

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:	)	
	)	
██████████,	)	OHA Case No. 11-FH-76
	)	
Claimant.	)	DPA Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. ██████████ (Claimant) completed and signed an application for Food Stamp Program benefits<sup>1</sup> on January 20, 2011 (Exs. 2.0 – 2.8). The Claimant’s application was received by the State of Alaska Division of Public Assistance (DPA or Division) on January 20, 2011 (Ex. 2.0).

On January 27, 2011 the Division mailed a written notice to the Claimant advising that the Claimant’s Food Stamp application had been denied on the grounds that the Claimant’s monthly income exceeded the Food Stamp Program’s applicable maximum monthly income limit (Ex. 6). On February 16, 2011 the Claimant requested a fair hearing with regard to the Division’s denial of her Food Stamp application (Ex. 7).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

A hearing was held as scheduled on March 23, 2011 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. ██████████, a Public Assistance Analyst with the Division, attended the hearing in person, represented the Division, and testified on its behalf. The party’s testimonies were

---

<sup>1</sup> In 2008 Congress amended the Food Stamp Act. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (“SNAP”). However, at this time the program is still commonly referred to as the “Food Stamp Program,” and the program will be referred to as the “Food Stamp Program” in this decision.

received and all exhibits submitted 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 January 27, 2011, it denied the Claimant's application for Food Stamp benefits dated January 20, 2011, because the Claimant's household's average monthly gross income allegedly exceeded the Food Stamp Program's applicable monthly gross income limit for a household of six (6) persons?

## **SUMMARY OF DECISION**

Pursuant to federal Food Stamp Program regulation 7 CFR § 273.9(c)(1)(vii), the Division was legally required to count the sums garnished from the Claimant's pay as part of her gross income for purposes of the Food Stamp Program. Accordingly, the Division was correct when, on January 27, 2011, it denied the Claimant's Food Stamp application dated January 20, 2011, on the basis that the Claimant's monthly average gross income exceeded the Food Stamp Program's applicable monthly gross income limit for a household of six (6) persons.

## **FINDINGS OF FACT**

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

1. The Claimant completed and signed an application for Food Stamp Program benefits on January 20, 2011 (Exs. 2.0 – 2.8). The Claimant's application was received by the Division on January 20, 2011 (Ex. 2.0).
2. The Claimant's household consists of six persons and includes the Claimant, her husband, and their four (4) minor children (Ex. 2.1, DPA Hearing Representative testimony).
3. At the time of her application (January 20, 2011) the Claimant was employed full-time and was working 40 hours per week (Ex. 2.2). In her application the Claimant reported that she was paid bi-weekly, and that her monthly wages were \$3,268.00 (Ex. 2.2).
4. On January 25, 2011 the Division received information from the Claimant regarding her earnings from employment for the three (3) two-week pay periods ending December 10, 2010, December 22, 2010, and January 7, 2011 (Exs. 5.1 - 5.3).
5. For the pay period ending December 10, 2010, the Claimant's gross pay was \$1,932.00 and her net pay<sup>2</sup> was \$1,442.59 (Ex. 5.1). For the pay period ending December 22, 2010, the Claimant's gross pay was \$2,125.60 and her net pay was \$1,447.85 (Ex. 5.2). For the pay period

---

<sup>2</sup> Net income is income "remaining after all deductions and adjustments have been made." *See Webster's II New Riverside University Dictionary at 791; see also Black's Law Dictionary (West Publishing, 5<sup>th</sup> Edition, 1979) at 938 ("income . . . after allowable deductions and exemptions have been subtracted from gross or total income").*

ending January 7, 2011, the Claimant's gross pay was \$2,125.60 and her net pay was \$1,436.52 (Ex. 5.3).

6. For the pay period ending December 10, 2010, the State of Alaska Student Loan Program (ASLP) garnished \$328.86 from the Claimant's gross pay (Ex. 5.1). For the pay period ending December 22, 2010, ASLP garnished \$487.62 from the Claimant's gross pay (Ex. 5.2). For the pay period ending January 7, 2011, ASLP garnished \$495.32 from the Claimant's gross pay (Ex. 5.3).

7. On January 26, 2011 the Division proceeded to estimate the Claimant's future (prospective) earned income from employment based on the Claimant's paychecks dated December 10, 2010, December 22, 2010, and January 7, 2011 (Ex. 5.0; DPA Hearing Representative's testimony). The Division totaled the gross income figures from these three paychecks for total gross income of \$6,183.20 for this six (6) week period. *Id.* The Division then divided that figure by three, arriving at an average bi-weekly income figure of \$2,061.07. *Id.* The Division then multiplied that figure by a conversion factor of 2.15, resulting in a monthly gross earned income figure of \$4,431.30. *Id.* The Division did not deduct or subtract from the Claimant's income any amounts garnished by ASLP from the Claimant's wages. *Id.*

8. The Division then applied a \$4,001.00 gross income limit for a household the size of the Claimant's (i.e. a six (6) person household) (Ex. 5.4; DPA Hearing Representative's testimony). Based on these figures, the Division calculated that the Claimant's average monthly gross income of \$4,431.30 exceeded the applicable Food Stamp Program gross income limit. *Id.*

9. On January 27, 2011 DPA mailed a notice to the Claimant advising that her application for Food Stamp benefits, (received by DPA on January 20, 2011), had been denied because her "household's income is higher than the amount allowed to be eligible for a benefit" (Ex. 6).

10. At the time she requested her hearing on February 16, 2011, the Claimant advised the Division that, because of the Division's policy of not allowing wage garnishments to be deducted from income for purposes of the Food Stamp Program, her family is in poverty, yet she is not eligible for Food Stamp benefits (Ex. 7). The Claimant's testimony during the hearing of March 23, 2011 reiterated these statements (Claimant hearing testimony).

## **PRINCIPLES OF LAW**

### I. Burden of Proof and Standard of Proof.

This case involves the Claimant's initial application for Food Stamp benefits. The party seeking a change in the status quo or existing state of affairs normally bears the burden of proof.<sup>3</sup> Accordingly, the Claimant bears the burden of proof in this case.

---

<sup>3</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated.<sup>4</sup> Therefore, “preponderance of the evidence” 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.<sup>5</sup>

## II. The Food Stamp Program – In General.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 CFR Sections 271-274.

The Food Stamp Program has been delegated to the states for administration. 7 CFR Section 271.4. The Department of Health and Social Services administers the Food Stamp program in Alaska, and has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC 46.010 - 7 AAC 46.990.

## III. The Food Stamp Program – Income Eligibility Standards.

Federal Food Stamp Program regulation 7 CFR § 273.9 provides in relevant part as follows:

(a) . . . . Households which do not contain an elderly or disabled member shall meet *both the net income eligibility standards and the gross income eligibility standards*<sup>6</sup> for the Food Stamp Program . . . . The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in 42 U.S.C. 9902(2). [Emphasis added].

. . . .

(b) Definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

---

<sup>4</sup> *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>5</sup> *Black’s Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

<sup>6</sup> Federal Food Stamp regulation 7 CFR 273.9(b) defines “income,” and federal Food Stamp regulation 7 CFR 273.9(c) defines “income exclusions.” These regulations do not, however, define “gross income.” The Division’s Alaska Food Stamp Manual likewise does not define “gross income” (see Manual Sections 600-2, 602, and 603). However, Division regulations concerning other benefit programs provide definitions of “gross income.” For example, 7 AAC 45.435, an Alaska Temporary Assistance Program regulation, defines gross income as: “[t]he gross income from employment actually received, or expected to be received . . . before any deductions are made for the cost of earning that income, such as taxes, child care, or transportation expenses.”

(1) Earned income shall include . . . . (i) All wages and salaries of an employee . . . .

. . . .

(c) Income exclusions. Only the following items shall be excluded from household income and no other income shall be excluded . . . .

. . . .

(1)(vii) Other Third-Party Payments. Other third-party payments shall be handled as follows: *moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded . . . . This . . . [is] illustrated by the following examples . . . . (B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense . . . . This [payment] is counted as income . . . . [Emphasis added].*

Federal Food Stamp Program regulation 7 CFR § 273.10(c)(1-3) provides in relevant:

(1) Anticipating income. (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period . . . . In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average . . . .

. . . .

(2) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period....

. . . .

Pursuant to 7 CFR § 273.9(a)(1)(ii) and the Alaska Food Stamp Manual, Addendum 4 (version effective October 1, 2010 through September 30, 2011), the Food Stamp Program's gross income limit for a household of six (6) persons during the period in question is \$4,001.00 (Ex. 5.4).

## ANALYSIS

### I. Introduction; Definition of Issue.

The ultimate issue in this case is whether the Claimant's household's average monthly gross income exceeded the Food Stamp Program's applicable monthly gross income limit for a household of six (6) persons. Normally, determining this issue would entail resolving several sub-issues such as (1) whether the Division committed any mathematical errors in calculating the Claimant's average gross monthly income; (2) whether the Division prospectively estimated the Claimant's gross income properly; and (3) whether the Division applied the correct maximum gross income limit.

In this case, however, the Claimant did not contest any of the foregoing issues.<sup>7</sup> The only issue raised by the Claimant in this case is whether or not the Division is legally required to include the sums garnished from the Claimant's pay as part of her gross income for purposes of the Food Stamp Program (see the Claimant's hearing request form (Ex. 7) and hearing testimony).

Based on the Claimant's framing of the issue it is clear that if the sums garnished were properly countable / includable as part of the Claimant's gross income, then the Division was correct and its denial of eligibility must be upheld. If, on the other hand, the sums garnished were *not* properly countable / includable, then the Division's decision was *not* correct. This is a purely legal issue; there are no factual issues in dispute in this case.<sup>8</sup>

### II. Was the Division Correct to Include the Claimant's Garnished Wages as Countable Income?

The regulation which determines whether garnished monies must be counted as income for purposes of the Food Stamp Program is federal Food Stamp Program regulation 7 CFR § 273.9(c)(1)(vii). That regulation provides in relevant part that "moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded," and specifically that "wages . . . garnished or diverted by the employer and paid to a third party for a household expense . . . [are] counted as income."

In this case, there was no dispute that, (absent the garnishment), the Claimant's employer was legally obligated to pay the wages at issue to the Claimant. There was also no dispute that the monies garnished were diverted by the "provider of the payment" (the Claimant's employer), "to a third party" (the Alaska Student Loan Program), "for a household expense" (the Claimant's

---

<sup>7</sup> Even though the Claimant did not challenge the Division's denial of benefits on any of the three bases discussed above, this Office nevertheless reviewed the Claimant's case file and the relevant regulations to ensure that no mistakes were made as to these issues in the Division's processing of the case. This Office's review indicates that no errors were made by the Division with regard to the three issues referenced.

<sup>8</sup> Although the parties did not expressly stipulate that this was the sole issue to be determined, it is clear from the record in this case that, in fact, the garnishment-related issue is the sole issue to be determined.

student loan). Accordingly, pursuant to the explicit and unambiguous terms of 7 CFR § 273.9(c)(1)(vii), the Division was required<sup>9</sup> to count the Claimant's garnished wages as income for purpose of determining financial eligibility for the Food Stamp Program.

### III. Summary.

Pursuant to federal Food Stamp Program regulation 7 CFR § 273.9(c)(1)(vii), the Division was legally required to count the sums garnished from the Claimant's pay as part of her countable income for purposes of the Food Stamp Program. Accordingly, pursuant to 7 CFR § 273.9(a)(1)(ii),<sup>10</sup> the Claimant's household was not financially eligible for Food Stamp benefits, based solely on gross income, at the time of the Division's determination. The Division was therefore correct when, on January 27, 2011, it denied the Claimant's Food Stamp application dated January 20, 2011, because the Claimant's average monthly gross income exceeded the Food Stamp Program's applicable gross monthly income limit for a household of six (6) persons.

### **CONCLUSIONS OF LAW**

1. Pursuant to federal Food Stamp Program regulation 7 CFR § 273.9(c)(1)(vii), the Division was legally required to count the sums garnished from the Claimant's pay as part of her countable gross income for purposes of determining eligibility for the Food Stamp Program.
2. Accordingly, the Division was correct when, on January 27, 2011, it denied the Claimant's Food Stamp application dated January 20, 2011, because the Claimant's average gross monthly income exceeded the Food Stamp Program's applicable gross monthly income limit for a household of six (6) persons.

---

<sup>9</sup> On her hearing request form (Ex. 7) and at the hearing, the Claimant indicated that it was her understanding that the rule requiring that garnished wages be counted as income for purposes of the Food Stamp Program was a *Division policy*. As indicated above, this is not the case; the rule comes directly from Food Stamp federal regulations. The significance of this difference is that while Division personnel could theoretically waive a Division policy, *the Division simply does not have the authority to waive or ignore a federal regulation*. This result derives from the supremacy clause of the United States Constitution, which declares that "the laws of the United States ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." (U.S. Const., art. VI, § 2). Pursuant to the supremacy clause, federal laws, including federal regulations enacted pursuant to a grant of Congressional authority, preempt state laws wherever Congress so intends. See generally *Fidelity Federal S. & L. Assn. v. de la Cuesta*, 458 U.S. 141, 152-154, 73 L.Ed.2d 664, 674-676 (1982); see also *Allen v. State of Alaska Department of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155 (Alaska 2009). This is particularly true where (as here) the program at issue is federally funded.

<sup>10</sup> Pursuant to regulation 7 CFR § 273.9(a), when a Claimant's household is financially ineligible for Food Stamp benefits based on *gross income*, the Division is not required to determine whether the Claimant's household would be financially eligible for Food Stamp benefits based on *net income* (see regulation quoted in Principles of Law, above).

**DECISION**

The Division was correct when, on January 27, 2011, it denied the Claimant’s Food Stamp application dated January 20, 2011.

**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  
PO Box 110640  
Juneau, AK 99811-0640

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 18th day of April, 2011.

(signed)

\_\_\_\_\_  
Jay Durych  
Hearing Authority

**CERTIFICATE OF SERVICE**

I certify that on April 18, 2011 true and correct copies of this decision were sent to the Claimant via U.S.P.S. Mail, and to the remainder of the service list via secure / encrypted e-mail, as follows:

Claimant – via Certified Mail, Return Receipt Requested

\_\_\_\_\_, DPA Fair 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