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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-250  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of Food Stamp Program benefits (Ex. 1.0). On July 6, 2011 the Claimant completed and signed a Food Stamp recertification application (Eligibility Review Form) (Exs. 2.0 through 2.5). The Claimant's Eligibility Review Form was received by the State of Alaska Division of Public Assistance (DPA or Division) on July 7, 2011 (Ex. 2.0).

On July 11, 2011 the Division mailed two notices to the Claimant (Exs. 4.0, 4.1). The first notice (Ex. 4.0) stated that the Claimant's Food Stamp recertification application had been approved; the notice also stated the amount of benefits that the Claimant would receive. The second notice (Ex. 4.1) stated that the Claimant's Food Stamp case would be closed after August 31, 2011 on the grounds that the Claimant's monthly income would exceed the Food Stamp Program's applicable maximum monthly income limit after that date. On July 8, 2011 the Claimant requested a hearing with regard to the Division's calculation of her Food Stamp benefits and the Division's termination of her Food Stamp benefits (Exs. 3.13, 3.14).

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

The Claimant's hearing was held as scheduled on August 11, 2011 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person, represented the Division, and testified on behalf of the Division. The parties' testimonies were 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.

## ISSUES

1. Did the Division prospectively estimate the Claimant's future earned income from employment, for the month of August 2011 and after, in accordance with the applicable regulations?
2. Did the Division prospectively estimate the child support received by the Claimant, for the month of August 2011 and after, in accordance with the applicable regulations?
3. Was the Division correct to determine that the Claimant's daughter would not be eligible to receive Food Stamp benefits after August 31, 2011, and that she would no longer be a part of the Claimant's household for purposes of the Food Stamp Program, based on the assertion that she would be a student after that date?
4. Was the Division correct to terminate the Claimant's Food Stamp benefits after August 31, 2011, based on the assertion that the Claimant's household's monthly income exceeded the Food Stamp Program's applicable monthly income limit for a household of one (1) eligible person?

## SUMMARY OF DECISION

The methods used by the Division to estimate the Claimant's prospective <sup>1</sup> (anticipated) <sup>2</sup> future income from her employment, and from child support, complied with the requirements of the applicable federal Food Stamp regulation (7 CFR § 273.10(c)(1)(i-ii)). Consequently, the Division's calculation of the Claimant's Food Stamp benefit amount for August 2011 was correct.

The Division also correctly determined that, pursuant to 7 CFR § 273.5, the Claimant's daughter became ineligible for the Food Stamp Program, based on her status as a full-time student, effective September 1, 2011. Because the daughter was no longer eligible, the Claimant's household became a household of one person, for Food Stamp Program purposes, effective September 1, 2011. The Food Stamp Program's maximum monthly gross income limit for a household of one is less than the corresponding limit for a household of two. The Claimant's gross income exceeded the maximum gross income limit for a one person household effective September 1, 2011. Consequently, the Division was also correct when, on July 11, 2011, it notified the Claimant that her Food Stamp benefits would end after August 31, 2011, because her gross <sup>3</sup> monthly income exceeded the Food Stamp Program's applicable gross monthly income limit for a household of one (1) person.

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<sup>1</sup> A prospective eligibility determination is "[t]he determination of eligibility based on anticipated income and circumstances in the issuance month." *See* Alaska Food Stamp Manual Section 600-2.

<sup>2</sup> "Anticipate means expecting a future event; predicting an event. For example, an applicant anticipates receiving child support each month." *See* Alaska Food Stamp Manual Section 600-2.

<sup>3</sup> Black's Law Dictionary defines *gross income* as all income from whatever source derived. *See* Black's Law Dictionary (West Publishing, 5<sup>th</sup> Edition, 1979) at 632; *see also* United States Internal Revenue Code, Section 61(a).

## FINDINGS OF FACT

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

1. The Claimant's household consists of five persons: the Claimant, her daughter, her son, her son's girlfriend, and one grandson (Exs. 1, 3.0). However, it is undisputed that the Claimant's son, his girlfriend, and the grandchild were not a part of the Claimant's household, for Food Stamp eligibility purposes, at any time relevant to the events at issue in this case (Exs. 1, 3.0). Accordingly, at the time the Claimant submitted the recertification application at issue in this case, her household, for Food Stamp purposes, consisted of only two (2) persons – the Claimant and her daughter (Ex. 2.0).
2. On July 6, 2011 the Claimant completed and signed a Food Stamp recertification application (Eligibility Review Form – Form Gen. 72) (Exs. 2.0 through 2.5). The Claimant's Eligibility Review Form was received by the Division on July 7, 2011 (Ex. 2.0).
3. At page 1 of the Eligibility Review Form, the Claimant indicated that the 20-year-old daughter, who she had listed as part of her household, was a full-time student attending postsecondary education at a college or university (Ex. 2.0).
4. At page 2 of the Eligibility Review Form, the Claimant indicated that she (a) was employed; (b) was paid \$14.50 per hour; (c) worked 38 hours per two (2) week period; and (d) was paid bi-weekly (Ex. 2.1). At page 3 of the Form, the Claimant indicated that her rent or mortgage payment was \$925.00 per month, and that her electric bill was \$181.00 per month (Ex. 2.2).
5. On July 8, 2011 the Claimant participated in a telephonic eligibility interview with a DPA Eligibility Technician (Ex. 3.0). At the time of her eligibility interview the Claimant indicated that she had just recently resumed working, and that she therefore had only one recent paycheck from her employer (Ex. 3.0). The Claimant provided this one pay statement to DPA (Ex. 2.6). The pay statement was for the period beginning June 5, 2011 and ending June 18, 2011 (Ex. 2.6). During this period of approximately two (2) weeks, the Claimant worked a total of 38.75 hours, at a rate of \$14.50 per hour, for total gross pay in the amount of \$561.88 (Ex. 2.6).
6. On the date of the eligibility interview the DPA Eligibility Technician telephoned the Claimant's employer to verify the Claimant's employment (Ex. 3.0). The Claimant's employer informed the Division that, initially, the Claimant was expected to be working 18 – 24 hours per week, (i.e. 36 – 48 hours every two weeks), at a pay rate of \$14.50 per hour (Ex. 3.0).
7. Based on the Claimant's one current paycheck, and the information obtained from the Claimant's employer, the Eligibility Technician estimated the Claimants prospective income by assuming that she would be working 21 hours per week, (21 hours per week being half-way between the employer's lower estimate of 18 hours per week, and the employer's upper estimate of 24 hours per week) (Ex. 3.0).
8. The Eligibility Technician then multiplied the Claimant's pay rate (\$14.50 per hour) by 21 hours per week, for estimated gross weekly wages of \$304.50 (Ex. 3.0). This weekly figure of \$304.50 was then multiplied by 4.3, (because there are an average of 4.3 weeks per month), resulting in estimated gross monthly wages of \$1,309.35. *Id.*

9. On the date of the eligibility interview the DPA Eligibility Technician also checked the State of Alaska's computerized child support records and determined that, during the 13-month period from May 17, 2010 through June 27, 2011, the Claimant was receiving child support payments. These payments were made on the average of once every two (2) weeks, *and were almost always in the amount of \$157.47* (Exs. 3.0, 3.1).<sup>4</sup> The bi-weekly child support figure of \$157.47 was then multiplied by 2.15, (because there are an average of 2.15 bi-weekly periods per month), resulting in estimated gross monthly child support of \$338.56. *Id.*

10. During the eligibility interview the DPA Eligibility Technician confirmed that the Claimant's daughter would be attending college full-time beginning with the fall semester of 2011 (Ex. 3.0). The Eligibility Technician placed a call to the college and verified that the fall semester would begin on September 1, 2011 (Ex. 3.0). Based on this information, the Eligibility Technician determined that the Claimant's daughter would become ineligible for the Food Stamp Program, based on her status as a full-time student, effective September 1, 2011 (Ex. 3.0).

11. The Eligibility Technician next determined that, because the Claimant's daughter would become ineligible for the Food Stamp Program based on her status as a full-time student, the Claimant's household would be reduced to a household of one (1) person, for purposes of the Food Stamp Program, effective September 1, 2011 (Ex. 3.0).

12. Based on the Claimant's average monthly gross employment income of \$1,309.35 (see Paragraph 8, above), and the Claimant's average monthly child support income of \$338.56 (see Paragraph 9, above), the Claimant's average total gross monthly household income was \$1,647.91. The Division then compared the applicable gross income limit for a household of one (\$1,466.00) with the Claimant's average total gross monthly household income (\$1,647.91), and concluded that the Claimant's gross monthly income exceeded the applicable Food Stamp Program gross monthly income limit by \$181.91 (Ex. 4.1, DPA Hearing Representative's testimony).

13. On July 11, 2011 the Division mailed a notice to the Claimant advising that the Claimant's recertification application for Food Stamp benefits (received by DPA on July 7, 2011) had been approved through August 31, 2011 (Ex. 4.0). The notice stated in relevant part as follows (format of original notice modified for brevity):

\$237.00 is your August 2011 Food Stamp benefit. \$669.56 is the countable income used to figure this benefit.

....

This action is based on Food Stamp Manual Section 604-2.

This determination was based on your household of two, [earned income of] \$1,309.35 gross/month (18-24 hours per week X \$14.50 / hour). It was also based on the child support that your household receives calculated at \$338.56 / month . . . . [Y]ou received deductions for \$925 [for] rent and also for your electric . . . .

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<sup>4</sup> The State of Alaska Child Support Enforcement Division's (CSED's) computerized records indicate that during this time period the Claimant received thirty (30) child support payments (Ex. 3.1). These payments were made on the average of once every two (2) weeks, and were almost always in the amount of \$157.47 (Ex. 3.1). Accordingly, the conclusion by the DPA Eligibility Technician, that the Claimant received bi-weekly child support in the amount of \$157.47, was accurate.

14. On July 11, 2011 the Division also mailed a second notice to the Claimant advising that the Claimant's Food Stamp benefits would end after August 31, 2011 (Ex. 4.1). The notice stated in relevant part as follows (format of original notice modified for brevity):

Your Food Stamp case is closed. You will not get Food Stamps after 08/31/2011 because your total income is over the Food Stamp Program limit.

\$1,466.00 is the Food Stamp income limit for your household. \$1,647.91 is the countable income amount we used to figure your eligibility.

....

This action is based on Food Stamp Manual Section 603-2.

Beginning 09/01/2011, [your daughter] will be considered a student for Food Stamp purposes and will be ineligible to receive Food Stamps due to her student status. Therefore, your benefits for 09/2011 were based on your household of one, your income from [employment] calculated at \$1,309.35 gross/month, as well as the child support you receive calculated at \$338.56 / month. That income puts your household of one over the income limit for Food Stamps, and therefore your case will close effective the date listed above . . . .

15. During the hearing of August 11, 2011 the Claimant testified in relevant part that:

a. She received \$237.00 in Food Stamp benefits for August 2011. That is less than she received each month during the prior certification period.

b. She normally works 30-31 hours per week. Her paycheck for the period June 5 through June 18, 2011 (Ex. 2.6), for 38.75 hours, was larger than normal.<sup>5</sup> She never works a 40-hour work week. She feels that her income from employment was over-stated by DPA.

c. The 13 month history of child support payments summarized in Ex. 3.1 is accurate for that period of time. However, she feels that it is inaccurate when averaged over a longer period of time. Her ex-husband owes her \$13,000.00 - \$15,000.00 in child support. She believes that, over the long term, she has received only about \$50.00 per month in child support. Also, she believes that the child support that she does receive has historically been paid on an irregular basis, and thus she has not been able to rely on it. Accordingly, she feels that the amount of child support that she receives was over-stated by DPA in its calculation of her benefit amount.

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<sup>5</sup> The Claimant appears to have been confused with regard to these statements. Her paycheck for the period June 5 through June 18, 2011 (Ex. 2.6), for 38.75 hours, *was for a period of approximately two (2) weeks*. Thus, during this period the Claimant was working an average of *19-20 hours per week*. This is consistent with the Claimant's employer's estimate that the Claimant would be working an average of *18 - 24 hours per week* (Ex. 3.0). The Claimant's testimony that she normally works 30-31 hours *per week*, if correct, indicates that the Claimant actually works 9-10 hours per week *more* than her employer had estimated. This would increase the Claimant's earned income by about 30%, making it even less likely that she would qualify for Food Stamp benefits.

d. She is often in a position where she cannot afford adequate food for her household using just her income and Food Stamps, and she has therefore had to request food boxes from the local food banks. She has nothing to fall back on. She is worried.

e. Her daughter is a full-time student. She feels like she is being penalized for trying to put her daughter in a position to better herself. She is frustrated.

f. She has always been a single working mother. She does not simply sit around and collect child support and/or public assistance.

## **PRINCIPLES OF LAW**

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

The party seeking a change in the status quo generally bears the burden of proof.<sup>6</sup> However, this case involves two separate events; the burden of proof must be determined as to each event:

1. The first event is the Division's calculation and reduction of the Claimant's benefits at the time of recertification. Federal law treats recertification applications as if they are initial applications. *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6<sup>th</sup> Cir. 1983). For that reason the Claimant is considered to be attempting to change the status quo by seeking an increased level of benefits. Accordingly, the Claimant bears the burden of proof as to the correctness of her benefit amount for August 2011.

2. The second event is DPA's in-certification period termination of the Claimant's benefits. The Division is considered to be attempting to change the status quo by seeking to terminate pre-existing benefits. Accordingly, DPA bears the burden of proof as to the correctness of its termination of the Claimant's benefits after August 31, 2011.

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>7</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>8</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.

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<sup>6</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>7</sup> *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>8</sup> *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

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.

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* 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.

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

(2) Unearned income shall include, but not be limited to . . . . (iii) Support or alimony payments made directly to the household from non-household members . . . .

7 CFR § 273.10(a) provides in relevant part as follows:

(2) Application for recertification. Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period . . . .

7 CFR § 273.10(c)(1-3) provides in relevant part as follows:

(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 . . . . If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income . . . .

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day

period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income . . . .

(2) Income only in month received. (i) . . . . 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 . . . .

. . . .

(3) Income averaging. (i) Income may be averaged . . . . When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income . . . .

The Alaska Food Stamp Manual, Addendum 4 (version effective October 1, 2010 through September 30, 2011 – Ex. 19.1), implements 7 CFR § 273.9(a) and calculates the Alaska Food Stamp Program's monthly income limits for a household of one (1) during the period in question as \$1,466.00 (gross) and \$1,128.00 (net).

#### IV. The Food Stamp Program – Student Ineligibility Standards.

7 CFR § 273.5 provides in relevant part as follows:

(a) Applicability. An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a . . . regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

[Subsection (b) contains a list of exemptions from the general rule of student ineligibility stated in subsection (a), above. However, none of the exemptions apply here based on the facts of record in this case].

(c) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education . . . .

### **ANALYSIS**

#### Introduction; Definition of Issues.

The Claimant stated at the hearing that her issues with the Division's benefit calculations and eligibility determinations were as follows:

1. The Claimant asserted that the Division based its earned income estimate on a *non-representative paycheck*, which caused the Division to significantly over-estimate her prospective income from wages.
2. The Claimant asserted that the Division based its unearned income estimate on a *non-representative sample of child support payments*, which caused the Division to significantly over-estimate her prospective income from child support.
3. The Claimant asserted that it is not fair that her daughter would not be considered a part of the Claimant's household for purposes of the Food Stamp Program, after August 31, 2011, simply because she will be a college student after that date.

These issues will be discussed below in the order stated. The Claimant has the burden of proof on the first two issues; the Division bears the burden of proof on the third issue. *See* discussion in Principles of Law at page 6, above.

#### I. Did The Division Prospectively Estimate the Claimant's Future Income In Accordance With The Applicable Regulations?

The regulation which governs the way in which the Division must prospectively estimate or "anticipate" income is 7 CFR § 273.10(c)(1)(i-ii). That regulation generally requires that prospective income be estimated based on "income received during the past 30 days." *Id.*

##### A. The Division's Prospective Estimate of the Claimant's Earned Income (Wages).

The Claimant's Eligibility Review Form was received by the Division on July 7, 2011 (Ex. 2.0). Thus, pursuant to 7 CFR § 273.10(c)(1)(i-ii), the Division was required to determine the Claimant's prospective income based on income that the Claimant had received from approximately June 7 through July 7, 2011 (i.e. "the past 30 days").

At the time of her eligibility interview the Claimant indicated that she had just recently resumed working, and that she therefore had only one *recent* paycheck from her employer (Ex. 3.0). The Claimant provided this one pay statement to the Division (Ex. 2.6). The pay statement was for the period beginning June 5, 2011 and ending June 18, 2011 (Ex. 2.6). During this period of 13 days (i.e. approximately two weeks), the Claimant worked a total of 38.75 hours (Ex. 2.6).

When the DPA Eligibility Technician handling the Claimant's case telephoned the Claimant's employer, the Claimant's employer informed her that, initially, the Claimant was expected to be working 18 – 24 hours per week (Ex. 3.0). This would equate to 36 – 48 hours during a two (2) week period. Thus, the Claimant's first pay check, for 38.75 hours of work in a two (2) week period, was *at the low end* of the number of hours which her employer estimated she would be working.

Based on the Claimant's one current paycheck, and information obtained from the Claimant's employer, the Eligibility Technician conservatively estimated the Claimant's future income by assuming that she would be working 21 hours per week, (21 hours per week being exactly half-way between the employer's lower estimate of 18 hours per week, and the employer's upper estimate of 24 hours per week) (Ex. 3.0). It should be noted that the Division's estimate of the Claimant's earned income was *based on the only current information then available*.

The Eligibility Technician then multiplied the Claimant's pay rate (\$14.50 per hour) by 21 hours per week, for estimated gross weekly wages of \$304.50 (Ex. 3.0). This weekly figure of \$304.50 was then multiplied by 4.3, (because there are an average of 4.3 weeks per month), resulting in estimated gross monthly wages of \$1,309.35. *Id. See* 7 CFR § 273.10(c)(2)(i).

In summary, the Division prospectively estimated the Claimant's earned income on July 8, 2011 based on the wages received by the Claimant during the previous five weeks, and based on the employer's best estimate of the future availability of work. This was *the only earned income information provided to the Division at that time*. Accordingly, the Division's prospective estimate of the Claimant's earned income was in compliance with the applicable regulation, 7 CFR § 273.10(c)(1)(i-ii).

#### B. The Division's Prospective Estimate of the Claimant's Child Support.

On the date of the eligibility interview the DPA Eligibility Technician checked the State of Alaska's computerized child support records and determined that the Claimant was receiving bi-weekly child support payments in the amount of \$157.47 (Exs. 3.0, 3.1). The State of Alaska Child Support Enforcement Division's (CSED's) computerized records indicate that, during the 13-month period from May 17, 2010 through June 27, 2011, the Claimant received thirty (30) child support payments (Ex. 3.1). These payments were made on the average of once every two (2) weeks, *and were almost always in the amount of \$157.47* (Ex. 3.1). Accordingly, the conclusion by the DPA Eligibility Technician, that the Claimant received bi-weekly child support in the amount of \$157.47, was accurate.

7 CFR § 273.10(c)(1)(i-ii) initially required the Division to prospectively estimate the Claimant's future child support based on the amount received during the past 30 days, *as long as the amount received during the last 30 days was representative*. The regulation further provides that, "if income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income." *Id.*

In this case, the child support figure used by the Division was accurate, whether based on the last one month, or the last 13 months. Accordingly, the Division's prospective estimate of the Claimant's child support (unearned income) fully complied with the requirements of the applicable regulation, 7 CFR § 273.10(c)(1)(i-ii). The Claimant therefore failed to carry her burden of proof, and did not prove, by a preponderance of the evidence, that the Division erred in estimating her child support payments.

#### C. The Division's Calculation of the Claimant's August 2011 Benefit Amount.

The Claimant's only challenges to the Division's calculation of her Food Stamp benefit amount for August 2011 were with regard to the Division's estimates of her income from employment and from child support. Those concerns were addressed above, and it was demonstrated that the Division's estimate of the Claimant's income from employment and child support was correct under the applicable regulations.

The only other variables pertaining to the Division's calculation of the Claimant's Food Stamp benefits for August 2011 were the Claimant's hourly wage rate (\$14.50 / hour), and the Claimant's monthly expenses for rent (\$925.00) and utilities (\$181.00) (Ex. 2.2). However, the Claimant did not challenge

the Division's calculations on these bases, and independent review by this Office indicates that the Division's benefit calculations utilized these figures correctly (Ex. 3.6). Accordingly, the Claimant did not meet her burden of proof and failed to prove, by a preponderance of the evidence, that the Division's benefit calculation of \$237.00 for the month of August 2011, as stated in Ex. 4.0, was in any way incorrect.

## II. Was the Division Correct to Exclude the Claimant's Daughter from the Household, For Purposes of the Food Stamp Program, Effective September 1, 2011?

During the eligibility interview the DPA Eligibility Technician confirmed that the Claimant's daughter would be attending college full-time beginning with the fall semester of 2011 (Ex. 3.0). The Eligibility Technician then placed a call to the college and verified that the fall semester would begin on September 1, 2011 (Ex. 3.0).

The Claimant acknowledged the foregoing facts at the hearing. However, the Claimant asserted that it is not fair or appropriate that her daughter not be considered a part of the Claimant's household, for purposes of the Food Stamp Program, simply because she is going to college.

The governing regulation, 7 CFR § 273.5, clearly provides that “[a]n individual who is enrolled at least half-time in an institution of higher education [is] ineligible to participate in the Food Stamp Program unless the individual qualifies for [an exemption],” and that a student's “enrollment status [is determined] on the first day of the school term of the institution of higher education . . . .” *Id.* Accordingly, 7 CFR § 273.5 squarely applies on the facts of this case.

Subsection (b) of 7 CFR § 273.5 contains a list of exemptions from the general rule of student ineligibility stated above. However, none of the exemptions apply here based on the facts of record in this case. Accordingly, the Eligibility Technician correctly determined that the Claimant's daughter would become ineligible for the Food Stamp Program, based on her status as a full-time student, effective September 1, 2011. The Division therefore carried its burden and proved, by a preponderance of the evidence, that it was correct to exclude Claimant's daughter from the household, for purposes of the Food Stamp Program, effective September 1, 2011.

## III. Summary.

It is not disputed that the Claimant's household's financial resources are limited, or that Claimant has a significant need for Food Stamp benefits. However, the Division is not at liberty to ignore its own policies or applicable federal regulations.<sup>9</sup> Likewise, this Office does not have the authority to create exceptions to valid policies or regulations.<sup>10</sup>

The methods used by the Division to estimate the Claimant's prospective/anticipated future income from her employment, and from child support, complied with the requirements of the applicable

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<sup>9</sup> “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).

<sup>10</sup> State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that “the role of the hearing authority (i.e. this Office) is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

regulation (7 CFR § 273.10(c)(1)(i-ii)). Consequently, the Division's calculation of the Claimant's Food Stamp benefit amount for August 2011 was correct.

Likewise, the Division correctly determined, pursuant to 7 CFR § 273.5, that the Claimant's daughter would become ineligible for the Food Stamp Program, based on her status as a full-time student, effective September 1, 2011.

The Alaska Food Stamp Program's monthly income limit for a household of one (1) person, during the period October 1, 2010 through September 30, 2011, is \$1,466.00 (gross) and \$1,128.00 (net). The Claimant's average total gross monthly household income is \$1,647.91. The Claimant's average total gross monthly household income (\$1,647.91) thus exceeds the applicable Food Stamp Program gross monthly income limit by \$181.91. Accordingly, pursuant to 7 CFR § 273.9(a),<sup>11</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 eligibility determination.

### 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 method of estimating the amount of her prospective (anticipated or future) wages (earned income) violated the applicable regulation (7 CFR § 273.10(c)); or
  - b. That the Division's method of estimating the amount of her prospective (anticipated or future) child support (unearned income) violated the applicable regulation (7 CFR § 273.10(c)).
  - c. That the Division's benefit calculation of \$237.00 for the month of August 2011 was in any other way incorrect.
2. The Division carried its burden and proved, by a preponderance of the evidence:
  - a. That the Claimant's daughter would become ineligible for the Food Stamp Program, (based on her status as a full-time student, effective September 1, 2011), pursuant to 7 CFR § 273.5.
  - b. That, because the daughter was no longer eligible, the Claimant's household became a household of one person, for Food Stamp Program purposes, effective September 1, 2011.
  - c. That the Claimant's gross income exceeded the Food Stamp Program's maximum gross monthly income limit for a household of one effective September 1, 2011.

### DECISION

The Division was correct when, on July 11, 2011, it notified the Claimant (a) that her Food Stamp benefit would be \$237.00 for the month of August 2011; and (b) that her Food Stamp benefits would

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<sup>11</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 text of regulation quoted in Principles of Law, above).

