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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-298
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Food Stamp recipient in August 2011. (Ex. 1) On August 15, 2011, the Division of Public Assistance (Division) received the Claimant's application to renew his Food Stamp benefits. (Exs. 2.1 – 2.5) On August 16, 2011, the Division sent the Claimant written notice informing him that his Food Stamp renewal application was denied because his household income was greater than allowed for Food Stamp eligibility. (Ex. 3) The Claimant requested a fair hearing on August 22, 2011. (Ex. 4.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on September 13, 2011. The Claimant attended the hearing in-person; he represented himself, and testified on his own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended in-person; she represented the Division and testified on its behalf.

ISSUE

The Division argued that the Claimant was not eligible to receive Food Stamp benefits because his household's gross monthly income exceeded the Food Stamp program's gross monthly income limit of \$1,466 for a one-person household.

The Claimant did not disagree with the Division's calculation of his gross monthly pay before any deductions. However, he argued that the Division should not have counted the child support payments garnished from his paycheck as part of his gross monthly income when it made its Food Stamp eligibility determination.

The resulting issue is:

Was the Division correct to deny the Claimant's August 15, 2011 Food Stamp renewal application on August 16, 2011, because his gross monthly income exceeded the Food Stamp program's gross monthly income limit for his household size, even though a portion of his paycheck was garnished for child support payments?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant was a Food Stamp recipient in August 2011. (Ex. 1) His Food Stamp benefits expired at the end of August 2011. *Id.*
2. The Claimant applied to renew his Food Stamp benefits on August 15, 2011 for his one-person household, which consisted of himself. (Exs. 2.1 – 2.6)
3. The Claimant was employed at the time of his August 15, 2011 Food Stamp renewal application and paid on a weekly basis. (Exs. 2.7 – 2.16) As part of his renewal application, the Claimant provided the Division with copies of his weekly paystubs, dated from June 3, 2011 through August 5, 2011. (Exs. 2.7 – 2.16)
4. The Claimant's average gross monthly employment income (income before any deductions were taken from the pay), based upon the paystubs he submitted, was \$2,559.03. (Ex. 2.0)¹ The Claimant did not dispute this amount.
5. The Claimant had child support payments garnished from his paychecks. (Exs. 2.7 – 2.16) The average monthly amount deducted from his paychecks for child support payments totaled \$843.02.² The Claimant did not dispute this amount.
6. The Division determined that the Claimant's gross monthly income was \$2,559.03 and that as a result he was not eligible for Food Stamp benefits. (Ex 2.0) On August 16, 2011, the Division sent the Claimant written notice that his Food Stamp application was denied because his "countable income" of \$2,559.03 exceeded the \$1,466 "Food Stamp income limit for [his] household size." (Ex. 3)

¹ This gross monthly income amount was arrived at by the Division by adding together the gross weekly income for each of the ten paystubs supplied by the Claimant, which total was \$5,951.25. It divided the figure of \$5,951.25 by ten to arrive at an average gross weekly income of \$595.12. It then multiplied the average gross weekly income of \$595.12 by the regulatory multiplier of 4.3 (*See* 7 CFR 273.10(c)(2)(i); 7 AAC 46.021(a)(28)) to arrive at an average gross monthly income of \$2,559.03. (Ex. 2.0)

² The Division arrived at this monthly child support garnishment amount by adding together the child support amount garnished from each of the ten paystubs supplied by the Claimant, which total was \$1,764.48. It divided the figure of \$1,764.48 by nine (only 9 of the Claimant's paychecks were garnished) to arrive at an average weekly child support garnishment of \$196.05. It then multiplied the average weekly child support amount of \$196.05 by the regulatory multiplier of 4.3 (*See* 7 CFR 273.10(c)(2)(i); 7 AAC 46.021(a)(28)) to arrive at an average monthly child support garnishment amount of \$843.02. (Ex. 2.0)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

The Food Stamp program is a federal program which is administered by the State of Alaska. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for determining if an applicant is eligible for Food Stamp benefits.

Each Food Stamp application involves an independent and new eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6th Cir. 1983). An application to renew Food Stamp benefits is treated similar to a new application; a person who applies to renew Food Stamp benefits “has no protectable property interest in the continuous entitlement to food stamps beyond the expiration of its certification period.” *Id.* at 297.

The Food Stamp program bases its eligibility for Food Stamp benefits, among other criteria, on the total Food Stamp household income. 7 CFR 273.9(a). Food Stamp household income consists of “all income from whatever source” unless specifically excluded in 7 CFR 273.9(c). 7 CFR 273.9(b). An employee’s wages are counted as income. 7 CFR 273.9(b)(1)(i).

The Food Stamp program has two income tests. The first test is the gross income test. If a one-person household makes more than \$1,466 in gross income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(1)(ii); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2010 through September 31, 2011). The Food Stamp program allows several exclusions from gross income when determining if an applicant meets the gross income test. For example, housing assistance payments made directly to the landlord, student loans, foster child care payments, and other specified items are not considered income and are not counted in arriving at gross income figures. 7 CFR 273.9(c).

The second test is the net income test. Net income is the amount arrived at after applicable deductions are taken from gross income. 7 CFR 273.9(d). If a one-person household makes more than \$1,128 in net income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(2)(ii); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2010 through September 31, 2011). Applicable deductions include items such as shelter costs (rent and utilities, etc.). 7 CFR 273.9(d)(6).

The federal Food Stamp regulations give each State the option of determining whether an applicant’s child support payments, made to someone who is not part of his household, is excluded from his gross income (i.e. not counted as part of his gross income), or if it is treated as a deduction from gross income to arrive at an applicant’s net monthly income. 7 CFR 273.9(c)(17) and (d)(5). The State of Alaska has chosen to count child support payments made by an applicant as a deduction from gross income for the purposes of determining net income,

instead of treating the child support payments as being excluded from gross income. *Alaska Food Stamp Manual* Section 603-2B7.

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant's August 15, 2011 Food Stamp renewal application because his gross income exceeded the Food Stamp program's gross monthly income limit for his household size, even though his paycheck was garnished for child support payments. Because this case involves the denial of an application,³ the Claimant is the party who is seeking to change the status quo. He, therefore, has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

The Claimant had a one-person household, which consisted only of himself. *See* Finding of Fact 2 above. His average gross monthly employment income (income before any deductions were taken from the pay) was \$2,559.03. *See* Finding of Fact 4 above. The Claimant had \$843.02 in child support payments garnished from his paychecks each month. *See* Finding of Fact 5 above.

The Division denied the Claimant's August 15, 2011 Food Stamp renewal application because his gross monthly income of \$2,559.03 exceeded the Food Stamp income limit for his household size. *See* Finding of Fact 6 above. The monthly gross income limit for a one-person household on August 15, 2011, the date of the Claimant's renewal application, was \$1,466. 7 CFR 273.9(a)(1)(ii); *Alaska Food Stamp Manual* Addendum 4 (For the period effective October 1, 2010 through September 31, 2011). On its face, the Claimant's monthly gross income of \$2,559.03 exceeded the Food Stamp program's income limit. As a result, the Claimant was not eligible for Food Stamp benefits. 7 CFR 273.9(a)(1)(ii).

The Claimant, however, disagreed with the Division's denial. He argued that the Division should not have counted his monthly child support payments as part of his gross income, i.e. that his child support payment should have been excluded from his gross income (i.e. his gross income should have been reduced by his child support payment) for the purpose of determining his financial eligibility for Food Stamp benefits.

The State of Alaska does not allow an exclusion from gross income for child support payments made by an applicant when determining Food Stamp financial eligibility; it instead deducts child support payments made by an applicant from gross income for the purposes of determining net income. *Alaska Food Stamp Manual* Section 603-2B7. However, an applicant has to pass the gross income test before the net income test is applied. The Division was therefore correct, as a matter of law, when it counted the child support payments made by the Claimant as part of his gross income. Consequently, because the Claimant's gross monthly income of \$2,559.03 was greater than the Food Stamp program's gross monthly income limit of \$1,466 for a one-person

³ An application to renew Food Stamp benefits is treated similar to a new application; a person who applies to renew Food Stamp benefits "has no protectable property interest in the continuous entitlement to food stamps beyond the expiration of its certification period." *Banks v. Block*, 700 F.2d 292, 297 (6th Cir. 1983).

Certificate of Service

I certify that on this 19th day of October, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II

J. Albert Levitre, Jr.
Law Office Assistant I