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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-314
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Adult Public Assistance, Medicaid, and Food Stamp¹ benefits on August 17, 2011. (Exs. 2 – 2.9) On August 26, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that his application for Adult Public Assistance and Food Stamp benefits was denied because his monthly income was too high, and that he had chosen to withdraw his Medicaid application. (Ex. 4) The Claimant requested a fair hearing on September 7, 2011. (Ex. 5.1) On September 20, 2011, the Division sent the Claimant a corrected written notice indicating that his application was denied as to all three programs (Adult Public Assistance, Medicaid, and Food Stamps) based upon his income. (Ex. 6)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on September 20 and October 19, 2011. The Claimant appeared telephonically, represented himself, and testified on his own behalf. [REDACTED], a Spanish language interpreter employed by In Sync Interpreters, attended telephonically on September 20, 2011 and translated. [REDACTED] attended telephonically on October 19, 2011; she translated for the Claimant and testified on his behalf.² [REDACTED], a Public Assistance Analyst with the Division, appeared in-person; he represented the Division and testified on its behalf.

¹ Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, the common usage refers to the program as the Food Stamp Program, which usage this decision also follows.

² In Sync Interpreters, the organization that provides telephonic interpreters for the Division, was not available. The Division did not object to the Claimant supplying his own interpreter.

ISSUES

1. Was the Division correct to deny the Claimant's August 17, 2011 Food Stamp application?
2. Was the Division correct to deny the Claimant's August 17, 2011 Adult Public Assistance application?
3. Was the Division correct to deny the Claimant's August 17, 2011 Medicaid application?

FINDINGS OF FACT

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

1. The Claimant is an adult, over 21 years old, who applied for Adult Public Assistance, Medicaid, and Food Stamp benefits for his one-person household on August 17, 2011. (Exs. 2 – 2.9) The Claimant does not receive Social Security Supplemental Security Income benefits. (Ex. 2.3)

2. The Claimant was receiving workers compensation payments at the time of his application. He received the two following workers compensation payments before submitting his August 17, 2011 application:

<u>Check Date</u>	<u>Amount</u>
July 18, 2011	\$753.87
August 4, 2011	\$767.34

(Ex. A, pp. 14 – 15)

3. The Claimant received the following workers compensation payments after his August 17, 2011 application:

<u>Check Date</u>	<u>Amount</u>
August 17, 2011	\$942.34
August 31, 2011	\$942.34

(Ex. A, pp. 16 – 17)

4. The Division Eligibility Technician spoke to both the Claimant and the Claimant's workers compensation adjuster on August 25, 2011. (Exs. 3 - 3.1) The Claimant told the Eligibility Technician that he would continue to receive workers' compensation benefits. (Ex. 3) The adjuster informed the Eligibility Technician that the Claimant was receiving workers compensation payments of \$942.34 every two weeks, and that the checks issued on July 18, 2011 and August 4, 2011 were less than \$942.34 because they were reduced by 20 percent

because the Claimant went back to work for a short time period. (Ex. A, pp. 14 – 15; Exs. 3 – 3.1)

5. On August 25, 2011, the Division calculated that the Claimant's monthly workers compensation income was \$2,026.03. (Ex. 3.1) It arrived at this figure by multiplying his \$942.34 workers compensation biweekly income by the 2.15 multiplier factor for persons who are paid every two weeks. *Id.*

6. The Division denied³ the Claimant's application for Food Stamp, Adult Public Assistance, and Medicaid benefits on August 26, 2011, because his income was greater than the income limit for the Food Stamp program (\$1,134) and the Adult Public Assistance and Medicaid programs (\$1,252). (Exs. 4, 6)

7. On September 23, 2011, the Claimant's workers compensation benefits were terminated effective September 13, 2011. (Ex. A, p. 26; Ex. C)

PRINCIPLES OF LAW

A. Burden of Proof and Standard of Proof

A party who is seeking a change in the status quo has the burden of proof. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *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).

B. Food Stamp Program

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

The Food Stamp program bases its eligibility for Food Stamp benefits, among other criteria, on the total Food Stamp household income. 7 C.F.R. § 273.9(a). Food Stamp household income consists of "all income from whatever source" unless specifically excluded in 7 C.F.R. § 273.9(c). 7 C.F.R. § 273.9(b). Workers compensation payments are considered income and specifically classified in the unearned income category. 7 C.F.R. § 273.9(b)(2)(ii). The Division is required to anticipate a household's income and determine what income a household is "reasonably certain will be received." 7 C.F.R. § 273.10(c)(1)(i).

³ On August 26, 2011, the Division of Public Assistance (Division) sent the Claimant an initial notice that his application for Adult Public Assistance and Food Stamp benefits was denied because his monthly income was too high, and that he had chosen to withdraw his Medicaid application. (Ex. 4) On September 20, 2011, the Division sent the Claimant a corrective written notice indicating that his application was denied as to all three programs (Adult Public Assistance, Medicaid, and Food Stamps) based upon his income. (Ex. 6)

When a household receives income on a weekly or biweekly basis, the Division is required to determine monthly household income by multiplying the weekly income by 4.3 and biweekly income by 2.15. 7 C.F.R. § 273.10(c)(2)(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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 273.9(d)(6).

C. Adult Public Assistance

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are over 65, blind, or disabled. AS 47.25.430; 7 AAC 40.120.

Financial eligibility is determined, in part, by an applicant's income (which also includes a spouse's income, if the applicant is married and living with his/her spouse). 7 AAC 40.240(a). Countable monthly income for Adult Public Assistance purposes is calculated by totaling an applicant's gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350. Earned income consists of wages and self-employment income. 7 AAC 40.300(a)(2). Unearned income consists of "income that is not earned" and includes such items as Social Security payments, disability benefits, pensions, workers compensation payments, and retirement payments. 7 AAC 40.300(a)(3).

The Adult Public Assistance program's list of allowable exclusions (deduction) from an applicant's income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general exclusion of \$20, which applies to both earned and unearned income. 7 AAC 40.320(a)(23).

If an adult applicant, who resides by himself, has a countable monthly income that exceeds \$1,252.00, he is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*.

D. Medicaid

The Medicaid program category for aged or disabled adults, who do not live with their minor children, has the same income limits as the Adult Public Assistance program. 7 AAC 100.400(a)(16) – (19).

A person who is receiving Social Security Supplemental Security Income or who is eligible for Adult Public Assistance is also eligible for Medicaid benefits. 7 AAC 100.002(b)(1) and (d)(1); 7 AAC 100.410(a) and (b).

ANALYSIS

There are three issues in this case, each of which will be addressed separately below:

1. Was the Division correct to deny the Claimant's August 17, 2011 Food Stamp application because his gross monthly income exceeded the Food Stamp program's gross monthly income limit?
2. Was the Division correct to deny the Claimant's August 17, 2011 Adult Public Assistance application because his monthly income exceeded the Adult Public Assistance program's monthly income limit?
3. Was the Division correct to deny the Claimant's August 17, 2011 Medicaid application because his monthly income exceeded the Medicaid program's monthly income limit?

Each of the above issues involves the question of whether the Division was correct to deny the Claimant's August 17, 2011 application for benefits. Because this case involves the denial of an application, 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).

1. Food Stamps

The Claimant has a one-person household, which consists only of himself. *See* Finding of Fact 1 above. At the time he applied for Food Stamp benefits, he was expected to receive biweekly workers compensation checks of \$942.34. *See* Findings of Fact 2, 3, and 4 above. In fact, he received workers compensation checks in this amount on August 17, 2011 and on August 31, 2011. *See* Finding of Fact 3 above.

When determining if an applicant is financially eligible for Food Stamp benefits, the Division is required to anticipate a household's income and determine what income a household is "reasonably certain will be received." 7 C.F.R. § 273.10(c)(1)(i). The Division determined on August 25, 2011, that the Claimant was expected to receive \$942.34 in biweekly workers compensation income. This determination was based upon all the information then available to the Division. The Division then calculated the Claimant's monthly income by multiplying the Claimant's biweekly income (\$942.34) by the 2.15 regulatory multiplier (*See* 7 C.F.R. §

273.10(c)(2)(i)) to arrive at a gross monthly income figure for the Claimant of \$2,026.03. *See* Finding of Fact 5 above. On August 26, 2011, the Division denied the Claimant's August 17, 2011 Food Stamp application because his income exceeded the Food Stamp program's income limit for a one-person household.

On its face, the Division was correct to deny the Claimant's August 17, 2011 Food Stamp application. The gross monthly income limit for a one-person household, as of August 2011, was \$1,466. 7 C.F.R. § 273.9(a)(1)(ii); *Alaska Food Stamp Manual* Addendum 4 (for the period effective October 1, 2010 through September 31, 2011). The Claimant's gross monthly income of \$2,026.03 exceeded this amount.

The fact that the Claimant subsequently had his workers compensation benefits terminated effective September 13, 2011 does not invalidate the Division's August 26, 2011 denial decision. The Claimant's expected gross monthly income, as of August 26, 2011, was \$2,026.03. There is nothing in the record showing, that as of the date of the Division's denial decision, that the Claimant's workers compensation income was likely to stop in September 2011.

The Claimant, as an applicant, had the burden of proof by a preponderance of the evidence, with regard to this issue. He did not satisfy his burden of proof. The evidence in this case shows the Claimant was expected to receive \$2,026.03 in gross monthly workers compensation income as of the date of the Division's August 26, 2011 denial decision. The Division was therefore correct when it denied the Claimant's August 17, 2011 Food Stamp application.

2. Adult Public Assistance

The above discussion, on Food Stamp financial eligibility, demonstrates that the Claimant was, as of August 26, 2011, expected to receive \$2,026.03 in gross monthly workers compensation income. The Claimant, as a recipient of unearned income, was eligible for an income exclusion of \$20. 7 AAC 40.320(a)(23). This reduced his monthly income to \$2,006.03.

The maximum monthly income a person, who lives by himself, can make and still be eligible for Adult Public Assistance is \$1,252. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1. The Claimant's monthly income of \$2,006.03 clearly exceeded this amount as of August 26, 2011, which was the date the Division denied his August 17, 2011 Adult Public Assistance application due to excess income. Consequently, the Claimant was not then financially eligible for Adult Public Assistance benefits.

The Claimant, as an applicant, had the burden of proof by a preponderance of the evidence, to establish that he was eligible for Adult Public Assistance benefits. He did not satisfy his burden of proof. The evidence in this case shows the Claimant was expected to receive \$2,026.03 in gross monthly workers compensation income as of the date of the Division's August 26, 2011 denial. After he received the Adult Public Assistance \$20 monthly income exclusion (deduction), his monthly income of \$2,006.03 exceeded the Adult Public Assistance's \$1,262 monthly income limit. The Division was therefore correct when it denied the Claimant's August 17, 2011 Adult Public Assistance application.

3. Medicaid

The Medicaid program for adults without minor children uses the same income limits as the Adult Public Assistance program. 7 AAC 100.400(a)(16) – (19).

As the above discussion on Adult Public Assistance shows, the Claimant was not financially eligible for Adult Public Assistance benefits. Because the Medicaid program uses the same financial eligibility rules as the Adult Public Assistance program, the Claimant was also not eligible to receive Medicaid benefits.

The Claimant had the burden of proof by a preponderance of the evidence to establish that he was eligible for Medicaid benefits. He did not satisfy his burden of proof. The evidence in this case shows the Claimant was not financially eligible for Medicaid benefits. The Division was therefore correct when it denied the Claimant's August 17, 2011 Medicaid application.

CONCLUSIONS OF LAW

1. The Claimant was not financially eligible to receive Food Stamp benefits because his monthly gross income exceeded the Food Stamp program gross monthly income limit for a one-person household. The Division was therefore correct when it denied his August 17, 2011 Food Stamp application.

2. The Claimant was not financially eligible to receive Adult Public Assistance benefits because his monthly income exceeded the Adult Public Assistance program income limit for a one-person household. The Division was therefore correct when it denied his August 17, 2011 Adult Public Assistance application.

3. The Claimant was not financially eligible to receive Medicaid benefits because his monthly income exceeded the Medicaid program's income limit for a one-person household. The Division was therefore correct when it denied his August 17, 2011 Adult Public Assistance application.

DECISION

The Division was correct when it, on August 26, 2011, denied the Claimant's August 17, 2011 Food Stamp, Adult Public Assistance, and Medicaid application.

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:

