) the Claimant has not yet been convicted of that felony; (c) the Claimant was, at all times relevant to her application for Food Stamp benefits, aware that a bench warrant has been issued for her arrest; (d) the Washington court and/or prosecutor knows of the Claimant’s whereabouts; and (e) the Washington court and/or prosecutor have not and are not now seeking the extradition of the Claimant from Alaska to Washington.

The Claimant’s argument is that she cannot be considered a “fleeing felon” for two reasons:

1. Although she has not yet appeared before the Washington court in response to the outstanding arrest warrant, the court knows her whereabouts, and she is not actively avoiding prosecution (*see*, Claimant’s hearing testimony). Therefore, she is not “fleeing.”

2. Although she has been *charged* with a felony, she has never been *convicted* of a felony (*see*, Claimant’s hearing testimony). Therefore, she is not a “felon.”

The Division's response to the Claimant's arguments is essentially as follows:

1. Where (as here) there is an outstanding arrest warrant, and the person has knowledge of the issuance of the warrant, then that person is "fleeing" for purposes of the Food Stamp Program's "fleeing felon" regulation (*see*, DPA Hearing Representative's testimony).
2. To be a felon for purposes of the Food Stamp Program's "fleeing felon" regulation, it is only necessary that a person be *charged* with a felony; it is not necessary that the person be convicted (*see*, DPA Hearing Representative's testimony).

Thus, based on the parties' assertions, there are two issues to be resolved in this case:

1. When is a person "fleeing" for purposes of the Food Stamp Program?
2. When is a person a "felon" for purposes of the Food Stamp Program?

As previously stated, the relevant facts are not in dispute. Accordingly, the only issues to be decided are legal issues which can be decided by reference to the controlling statutes and regulations.

II. When is a Person a "Fleeing" Felon for Purposes of the Food Stamp Program?

It is clear that, *prior to 2008*, if an individual had been charged with a felony, had a warrant out for his or her arrest, and had knowledge of the issuance of the warrant, that person was "fleeing" for purposes of the Food Stamp Program and was disqualified from receiving benefits. *See*, Principles of Law at pages 4-5, above.

In this case, it is undisputed that the Claimant has been charged with a felony; that she has a warrant out for her arrest; and that she has been aware for some time that the warrant was issued and is still outstanding. Thus, under the law in effect prior to 2008, the Claimant would clearly be a "fleeing" felon for purposes of the Food Stamp Program and would be disqualified from receiving benefits (*see*, Principles of Law at pages 4-5, above).

However, Congress changed the applicable law in 2008 (*see*, Principles of Law at pages 5-6, above). The governing federal statute, 7 U.S.C. § 2015(k)(2)(b), now disqualifies only "*individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual.*" [Emphasis added].⁴ It is clear in this case that Washington law enforcement agencies are not "actively seeking" the Claimant. *See*, Findings of Fact at Paragraphs 7 and 9, above. The Claimant is therefore not "fleeing" as that term is

⁴ Research indicates that FNS, the federal agency charged with interpretation and enforcement of the Food Stamp statutes, has neither amended its regulations nor otherwise publicized this change in the law, even though the statutory amendment has been in effect for over two years. Accordingly, the Division cannot be faulted for not being aware of this somewhat obscure change in the law.

currently defined by federal Food Stamp statute 7 U.S.C. § 2015(k)(2)(b).⁵ Accordingly, because the Claimant is not “fleeing,” she cannot be a “fleeing felon” for purposes of the Food Stamp Program.⁶

III. Summary.

In summary, it is clear that, *prior to 2008*, if an individual had been charged with a felony, had a warrant out for his or her arrest, and had knowledge of the issuance of the warrant, that person was a “fleeing felon” for purposes of the Food Stamp Program and was disqualified from receiving benefits. *See*, Principles of Law at pages 4-5, above. However, recent statutory amendments to the applicable federal Food Stamp statute (7 U.S.C. § 2015(k)(2)(b)), clearly state that a person is not considered to be “fleeing” from prosecution unless law enforcement authorities are *actively seeking* the person.

The evidence in this case clearly demonstrates that Washington law enforcement officials are not actively seeking the Claimant. Accordingly, the Division was not correct when, on December 10, 2010 it notified the Claimant that her application for Food Stamp benefits dated December 7, 2010 had been denied based on the assertion that the Claimant was a “fleeing felon” as defined by the Food Stamp Program’s applicable statutes and regulations.

CONCLUSIONS OF LAW

1. The Claimant is not “fleeing felon” for purposes of the Food Stamp Program because, based on recent statutory amendments to the applicable federal Food Stamp statute, 7 U.S.C. § 2015(k)(2)(b), a person is not considered to be “fleeing” from prosecution unless law enforcement authorities are *actively seeking* the person.

2. Accordingly, the Division was not correct when, on December 10, 2010 it notified the Claimant that her application for Food Stamp benefits dated December 7, 2010 had been denied based on the assertion that the Claimant was a “fleeing felon” as defined by the Food Stamp Program’s applicable statutes and regulations.

⁵ It is clear that a congressional statute trumps an agency regulation. *See Chevron USA, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); *State, Dep’t of Bus. Reg. v. Salvation Ltd.*, 452 So.2d 65, 66 (Fla. 1st DCA 1984) (“it is, of course axiomatic that an administrative rule cannot . . . contravene the provisions of a statute”); *Luna v. Bowen*, 641 F.Supp. 1109 (D. Colo. 1986) (“it is beyond cavil that a statute takes precedence over an interpretive regulation”); *Suburban Manor/Highland Hall Care Center v. Dep’t of Pub. Welfare*, 680 A.2d 867 (Pa. 1996) (regulations promulgated by a government entity that are inconsistent with a statute are invalid); *Willette v. Air Prods.*, 700 So.2d 397, 401 (Fla. 1st DCA 1997) (“a statute takes precedence over a rule”); *Furlow v. U.S.*, 55 F.Supp.2d 360 (D. Md. 1999) (“a statute duly enacted by Congress and signed into law by the President . . . takes precedence over a conflicting . . . regulation”); and *Tunik v. Merit Systems Protection Board*, 407 F.3d 1326 (C. A. Fed.2005) (a statute takes precedence over a regulation).

⁶ Because the Claimant is not “fleeing” for purposes of the Food Stamp Program, it is not necessary to analyze whether or not the Claimant is a “felon” for purposes of the Food Stamp Program.

DECISION

The Division was not correct when, on December 10, 2010 it notified the Claimant that her application for Food Stamp benefits dated December 7, 2010 had been denied based on the assertion that the Claimant was a “fleeing felon” as defined by the Food Stamp Program’s applicable statutes and regulations.

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

An appeal request must be sent within fifteen (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 18th day of February, 2011.


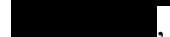
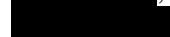
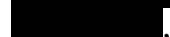
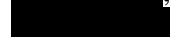
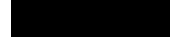
(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 18th day of February 2011 copies of the foregoing document were sent to the Claimant via U.S.P.S. Mail, and to the remainder of the service list by e-mail, as follows:

Claimant – via Certified Mail, Return Receipt Requested

- , DPA Hearing Representative
- , DPA Hearing Representative
- , Policy & Program Development
- , Staff Development & Training
- , Administrative Assistant II
- , Eligibility Technician I

(signed)

By: _____
J. Albert Levitre, Jr.
Law Office Assistant I