

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (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. 11-FH-10
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) filed an application for Food Stamp and CAMA (Chronic and Acute Medical Assistance) benefits on November 10, 2010. (Exs. 2.0 – 7.9) On November 17, 2010, the Division of Public Assistance (Division) sent the Claimant notice that her application for both programs was denied. (Exs. 4.0 – 4.1) The Claimant requested a fair hearing on January 11, 2011. (Ex. 5.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

On January 19, 2011, the Division filed a Motion to Dismiss the CAMA portion of this case. The Division's Motion to Dismiss was granted on February 4, 2011.

The Claimant's hearing on the remaining issue, the denial of her November 10, 2010 Food Stamp application, was held on February 22, 2011. The Claimant appeared telephonically; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf. [REDACTED], an Eligibility Technician, employed by the Division, appeared telephonically and testified on the Division's behalf.

The record was left open after the February 22, 2011 hearing to allow the Claimant to submit additional information. The Claimant's information was received on February 25, 2011. (Ex. A) The Division's written response was received on February 28, 2011. (Ex. 23)

STATEMENT OF ISSUES

Was the Division correct to deny the Claimant's November 10, 2010 Food Stamp application because her household allegedly owned countable resources worth more than \$2,000, specifically her father's bank account?

FINDINGS OF FACT

1. The Claimant applied for Food Stamp benefits on November 10, 2010. (Exs. 2.0 – 2.9) That application states the Claimant is over the age of 22 years and resides with her father, who is under the age of 60 years. (Ex. 2.1)
2. The Claimant participated in a telephonic Food Stamp eligibility intake interview with a Division Eligibility Technician on November 16, 2010. (Ex. 3.0) The Eligibility Technician's interview case note states:
 - a. The Claimant lives with her father and they share food. *Id.*
 - b. The Claimant's father has a savings account with a balance of approximately \$8,000. There are no restrictions on the account and he can access the funds. *Id.*
3. The Claimant testified as follows:
 - a. She told the Eligibility Technician that she was not living with her father, but was instead "couch surfing," i.e. it wasn't her permanent residence. She rotates between staying at her father's home, her aunt's home, and several friends. She did not have a permanent residence.
 - b. The Claimant was staying at her father's home the week she submitted her application. The next week, she stayed at her aunt's home.
 - c. The Eligibility Technician insisted that the Claimant's father had to be listed on the Claimant's application, and required her to add her father to the application.
4. The Claimant was a credible witness. Her demeanor was unsophisticated; her testimony was internally consistent and obviously not rehearsed. For example, she initially did not recall having had an eligibility interview, and then immediately corrected herself, asking "you mean the old lady that called and insisted that I put my father's income and everything on the application?"
5. The Claimant's application has two date stamps on it. The first page bears a date stamp of November 10, 2010. (Ex. 2.0) Subsequent pages of the application, including the one that identifies the Claimant's father as residing in the same household as the Claimant and pages containing her father's financial information are date stamped November 16, 2010. (Exs. 2.1, 2.3, 2.5, 2.6 – 2.8)

6. The Eligibility Technician who conducted the Claimant's November 16, 2010 telephonic interview did not recall telling the Claimant how to complete her Food Stamp application, nor did she recall the Claimant informing her that she was "couch surfing." (██████████ testimony)

7. On November 17, 2011, the Division mailed the Claimant notice that her November 10, 2010 Food Stamp application was denied "because [her] countable resources are over the Food Stamp Program limit." (Ex. 4.1) The notice stated the Claimant had \$8,755 in countable resources, of which 8,000 was her 'father's savings account." *Id.*

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 Code of Federal Regulations (CFR) contains the rules for determining if an applicant is eligible to receive Food Stamp benefits.

One of the financial eligibility criteria is that an applicant's household, where none of the household members has reached the age of 60 years, may not own countable resources worth in excess of \$2,000. 7 CFR 273.8(b). A Food Stamp household consists of those persons "who live together and customarily purchase food and prepare meals together for home consumption." 7 CFR 273.1(a)(3).

The Food Stamp program rules on countable resources are contained in federal regulation 7 CFR 273.8. Funds held in checking and savings accounts are countable resources. 7 CFR 273.8(c)(1).

The federal Food Stamp regulations do not define the term "living together." The *Alaska Food Stamp Manual* also does not define the term "living together." However, the *Alaska Food Stamp Manual* states that short term visitors, who stay temporarily in a home, are not household members:

Non household members include:

* * *

- (e) Visitors, including parents, children and spouses, staying temporarily with the food stamp household even though they may purchase food and prepare meals with the household during the visit. However, when the visit is anticipated to last more than half the days in the calendar month, the visitor is treated as a household member for

that month when determining eligibility and benefit amount, unless otherwise excluded.

Alaska Food Stamp Manual Section 602-1a (4)(e).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant's November 10, 2010 application for Food Stamp benefits. As an applicant, the Claimant has the burden of proof by a preponderance of the evidence.

The reason the Division denied the Claimant's application was because it determined that the Claimant lived with her father, and as a result, she was not financially eligible for Food Stamp benefits.

The Claimant disagreed with the Division, arguing that she was not living with her father. She credibly testified she told the Division Eligibility Technician she was "couch surfing" and that the Eligibility Technician made her list her father on her Food Stamp application. In contrast, the Eligibility Technician did not recall the Claimant telling her the Claimant was "couch surfing." Nor did the Eligibility Technician recall telling the Claimant how she had to fill out her Food Stamp application.

The Claimant's credible testimony that she told the Eligibility technician she was "couch surfing" is specific. The Division's casenote, dated November 16, 2010, that states the Claimant lives with her father, is not sufficient to rebut the Claimant's testimony. It is consistent with the Claimant's statement that the Eligibility Technician "insisted" that she include her father on the application. *See* Finding of Fact 3(c) and 4 above. The Claimant's testimony is corroborated by the Claimant's application, on page 1, which has an initial date stamp of November 10, 2010, while the subsequent portions that identify her father as being a part of her household and contain his financial information bear a date stamp of November 16, 2010, the same date as her Food Stamp interview. *See* Finding of Fact 5 above.

The record in this case therefore demonstrates that the Claimant filed her initial application on November 10, 2010. That application did not list the Claimant's father as part of the Claimant's household. When the Claimant had a telephone eligibility interview on November 16, 2010, the Eligibility Technician was told by the Claimant she was "couch surfing" at her father's home. The Eligibility Technician then decided that the Claimant was living with her father and required the Claimant to revise her application to include her father, including his finances, as part of the Claimant's household. In other words, the revised application does not constitute an admission on the Claimant's part that she was living with her father; it was revised because the Eligibility Technician "insisted" it be revised.

The Claimant's credible testimony, taken in its entirety, further established that she did not have a permanent residence at the time of her application and that she rotated staying between her father, her aunt, and several friends. In fact, she stayed at her father's the week she applied for Food Stamps and stayed at her aunt's the following week. Her credible testimony shows that it is probable (i.e. more likely true than not true), that she did not reside at her father's home for more than half of the calendar

days in a month at the time of her November 10, 2010 application. As a result, her father cannot be considered to be part of the Claimant's Food Stamp household. *See Alaska Food Stamp Manual* Section 602-1a (4)(e).

The Claimant had the burden of proof by a preponderance of the evidence. She met her burden of proof and established that she was not living with her father at the time of her November 10, 2010 Food Stamp application. She occasionally stayed at her father's home, but did not live with him for more than half of the calendar days in a month. As a result, her father's assets should not have been considered her assets for the purposes of determining her Food Stamp financial eligibility. The Division was therefore not correct when it denied her November 10, 2010 Food Stamp application on the grounds that the Claimant's assets exceeded those allowed by the Food Stamp program.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof to establish that her father was not part of her household for Food Stamp purposes. She met her burden of proof and demonstrated that she occasionally stayed with her father, but did not live with him for more than half the calendar days in a month.
2. Because the Claimant's father was not part of the Claimant's Food Stamp household, the Claimant's father's assets were not properly countable as Claimant's assets for the purposes of determining Food Stamp eligibility.
3. As a result, the Division was not correct when it denied the Claimant's November 10, 2010 Food Stamp application for the reason that her assets exceeded those allowed by the Food Stamp program.

DECISION

The Division was not correct to deny the Claimant's November 10, 2010 application for Food Stamp benefits.

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 15th day of April, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 15th day of April, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., Certified Mail, and by email and to the following by e-mail:

Claimant by Certified Mail, Return Receipt Requested and to other listed persons by e-mail:

- ██████████, Public Assistance Analyst
- ██████████, Public Assistance Analyst
- ██████████, Policy & Program Development
- ██████████, Staff Development & Training
- ██████████, Administrative Assistant II
- ██████████, Eligibility Technician I

/signed/
J. Albert Levitre, Jr.
Law Office Assistant I