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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. 11-FH-96
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is a recipient of Food Stamp Program¹ benefits (Ex. 1.0). On March 7, 2011 the Claimant completed and signed an Application for Services (Form Gen. 50B) requesting Adult Public Assistance and Medicaid benefits (Exs. 2.0 through 2.9). Because the Claimant was already receiving Food Stamps, the application also served as an application for recertification of the Claimant's Food Stamp benefits ([REDACTED] testimony).² The Claimant's application was received by the State of Alaska Division of Public Assistance (DPA or Division) on March 7, 2011 (Ex. 2.0).

On March 8, 2011 the Division mailed to the Claimant two written notices (Exs. 3.0, 3.1). One of these notices (Ex. 3.0) stated that the Claimant's Food Stamp recertification application had been approved. The other notice (Ex. 3.1) stated that the Claimant's monthly Food Stamp benefit amount would decrease³ to \$19.00 beginning in April 2011. The Claimant requested a fair hearing with regard to the decrease in the amount of her Food Stamp benefits on March 7, 2011 (Ex. 2.22).

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

¹ 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 this decision will refer to the program as such.

² Only the Claimant's Food Stamp benefits are at issue in this case.

³ As explained in the Principles of Law, below, it is significant, for purposes of allocating the burden of proof, that the reduction in the amount of the Claimant's Food Stamp benefits *occurred at time of recertification and eligibility determination*, rather than during the six-month recertification period.

The Claimant's hearing began as scheduled on April 13, 2011. However, the Claimant was not present and could not be reached by telephone. Accordingly, the Claimant's case was considered abandoned pursuant to 7 AAC 49.100(4), and an order dismissing the Claimant's case, based on abandonment, was issued. However, on April 14, 2011 the Claimant contacted this Office, stated that her telephone had not been working correctly, and requested that her case be reinstated. The Division did not oppose this request. Accordingly, on April 15, 2011 this Office entered an order reinstating the Claimant's case and scheduling her hearing for May 18, 2011.

The Claimant's second hearing was held as scheduled on May 18, 2011 before Hearing Examiner Jay Durych. The Claimant participated by telephone, represented herself, and argued on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person, and represented and testified on behalf of the Division.

At the hearing, the Claimant disputed this Office's jurisdiction to decide her case on the merits. After arguing several procedural issues, the Claimant declined to be sworn-in. The Claimant then ended her participation in the hearing by hanging up her phone.

Although the Claimant's decision not to provide sworn testimony could have been treated as an abandonment of her case pursuant to 7 AAC 49.100(4), the Hearing Examiner chose to proceed with the determination of the case on its merits. Accordingly, the hearing proceeded in the Claimant's absence. The DPA Hearing Representative's testimony was 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 March 8, 2011, it decreased the amount of the Claimant's Food Stamp benefits, due to the fact that the Claimant's monthly income had increased as a result of the Claimant's receipt of monthly Social Security disability benefits beginning in March 2011? Stated differently, did the Division correctly calculate the Claimant's new Food Stamp benefit amount?

FINDINGS OF FACT

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

1. The Claimant has received Food Stamp, Adult Public Assistance, and Medicaid benefits since at least March 2011 (Ex. 1).
2. On or about February 22, 2011 the United States Social Security Administration (SSA) mailed a notice to the Claimant stating that she had qualified for disability benefits (Exs. 2.10 – 2.12). The notice stated that the Claimant was found to be disabled by SSA standards effective October 18, 2008 and was entitled to receive disability benefits effective August 2009. *Id.* The notice stated that the Claimant would receive a lump-sum payment of \$16,668.00 representing the payments due for the period August 2009 through January 2011. *Id.* The notice further stated that the Claimant would receive monthly payments of \$926.00 beginning in March 2011. *Id.* The Claimant provided a copy of this notice to the Division on March 7, 2011. *Id.*

3. On March 7, 2011 the Claimant submitted an Application for Services (Exs. 2.0 – 2.9) which the Division treated in part as an application for recertification of the Claimant’s Food Stamp benefits (██████ testimony). The Claimant’s application sought benefits for a household of one (i.e. the Claimant herself) (Ex. 2.1). The Claimant’s application indicated that the Claimant owned her own home, and that her only sources of income were her social security benefits and energy assistance benefits (Ex. 2.3). The Claimant’s application also indicated that the Claimant paid child support in the amount of \$419.00 per month, and property taxes in the amount of “\$700 - \$800” per year (Ex. 2.5).

4. On March 7, 2011 the Claimant participated in an eligibility interview with a DPA Eligibility Technician (Ex. 2.13). The Claimant indicated that her only source of cash income was her \$926.00 monthly social security benefit payment (Ex. 2.13).

5. In calculating the amount of the Claimant’s Food Stamp benefits for April 2011, the Division began with the Claimant’s SSA disability payments of \$926.00 per month, and added the Claimant’s Adult Public Assistance benefits of \$130.00 per month (Exs. 2.15, 2.17),⁴ resulting in total gross unearned income of \$1,056.00 (Ex. 2.20). The Division then applied a standard deduction of \$243.00, resulting in net income of \$813.00 (Ex. 2.20). The maximum net income that a one-person household can have, and still receive Food Stamps, is \$1,128.00 (Exs. 2.20, 7.0).

6. The Division did not apply an earned income deduction, a medical deduction, a dependent care deduction, a child support deduction, a shelter deduction, or a fishing or farming offset, in calculating the Claimant’s net income (Ex. 2.20). There is no evidence in the record indicating that the Claimant is entitled to any of those deductions or offsets.⁵

7. Based on the Claimant’s net income of \$813.00, the Division determined that the Claimant had “allotment income” of \$239.00 (Ex. 2.20).⁶ Based on the Claimant’s allotment income of \$239.00, the monthly Food Stamp benefit for the Claimant’s geographic area, is \$19.00 (Ex. 7.0).

8. On March 8, 2011 the Division mailed to the Claimant two written notices (Exs. 3.0, 3.1). One of these notices (Ex. 3.0) stated that the Claimant’s Food Stamp recertification application had been approved. The other notice (Ex. 3.1) stated that the Claimant’s monthly Food Stamp benefit amount would decrease to \$19.00 beginning in April 2011. The notice also stated that “\$813.00 is the countable income used to figure this benefit.” *Id.*

⁴ Public assistance payments are properly included in an applicant or recipient’s income in determining their eligibility for Food Stamp benefits. See *Ondrusek v. Commissioner, Department of Public Welfare*, 496 A.2d 70 (Pa. 1985).

⁵ In her application the Claimant indicated that she paid child support in the amount of \$419.00 per month (Ex. 2.5). However, there is no evidence in the record that the Claimant ever provided verification of these payments. During a prehearing conference, the Claimant indicated only that the State of Alaska Child Support Services Division might be garnishing her SSA disability payment in the future (Ex. 2.21). Consequently, the Division did not credit the Claimant with any child support payments at this time.

⁶ “Allotment income” is determined based on an applicant / recipient’s household size, household location, net income, and expenses. See State of Alaska Food Stamp Manual at Section 603-3 (Ex. 10).

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof.⁷ This case involves the Division's calculation of a recipient's benefit amount in the context of an application for recertification of Food Stamp Benefits. Food stamp recertification applications are considered new and independent eligibility determinations (see *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983)). Accordingly, pursuant to applicable federal law, the Claimant bears the burden of proof in these proceedings because she is considered to be applying anew for Food Stamp benefits, and the Division is likewise determining her eligibility anew.

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.⁸ 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.⁹

II. The Food Stamp Program – In General.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 U.S.C. §§ 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 in the Code of Federal Regulations (C.F.R.) at 7 C.F.R. §§ 271-274.

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

III. The Food Stamp Program – Calculation of Net Income and Benefit Amount.

The Code of Federal Regulations contains the federal Food Stamp Regulations. These federal regulations set forth the general rules for administration of the Food Stamp program. For example, regulation 7 C.F.R. § 273.9 sets forth general income exclusions and deductions. Regulation 7 C.F.R. § 273.10(d) sets forth certain more specific income deductions and expense allowances. Finally, regulation 7 C.F.R. § 273.10(e) sets forth the general procedures for calculating net income and Food Stamp benefit levels.

⁷ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁸ *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

⁹ *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

The *specific procedures* for calculating Food Stamp income eligibility, and the appropriate benefit amount, are set forth in the State of Alaska's Food Stamp Manual ("Manual") and the addenda thereto. Pursuant to Manual Section 603-2, the procedures for determining income are as follows:

1. The Division first determines gross monthly income by adding the total nonexempt income from all sources, earned and unearned.
2. If the household's monthly gross income is greater than the gross monthly income standards for the household size (as set forth in Food Stamp Manual Addendum 4), the household is not eligible. If the gross income does not exceed the maximum limit, then the Division proceeds to the determination of net income.
3. The Division next multiplies the total gross earned income by 80 percent to determine the net monthly earned income, applying the 20 percent earned income deduction.
4. The Division then adds to the net monthly earned income the total monthly unearned income of all household members, minus income exclusions.
5. The Division then subtracts the standard deduction for the household size (set forth in Food Stamp Manual Addendum 4) from the total net income.
6. The Division then determines whether the household is a "Special Category" or "SPECAT" household. For a SPECAT household, the Division totals all allowable medical expenses, subtracts \$35.00, and then subtracts the result from the result in No. 5, above. If the household is not SPECAT, the Division proceeds to the next step, below.
7. The Division next determines the amount of dependent care costs incurred by the household. This amount is subtracted from the result above.
8. The Division next determines the amount of the legally obligated child support the household paid to someone outside the household. This amount is then subtracted from the result above.
9. The Division then determines and applies a shelter deduction. [No shelter deduction is at issue in this case, so the details of the calculation of the shelter deduction are omitted here for purposes of brevity]. The Division then subtracts the allowable excess shelter cost from the household's income. The result is the household's net monthly food stamp income.
10. The Division then compares the net income determined above to the maximum net monthly income standard for the appropriate household size. Manual Addendum 4 contains the current net monthly income limits. Households with net monthly income greater than the eligibility limit are not eligible to participate in the Food Stamp Program. Households with net monthly income not exceeding the maximum limit, and which meet the other eligibility requirements, are eligible to participate in the Food Stamp Program.

Food stamp allotment / benefit amount calculations are normally performed automatically by the Division's Electronic Information System (EIS). *See* Alaska Food Stamp Manual Section 603-3A. However, the benefit amount can be calculated manually in accordance with the worksheet and procedures set forth in Alaska Food Stamp Manual, Addendum 7.

Pursuant to Alaska Food Stamp Manual, Addendum 7, the procedure for calculating the Food Stamp benefit amount, for households (as here) with elderly or disabled members, is as follows:

1. Multiply monthly net income by 0.3 to find the adjusted food stamp income.
2. Subtract the adjusted food stamp income (1, above) from the maximum food stamp allotment (from chart), and then round down to the next whole dollar. This is the monthly food stamp benefit amount.
3. If (as here) there are 1 or 2 household members, and the monthly food stamp benefit amount is less than the minimum benefit, round up to the minimum benefit.
4. If the adjusted food stamp income (1, above) is greater than the maximum food stamp allotment, the allotment is the minimum benefit.

ANALYSIS

Introduction; Definition of Issue.

The Claimant did not assert any particular error with regard to the Division's calculation of her new Food Stamp benefit amount. Rather, the Claimant basically asserted that this Office does not have jurisdiction to decide her case on its merits.

Initially, state regulation 7 AAC 49.010(a) expressly gives this Office jurisdiction to decide Food Stamp cases. Accordingly, the Claimant's jurisdictional argument fails. It is therefore appropriate to address the merits of the case and determine whether the Division's calculation of the Claimant's net income, and the Claimant's benefit amount, were correct.

As explained in the Principles of Law, above, because the Division's benefit calculation was made in the context of a recertification application, which is considered a new application, the benefit amount arrived at by the Division is considered by federal law to be the status quo. Because the Claimant is attempting to change this existing status quo by challenging the Division's benefit calculations, the Claimant has the burden of proving, by a preponderance of the evidence, that the methods that the Division used to calculate the Claimant's income and benefit amount were not correct. *See* Principles of Law, above. This is the case even though the benefit amount calculated by the Division for the current six-month certification period is less than the benefit amount paid to the Claimant during the prior certification period.

I. Did the Division Correctly Calculate the Claimant's Net Income?

In order to calculate an applicant or recipient's benefit amount, it is first necessary to calculate net income, on which the benefit amount is based. Pursuant to 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska's Food Stamp Manual, § 603-2, the procedures for determining income are as follows:

1. The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned. Here, the Claimant had no earned income; her gross unearned income was \$1,056.00. *See* Findings of Fact at Paragraph 5, above.

2. Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household size (set forth in Food Stamp Manual Addendum 4). The gross monthly income limit for a household of one is \$1,466.00 (Ex. 7.0). The Claimant's monthly gross income of \$1,056.00 is less than the applicable maximum gross income limit of \$1,466.00. Accordingly, the Claimant passed the "gross income test," and the Division proceeded to the determination of her net income.¹⁰

3. The Division then subtracts the standard deduction for the household size from the total net income. The standard deduction amounts are set forth in the Manual at Addendum 4. The standard deduction for the Claimant's household is \$243.00 (Ex. 7.1). Subtracting \$243.00 from the Claimant's \$1,056.00 in unearned income results in net income of \$813.00 (Ex. 2.20).¹¹

4. The Division then compares the net income determined above (here, \$813.00) to the maximum net monthly income standard for the appropriate household size (here, \$1,128.00) (Exs. 2.20, 7.0). Households with net monthly income not exceeding the maximum limit, and which meet the other eligibility requirements, are eligible to participate in the Food Stamp Program. Here, DPA properly found that the Claimant's net income was less than the applicable maximum net income limit, and determined that the Claimant was eligible for Food Stamps.

¹⁰ The Division would then normally multiply the total gross *earned income* by 80 percent to determine the net monthly *earned income*. However, in this case, the Claimant has no earned income. Accordingly, this step was necessarily skipped in this case. The Division then adds to the net monthly earned income the total monthly unearned income of all household members. Because the Claimant had zero dollars of earned income, and \$1,056.00 in unearned income, her total at this stage is \$1,056.00.

¹¹ The Division did not apply an earned income deduction, a medical deduction, a dependent care deduction, a child support deduction, a shelter deduction, or a fishing or farming offset, in calculating the Claimant's net income (Ex. 2.20). There is no evidence in the record indicating that the Claimant is entitled to any of those deductions or offsets.

The Division then determines whether the household is a "Special Category" or "SPECAT" household. If the household is Special Category, the Division totals all allowable medical expenses, subtracts \$35.00, and then subtracts the result from the result in No. 5, above. In this case, the Claimant is in a "Special Category" household. However, there is no evidence of any medical expenses in the record. Accordingly, no medical expense deduction was provided to the Claimant.

The Division next determines the amount of dependent care costs incurred by the household and subtracts this amount from the result above. In this case, there is no evidence of any dependent care costs in the record. Accordingly, no dependent care costs were deducted.

The Division next determines the amount of any legally obligated child support the household paid to someone outside the household, and subtracts that amount from the result above. In her application the Claimant indicated that she paid child support in the amount of \$419.00 per month (Ex. 2.5). However, there is no evidence in the record that the Claimant ever provided verification of these payments. Also, during her prehearing conference, the Claimant indicated only that the State of Alaska Child Support Services Division might be garnishing her SSA disability payment *in the future* (Ex. 2.21). Consequently, the Claimant is not entitled to any child support deduction.

The Division then determines and applies a shelter deduction. In this case, the Eligibility Technician gathered information relevant to whether the Claimant should receive a shelter deduction (Ex. 2.13). However, the Claimant has the burden of proving entitlement to the deduction, and the Claimant failed to meet this burden. Accordingly, the Division was correct not to apply a shelter deduction (Ex. 2.20).

In summary, the foregoing demonstrates that the Division properly determined the amount of the Claimant's net income in accordance with 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska Food Stamp Manual, § 603-2. The only remaining issue is whether, using that net income figure (\$813.00), the Division correctly determined the amount of the Claimant's monthly Food Stamp benefit.

II. Did the Division Correctly Calculate the Claimant's Monthly Benefit Amount?

Pursuant to Alaska Food Stamp Manual, Addendum 7, the procedure for calculating the Food Stamp benefit amount, for households (like the Claimant's) with elderly or disabled members, is as follows:

1. First, the recipient's monthly net income (here, \$813.00) is multiplied by 0.3 to find the adjusted food stamp income. Here, \$813.00 multiplied by 0.3 equals \$243.90.
2. The next step is to subtract the adjusted food stamp income (\$243.90) from the maximum food stamp allotment (\$239.00 - from chart - Ex. 7.0), and then round down to the next whole dollar. In this case, \$239.00 minus \$243.90 equals *negative* \$4.90. This is the monthly food stamp benefit.
3. However, if there are 1 or 2 household members (as in this case), and the monthly food stamp benefit amount (here, -\$4.90) is less than the minimum benefit (here, \$19.00 - see Ex. 7.0), the Division rounds-up to the minimum benefit amount benefit (\$19.00 - see Ex. 7.0).

Here, DPA calculated the amount of the Claimant's monthly Food Stamp benefit, beginning in April 2011, to be \$19.00 (Ex. 3.1). As demonstrated above, the Division's calculation was in accordance with Alaska Food Stamp Manual, Addendum 7, and was therefore correct.

CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden, and did not prove by a preponderance of the evidence:
 - (a) That the Division's calculation of her net income violated the applicable regulations (7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and/or the State of Alaska's Food Stamp Manual, § 603-2), or was mathematically incorrect or otherwise in error; or
 - (b) That the Division's calculation of the amount of the Claimant's Food Stamp benefits, beginning with the month of April 2011, violated the applicable regulation (the State of Alaska's Food Stamp Manual, Addendum 7), or was mathematically incorrect or otherwise in error.
2. Accordingly, the Division was correct when, on March 8, 2011, it notified the Claimant that her Food Stamp benefits would be \$19.00 per month, beginning in April 2011, based on net income of \$813.00.

DECISION

The Division was correct when, on March 8, 2011, it notified the Claimant that the amount of her Food Stamp benefits would be \$19.00 per month beginning in April 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. 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. To appeal, 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

DATED this 10th day of June, 2011.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on June 10, 2011 true and correct copies of this document were sent to the Claimant via USPS Mail, and to the remainder of the service list by secure / encrypted e-mail, as follows:

Claimant – 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