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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-313
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Food Stamp recipient in July 2011. (Ex. 1) On July 1, 2011, the Division of Public Assistance (Division) received the Claimant's application to renew her Food Stamp benefits. (Exs. 2.0 – 2.5) On August 2, 2011, the Division sent the Claimant written notice informing her that her Food Stamp renewal application was denied because her household resources were greater than allowed for Food Stamp eligibility. (Ex. 5) The Claimant requested a fair hearing on September 1, 2011. (Ex. 9.2)

This office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on September 27, 2011. The Claimant appeared telephonically; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, appeared in-person; he represented the Division and testified on its behalf. [REDACTED] and [REDACTED], both of whom are Eligibility Technicians employed by the Division, appeared telephonically and testified on behalf of the Division.

STATEMENT OF ISSUES

The Division denied the Claimant's July 1, 2011 Food Stamp application because it determined the Claimant's household owned countable resources, specifically a snow machine, that caused the household to exceed the \$2,000 resource limit for the Food Stamp and Family Medicaid programs. (Ex. 5) The Claimant argued that the snow machine should have been exempted from being counted as a resource because her boyfriend used the snow machine for subsistence hunting and fishing for her household.

The resulting issue is:

Was the Division correct to deny the Claimant's July 1, 2011 Food Stamp application because the Claimant's household allegedly owned countable resources worth more than \$2,000, specifically a snow machine worth at least \$5,000?

FINDINGS OF FACT

1. The Claimant applied for Food Stamp benefits for her household on July 1, 2011. (Exs. 2.0 – 2.5) That application contains the following information:
 - a. The Claimant resides in Anchorage, Alaska along with her boyfriend and several children. (Ex. 2.0) All household members are under 60 years of age. *Id.*
 - b. The Claimant's boyfriend owns a snow machine, valued at \$7,500, which the Claimant explicitly wrote was used for subsistence. (Ex. 2.1)
2. The Claimant, her boyfriend, and other household members used to reside in [REDACTED] [REDACTED]. (Claimant testimony) They moved to Anchorage on April 28, 2011. *Id.* The snow machine is still located in [REDACTED] [REDACTED]. (Ex. 3)
3. The Claimant spoke to a Division Eligibility Technician on August 1, 2011 and informed the Eligibility Technician that her family's home was in Anchorage. (Ex. 3) The Claimant also informed the Eligibility Technician that she thought the saleable value of the snow machine, if sold in [REDACTED] [REDACTED], was at least \$5,000. *Id.*
4. On August 2, 2011, the Division sent the Claimant written notice that her Food Stamp application was denied because her household owned countable resources worth more than the Food Stamp program's \$2,000 limit. (Ex. 5) That notice specifically stated the resource that made the Claimant's household not eligible for Food Stamps was the snow machine, which the Division valued at \$5,000. *Id.*
5. On September 1, 2011, the Claimant spoke to a Division Eligibility Technician and initially told the Eligibility Technician that her boyfriend would be going to the village and using the snow machine to hunt and fish for his parents and her parents who lived in the village. ([REDACTED] testimony; Ex. 8) The Eligibility Technician explained to the Claimant that the snow machine had to be used to hunt and fish for the Claimant's own household, after which the Claimant then told the Eligibility Technician that the Claimant's own household would be receiving some of the meat. *Id.*
6. The Claimant credibly testified as follows:
 - a. Her boyfriend returned to [REDACTED] [REDACTED] in May 2011 to hunt and fish for their family members who lived in the village. He brought home some seal meat and birds. He uses the snow machine for hunting in February and March for hunting rabbits and ptarmigan, and in springtime (end of April and May) for hunting seal and birds. He

brings back part of his catch to her household. He also uses the snow machine to get water and fuel for his mother.

- b. She buys the majority of the household food at grocery stores. However, she has a small chest freezer in her kitchen which contains traditional foods: birds, sheefish, seal oil and seal meat.

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.

One of the Food Stamp program’s financial eligibility criteria is that an applicant’s household, where none of the household members has reached the age of 60 years, may not own countable resources worth in excess of \$2,000. 7 CFR 273.8(b).

The Food Stamp program rules on countable resources are contained in federal regulation 7 CFR 273.8. Vehicles, both licensed and unlicensed, are generally counted as resources. 7 CFR 273.8(c)(2). The Federal Food Stamp regulations do not contain an exclusion for vehicles used for subsistence hunting and fishing purposes. *See* 7 CFR 273.8(e)(i). However, the State of Alaska provides Food Stamp applicants with a resource exclusion for vehicles used for subsistence hunting and fishing purposes. *Alaska Food Stamp Manual* Section 602-2(C)(1)(a). “Subsistence hunting and fishing” is defined as follows:

Subsistence Hunting/Fishing: A household is considered to be engaged in subsistence hunting and/or fishing when it customarily and traditionally depends on hunting and/or fishing for a substantial portion of its food needs.

Alaska Food Stamp Manual Section 600-2.

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant's July 1, 2011 Food Stamp renewal application because her household's countable resources exceeded the Food Stamp program's \$2,000 countable resource limit. Because this case involves the denial of an application,¹ the Claimant is the party who is seeking to change the status quo. She, 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).

It must first be noted all of the members of the Claimant's household are under the age of 60 years. *See* Finding of Fact 1(a) above. Consequently, if the household owns more than \$2,000 in countable resources, it is not eligible for Food Stamp benefits. 7 CFR 273.8(b).

In this case, the Claimant's resource in question is the snow machine owned by the Claimant's boyfriend, who is part of the Claimant's Food Stamp household. The snow machine is worth at least \$5,000. *See* Findings of Fact 1(b) and 3 above. If the snow machine is properly counted as a resource, the Claimant is not eligible for Food Stamp benefits because it is worth more than \$2,000. 7 CFR 273.8(b). As a result, it is necessary to determine whether the snow machine is a countable resource.

The Claimant and her household used to live in [REDACTED] [REDACTED]. *See* Findings of Fact 1(a) and (2) above. They do not live there anymore. *Id.* They now live in Anchorage. *Id.* The snow machine is located in the village. *See* Finding of Fact 2 above. The majority of the household's food is purchased in the grocery store. *See* Finding of Fact 6(b) above. However, the Claimant's boyfriend returns to the village where he hunts and fishes using the snow machine. *See* Findings of Fact 5 and 6(a) above. Some of the catch is for non-household members, i.e. family members in the village, and some is brought back to the Claimant's household in Anchorage for its use. *Id.*

If the snow machine is used for subsistence hunting and fishing purposes, it is exempt from being counted as a resource. *Alaska Food Stamp Manual* Section 602-2(C)(1)(a). "Subsistence hunting and fishing" is defined as follows:

Subsistence Hunting/Fishing: A household is considered to be engaged in subsistence hunting and/or fishing when it customarily and traditionally **depends** on hunting and/or fishing for a **substantial portion** of its food needs.

Alaska Food Stamp Manual Section 600-2 (emphasis added).

The Claimant has the burden of proof in this case. In order to prevail, she must prove, by a preponderance of the evidence, that her household uses the snow machine for subsistence purposes,

¹ An application to renew Food Stamp benefits is treated similarly 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).

which in turn requires that the household “depend” on hunting and fishing for a “substantial portion” of its food. The facts of this case, as recited above, demonstrate that the Claimant’s household does not satisfy this requirement. The snow machine is located in the village. While some of the household food is obtained by the use of the snow machine, the Claimant’s household is located in an urban area (Anchorage) and obtains the majority of its food from a grocery store. It is therefore not dependent upon hunting and fishing for a “substantial portion” of its food. As a result, the Claimant is not entitled to exempt the snow machine from being counted as a resource for Food Stamp eligibility purposes.

A Food Stamp applicant, pursuant to federal Food Stamp regulation 7 CFR 273.8(b), is not eligible to receive Food Stamp benefits if the Food Stamp household owns countable resources worth more than \$2,000.00. As shown above, the snow machine is a countable resource worth over \$2,000.00. Consequently, the fact that the Claimant’s boyfriend, a member of her household, owns the snow machine makes the household not eligible to receive Food Stamp benefits.

The Claimant had the burden of proof in this case. She had to establish that the snow machine was not a countable resource. She did not meet her burden of proof. The Division was therefore correct when it denied the Claimant’s July 1, 2011 application for Food Stamp benefits.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof to establish that the snow machine was exempt from being counted as a resource for the Food Stamp program. She did not meet her burden of proof. The snow machine was a countable resource.
2. As a result, the Claimant was not financially eligible for Food Stamp benefits, pursuant to federal Food Stamp regulation 7 CFR 273.8(b), because her Food Stamp household owned a countable resource, the snow machine, which was worth at least \$5,000, which exceeded the Food Stamp program’s financial resource limit of \$2,000.
3. The Division was therefore correct when it denied the Claimant’s July 1, 2011 application for Food Stamp benefits.

DECISION

The Division was correct to deny the Claimant’s July 1, 2011 application for Food Stamp benefits.

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:

