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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-302
)
 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 4, 2011, the Division of Public Assistance (Division) notified the Claimant in writing that his Food Stamp case would be closed after August 31, 2011. (Ex. 3) The Claimant requested a fair hearing on August 19, 2011. (Exs. 4, 4.2)

This office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on September 20, 2011. The Claimant appeared telephonically; he represented himself and testified on his own behalf. [REDACTED], a Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf. [REDACTED], an investigator with the Division's Fraud Control Unit, appeared telephonically and testified on behalf of the Division.

ISSUE

The Claimant was receiving Food Stamp benefits as a one-person household. The Division alleged that he was residing with his girlfriend, who was herself a Food Stamp recipient. The Division notified the Claimant, on August 4, 2011, that his individual Food Stamp case would be closed after August 31, 2011 and that he would be added to his girlfriend's Food Stamp case. The Claimant argued that he does not reside with his girlfriend and that as a result the Division's action was incorrect.

The resulting issue is:

Was the Division correct when it notified the Claimant, on August 4, 2011, that his individual Food Stamp case would be closed after August 31, 2011 and that he would be added to his girlfriend's Food Stamp case?

FINDINGS OF FACT

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

1. The Claimant was a Food Stamp recipient in October 2010. (Ex. 1) He applied to renew his Food Stamp benefits for a one-person household (himself) on October 8, 2010. (Ex. 11) His October 8, 2010 Food Stamp renewal application listed his residence address as [REDACTED] [REDACTED] St., Anchorage, Alaska. *Id.* He was approved for continuing Food Stamp benefits. (Ex. 1)
2. The Claimant applied to renew his Food Stamp benefits for a one-person household (himself) on March 25, 2011. (Ex. 12) His March 25, 2011 Food Stamp renewal application listed his residence address as [REDACTED] [REDACTED] St., Anchorage, Alaska. *Id.* He was approved for continuing Food Stamp benefits. (Ex. 1)
3. On February 14, 2011, the Division was informed by the Claimant's ex-wife that the Claimant was living, and had lived, with his girlfriend for years. (Ex. 13)
4. A Division investigator went to the [REDACTED] St. address listed on the Claimant's applications. ([REDACTED] testimony) She made between 6 to 8 daytime visits and did not find either the Claimant or his girlfriend there. *Id.* She did, however, speak to the girlfriend's adult son on July 7, 2011. ([REDACTED] testimony; Ex. 2.2) The son told the investigator that he, his girlfriend and their child, lived at the [REDACTED] St. address along with the Claimant and the Claimant's girlfriend, who was his mother. *Id.* The son said that the Claimant and the Claimant's girlfriend had been living together for over five years. *Id.*
5. The Claimant's girlfriend telephoned the Division investigator later on the day of July 7, 2011. ([REDACTED] testimony; Ex. 2.2) She told the investigator that the Claimant was living with her at the [REDACTED] St. address. *Id.*
6. The Claimant's girlfriend was a Food Stamp recipient herself. (Ex. 2; [REDACTED] testimony)
7. On July 25, 2011, the Division determined the Claimant was residing with his girlfriend and made the decision to close the Claimant's individual Food Stamp case and add him to the girlfriend's Food Stamp case. (Ex. 2; [REDACTED] testimony)
8. On August 4, 2011, the Division sent the Claimant notice that his individual Food Stamp case would be closed after August 31, 2011 and that instead he would be added to his girlfriend's Food Stamp case. (Ex. 3)
9. On August 19, 2011 the Claimant requested a Fair Hearing. (Exs. 4, 4.2) His written statement on the hearing request form reads "I am not connected or living with this person. We are not married or together." (Ex. 4.2)

10. The Claimant testified as follows:

- a. He lived at the [REDACTED] St. address with his girlfriend from approximately two years before the date of the hearing until the end of March 2011 when he was hospitalized.
- b. Since the end of March 2011, he has not resided at the [REDACTED] St. address. Some of his belongings are there and his dog is there, but he primarily stays with relatives and friends. He has a fair number of medical appointments and has no transportation, so he stays with friends and family who live close to his medical appointments.
- c. He was the original resident at the [REDACTED] St. address, and considers himself responsible for assembling the monthly rental payment for the property from the persons living there and making sure it gets paid.
- d. The Claimant visits the [REDACTED] St. address occasionally, but only stays overnight there infrequently; perhaps three to four overnights in the past three months.
- e. He has known his girlfriend for an extended period of time, and they have an on again and off again relationship.

11. The Claimant is not a credible witness concerning his residency due to the following inconsistencies:

- a. He testified that he lived with his girlfriend at the [REDACTED] St. address for several years before leaving at the end of March 2011.
- b. However, his October 8, 2010 Food Stamp renewal application stated that he lived by himself at the [REDACTED] St. address. (Ex. 11) His March 25, 2011 Food Stamp renewal application also stated that he lived by himself at the [REDACTED] St. address. (Ex. 12)
- c. His hearing testimony that he takes responsibility for assembling the monthly rental payment for the [REDACTED] St. address is inconsistent with not being a tenant there.
- d. The Claimant's August 19, 2011 written hearing request reads "I am not connected or living with this person." (Ex. 4.2) Per his hearing testimony, he is clearly connected to his girlfriend; they have a long standing relationship, which is off and on.

12. Because the Claimant was not credible concerning his residency, the hearsay evidence presented by the Division's investigator is more credible than the Claimant's statements concerning his residency and entitled to greater weight. Specifically, the statements made to the Division's investigator by the Claimant's girlfriend and her son on July 7, 2011 that the Claimant resided with them, are more credible than the Claimant's testimony. That credible hearsay evidence combined with the statement made on the Claimant's October 8, 2010 and March 25,

2011 Food Stamp renewal applications that he resided at the [REDACTED] St. address, established that the Claimant resides with his girlfriend at the [REDACTED] St. address.

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).

Food Stamps is a federal program administered by the State. 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.

Food Stamp benefit levels are based upon the number of persons in the Food Stamp household and their combined net income. CFR 273.10(e). A Food Stamp household consists of those individual “who live together and customarily purchase food and prepare meals together for home consumption.” 7 CFR 273.1(a)(3). “An individual may only be determined eligible as a member of one household at a time in any given month.” *Alaska Food Stamp Manual* Section 601-1A.

ANALYSIS

The issue in this case is whether the Division was correct to close the Claimant’s individual Food Stamp case after August 31, 2011, and instead add him to his girlfriend’s Food Stamp case, because he was residing with his girlfriend. The Division has the burden of proof, by a preponderance of the evidence, because it is the party seeking to change the status quo.

A very brief summary of the pertinent facts of this case are that the Claimant was a Food Stamp recipient for a one-person household consisting solely of himself. *See* Findings of Fact 1 and 2 above. The Division was informed that the Claimant was actually residing with his girlfriend. *See* Finding of Fact 3 above. That girlfriend was herself a Food Stamp recipient. *See* Finding of Fact 6 above. The Division investigated and determined, on July 7, 2011, that the Claimant actually resided with the girlfriend. *See* Finding of Fact 7 above.

The Division closed the Claimant’s individual Food Stamp case after August 31, 2011. *See* Findings of Fact 7 and 8 above. It, however, did not terminate the Claimant’s Food Stamp benefits, but instead added him to the girlfriend’s Food Stamp case. *See* Finding of Fact 8 above. This meant that the Claimant was still a Food Stamp recipient, but only as part of the girlfriend’s Food Stamp household.

The Claimant denied residing with the girlfriend. *See* Findings of Fact 9 and 10(a), (b), and (d) above. The Claimant was not a credible witness concerning his residency. *See* Finding of Fact 11 above. The Division therefore met its factual burden of proof by a preponderance of the evidence and established that the Claimant resided with his girlfriend. *See* Finding of Fact 12 above.

Because the Claimant resides with his girlfriend, and because an individual may only be a member of one Food Stamp household at a time, he and his girlfriend were required to be part of the same Food Stamp household. 7 CFR 273.1(a)(3); *Alaska Food Stamp Manual* Section 601-1A. The Division was therefore correct to close the Claimant's individual Food Stamp case after August 31, 2011 and to add him to his girlfriend's Food Stamp case thereafter.

CONCLUSIONS OF LAW

1. The Division has the burden of proof in this case by a preponderance of the evidence.
2. The Division met its burden of proof. It proved that the Claimant, who received Food Stamp benefits as a one-person household, actually resided with his girlfriend, who was also a Food Stamp recipient.
3. Because the Claimant resided with his girlfriend, and because a person may only be a member of one Food Stamp household at a time, the Division was correct to terminate the Claimant's individual Food Stamp case, and instead add him to his girlfriend's Food Stamp case.

DECISION

The Division was correct when it notified the Claimant, on August 4, 2011, that his individual Food Stamp case would be closed after August 31, 2011 and that he would be added to his girlfriend's Food Stamp case.

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 17th day of October, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 17th 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