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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-108  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED] (Claimant) signed and submitted an Eligibility Review Form on January 30, 2011 seeking recertification of eligibility for Food Stamp<sup>1</sup> benefits for herself and one minor child. (Ex. 2.0-2.5) The Division of Public Assistance (Division) received it on January 31, 2011 (Ex. 2.0) On March 2, 2011, the Division awarded Food Stamp benefits for a household of one person, instead of two persons, because Claimant was determined to be a student who was not eligible for the Food Stamp Program. (Ex. 4)

Claimant requested a Fair Hearing on March 7, 2011. (Ex. 5)

This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010, *et. seq.*

The Fair Hearing was held on April 14, 2011. Claimant appeared telephonically, represented herself and testified on her own behalf. Mr. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division.

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<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.

## ISSUE

Was the Division correct to deny Claimant's<sup>2</sup> January 30, 2011 request for Food Stamps because she was a student?

## FINDINGS OF FACT

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

1. The parties agreed that Claimant, forty-three years old and a single mother of a child over the age of 12<sup>3</sup>, is a student attending the University of Alaska three-quarters (3/4) of full time through the distance education program of the University. (Ex. 2; Ex. 3; Ex. 7; Claimant's testimony) Claimant lives in the urban area of [REDACTED], Alaska. (Ex. 2)
2. On January 30, 2011, Claimant applied to re-certify Food Stamp benefits for herself and her son. (Ex. 2.0-2.9) On her application, Claimant wrote she works four (4) hours per week. (Ex. 2.1)
3. During Claimant's eligibility interview on March 1, 2011, the Eligibility Technician wrote that Claimant was scheduled to work 17 hours per month. (Ex. 3) Claimant does not work 20 hours a week or more, in part because she has an injury which prevents her from lifting more than 20 pounds and in part because work she can do is not available in [REDACTED]. (Claimant's testimony)
4. On March 2, 2011, the Division gave Claimant written notice her household Food Stamp benefits would be reduced to \$239.00<sup>4</sup> in April 2011 because she, as one of two household members, was no longer eligible for benefits. (Ex. 4.0) The Division informed Claimant she was not eligible for Food Stamps because she was a student attending college more than one-half time. (Ex. 4) The notice also informed Claimant that she did not meet any [exemption] criteria for students that would exempt her from the general rule disqualifying students from eligibility. (Ex. 4)
5. Claimant's evidence during the fair hearing included:
  - a. Claimant agrees she is excluded from eligibility for Food Stamps because she is attending college three-quarters of full time;
  - b. Claimant agrees she does not meet the criteria for any of the exemptions from the disqualification of students from receiving Food Stamp benefits;
  - c. Claimant believed she was being penalized for trying to improve her circumstances by attending college; she does not get cash assistance from the State;

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<sup>2</sup> As stated above, Claimant applied for Food Stamps for herself and her son. At issue in this case is only Claimant's eligibility for Food Stamps, which the Division denied. Claimant's son's eligibility, to whom the Division awarded benefits, is not at issue, nor is the amount of benefits awarded.

<sup>3</sup> The child attained twelve years of age on [REDACTED], 2011. (Ex. 2)

<sup>4</sup> Although not stated in the notice, it is evident the reduction in benefits from \$438.00 in March 2011 to \$239.00 in April 2011, represented only her ineligibility and that her son was still eligible for benefits. (Ex. 3.1) The monthly Food Stamp benefit amount for one person in urban Alaska is \$239.00. See, <http://www.hss.state.ak.us/dpa/programs/fstamps/>

d. Claimant cannot qualify for Food Stamps by participating in any of the program exemptions (provided for students by the Food Stamp regulation) because the State of Alaska does not offer, in [REDACTED], any of the programs identified in the exemptions;

e. Claimant has a back injury and her doctor has not approved her for physical work. However, she took a job as a personal care assistant for a person with mental difficulties because she does not need to lift more than 20 pounds and can work about 4 hours a week. That job is the most work she has been able to find in [REDACTED] that she can do.

f. Claimant should be awarded Food Stamps, notwithstanding her ineligible status as a student, because of the above reasons.

(Claimant's testimony)

## PRINCIPLES OF LAW

### I. Burden of Proof

Applicants for Food Stamp Program benefits must meet the eligibility requirements of the Program for each period they are certified to receive benefits. *Banks v. Block*, 700 F.2d 292, 296-97 (6<sup>th</sup> Cir. 1983). Therefore, Claimant, as an applicant for Food Stamps, has the burden of proving eligibility for Program benefits.

### 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 Corp. 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) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

Consequently, Claimant has the burden of proving by a preponderance of the evidence that she is eligible to receive Food Stamps in this case.

### III. Food Stamp Program

The Food Stamp Program is a federal program administered by the States. 7 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining whether individuals qualify for Food Stamp benefits. *See*, 7 C.F.R. § 271 – 273.

## A. The Food Stamp Program, Its Administration

Congress created the Food Stamp Program: “[t]o alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet...” 7 CFR § 271.1(a) (quoting Section 2 of the Food Stamp Act of 1977 in part). The regulation establishing the purpose and scope of the Food Stamp Program, states in part, the Program is to “promote the general welfare and safeguard the health and well being of the nation’s population by raising the levels of nutrition among low-income households.” 7 CFR § 271.1(a).

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 in 7 C.F.R. § 271 – 274. The duties of the Alaska Department of Health and Social Services, in regard to the Food Stamp Program, include “comply[ing] with the requirements of 7 U.S.C. 2011-2036 (Food Stamp Program).” AS 47.25.980(a)(3).

## B. Student Eligibility Requirements

Food Stamp regulation 7 C.F.R. § 273.5(a) makes clear that an individual who is enrolled at least one-half time in an institution of higher education is a student not eligible to participate in the Food Stamp Program, unless that person qualifies for one of the exemptions in subparagraph (b) of the regulation.

Regulation 7 C.F.R. § 273.5(b)<sup>5</sup> sets out several exemptions by which such an individual may receive benefits. To be eligible for the program, a student must meet at least one of the criteria constituting an exemption from non-eligibility. The exemptions are available to individuals as follows:

- (1) Be age 17 or younger or age 50 or older;
- (2) Be physically or mentally unfit;
- (3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;
- (4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;
- (5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
- (6) Be participating in a State or federally financed work study program during the regular school year. ...

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<sup>5</sup> Regulation 7 C.F.R. § 273.5 is promulgated as 46 FR 43025, Aug. 25, 1981, as amended by Amdt. 235, 47 FR 55908, Dec. 14, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 277, 51 FR 30048, Aug. 22, 1986; Amdt. 370, 60 FR 48869, Sept. 21, 1995; 67 FR 41603, June 19, 2002.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12. ...

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. ... Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) A program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) An employment and training program under Sec. 273.7;

(iii) A program under section 236 of the Trade Act of 1974 (19U.S.C. 2296); or

(iv) An employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in Sec. 273.7(e)(1).

### C. General Legal Principles

“Administrative agencies are bound by their regulations, just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851,868-869 (Alaska 2010).

## ANALYSIS

### I. Issue

Was the Division correct to deny Claimant’s January 30, 2011 request for Food Stamps because she was a student?

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

Because Claimant is applying for Food Stamp benefits, she has the burden of proving that she meets the eligibility requirements for the Food Stamp Program. Furthermore, Claimant must meet this burden of proof by the preponderance of the evidence. In this case, Claimant must prove she is not disqualified from receiving Program benefits because she is a student, by proving she is entitled by law to receive Food Stamps.

## III. Undisputed facts

The parties stipulated that Claimant is a student attending college three-quarter's time, which is more than half-time. Claimant is 43 years old and parents a child who became 12 years old on [REDACTED], 2011. It is also undisputed Claimant works less than 20 hours per week. She does not get cash assistance from the State under Title IV of the Social Security Act. Claimant's undisputed testimony was that she has a low number of work hours because she has a back injury that prevents her from working at any job requiring lifting more than 20 pounds of weight. Claimant's additional undisputed testimony was that the jobs available to her with her weight restriction are few in [REDACTED], where she resides. There is no evidence Claimant is mentally or physically unfit or mentally or physically incapable of engaging in gainful employment. In fact, the evidence is the opposite: Claimant is a college student and is gainfully employed.

## IV. Discussion

The Division determined Claimant is not eligible for Food Stamps because she is disqualified by regulation 7 C.F.R. § 273.5(a). This regulation disqualifies any student enrolled half-time or more in an institution of higher learning from being eligible for Food Stamps. The Division further determined Claimant does not qualify for any exception established by regulation 7 C.F.R. § 273.5(b), which provides that students attending more than half-time may qualify for Food Stamps under certain circumstances. Claimant does not dispute the Division's determinations.

Claimant agrees she does not meet the requirements of any of the exemptions and that she is enrolled more than half-time in college. Claimant argues that the fact she does not qualify for an exemption provided by 7 C.F.R. § 273.5(b) is because the State of Alaska does not offer the programs and opportunities identified in the listed exemptions of section 273.5(b) and/or because she is not getting cash assistance under Title IV of the Social Security Act. Claimant seeks an order finding the Division erred in denying her Food Stamps on grounds the denial was unjust and penalizes her for trying to better herself.

Claimant and the Division agreed as to all the facts at issue in this case and there is no material dispute of fact. As a matter of law, after applying the undisputed facts to the criteria of each of the exemptions provided by 7 C.F.R. § 273.5(b),<sup>6</sup> Claimant does not qualify for any exemption by which she, as a student attending college more than half-time, could be eligible for Food Stamps.

Claimant is seeking, in effect, a hardship exception to the federal Food Stamp regulations. There is no provision for such an exception in the Food Stamp rules and regulations. The federal regulations enumerate at least eleven exceptions to the disqualification from Food Stamps applicable to students

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<sup>6</sup> See Principles of Law section, hereinabove, at III. B. Student Eligibility Requirements.

attending institutions of higher learning more than half-time. Claimant's factual circumstances cause her not to meet the criteria of any of the eleven exceptions. 7 C.F.R. § 273.5(b).

Claimant has the option of reducing the number of hours she is attending college below half-time, in order to qualify for Food Stamps under regulation 7 C.F.R. § 273.5(a). Alternatively, Claimant could become employed more than 20 hours per week and qualify under the exception provided by 7 C.F.R. § 273.5(b)(5).

Claimant testified she is unable to participate in the programs identified in the exemptions provided by 7 C.F.R. §273.5(b) because the programs are not available in [REDACTED]. However, this is the result of Claimant's choice of residence in [REDACTED]. Claimant did not provide evidence that the State of Alaska or the University of Alaska in other location(s) do not offer the programs which are included in one or more of the exemptions of 7 C.F.R. § 273.5(b)(5).

Finally, Claimant did not provide factual evidence in support of her claim she is being unfairly punished for trying to better herself.

In summary, Claimant's undisputed factual circumstances as student, parent, and wage earner each fail to qualify her for any exemption. Claimant is seeking a determination through the Fair Hearing process that she is entitled to Food Stamp benefits, although she admits she does not meet the requirements of eligibility to receive them. "Administrative agencies are bound by their regulations, just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868-869 (Alaska 2010). Claimant has not provided any factual basis on which she can be determined eligible for Food Stamps.

Claimant has not met her burden of proving she is eligible to receive Food Stamps. The Division was correct to determine that Claimant's factual circumstances make her not eligible for Food Stamp benefits.

### **CONCLUSIONS OF LAW**

1. Claimant is a student enrolled more than half-time at an institution of higher learning and therefore is not eligible to participate in the Food Stamp Program. 7 C.F.R. § 273.5(a).
2. Claimant did not meet her burden of proving by a preponderance of the evidence that she qualifies for any exemption, provided by 7 C.F.R. § 273.5(b), that would qualify her to be eligible for Food Stamp benefits as a student.
3. The Division was correct to deny Claimant's eligibility Food Stamp benefits when she applied on January 30, 2011 because she is a student.

### **DECISION**

The Division was correct to determine Claimant was a student not eligible for Food Stamps. The Division was correct deny Claimant's January 30, 2011 request for Food Stamps benefits for that reason.<sup>7</sup>

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<sup>7</sup> The Division's action did not affect the receipt of Food Stamp benefits awarded to the remaining member of the household.

**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  
P.O. Box 110640  
Juneau, AK 99811-0640

Dated this May 6, 2011

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*/signed/*  
Claire Steffens  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on May 6, 2011 true and correct copies of the foregoing were sent to:  
Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

- ██████████, Hearing Representative
- ██████████, Hearing Representative
- ██████████, Chief, Policy & Program Dev.
- ██████████, Administrative Assistant II
- ██████████, Eligibility Technician I
- ██████████, Staff Development & Training

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