

3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Telephone: (907)-334-2239
Fax: (907)-334-2285

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS

In the Matter of)
)
 [REDACTED],) OHA Case No. 11-FH-383
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant) signed and submitted an Application for Services (Application) on October 3, 2011 seeking Food Stamp¹ benefits for her household. (Ex. 2.0-2.6) The date the Division of Public Assistance (Division) received this Application appears likely as October 3, 2011.² (Ex. 2.0) On October 7, 2011, the Division notified Claimant her Application had been approved. (Ex. 6.0) Claimant signed a Fair Hearing request on October 7, 2011, which the Division received on October 11, 2011. (Ex. 7.0-7.1)

PERTINENT PROCEDURAL FACTS

This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010 and 7 C.F.R. § 273.15.

The Fair Hearing was held on November 10, 2011. Claimant participated at the hearing by telephone, represented herself and testified on her own behalf. Mr. [REDACTED], Public Assistance Analyst represented the Division of Public Assistance and testified in person for the Division.

ISSUES AND CONCLUSION

¹ On October 1, 2008, the Food Stamp Program (FSP) was renamed the Supplemental Nutrition Assistance Program (SNAP). *See*, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The SNAP program is still commonly called the Food Stamp Program and will be referred to as the Food Stamp Program in this decision.

² The Application is date stamped as received by the Division on October 11, 2011. (Ex. 2.0) This must be an incorrect date because Claimant engaged in an eligibility interview on October 4, 2011. (Ex. 3.0)

Claimant requested the Fair Hearing because she thought the Division was incorrect to include her eighteen year old, full time college student, daughter's income in the calculation of the household's Food Stamp benefit. This is one issue. A second issue from Claimant's belief that her daughter's income is greater in the summer, when her daughter is not attending college, than when her daughter attends college, and therefore the five pay periods averaged by the Eligibility Technician were not representative of her daughter's prospective income during the school year. Another issue is that Claimant thinks her daughter should be able to keep the income she earns to apply to her own needs, in particular paying for her dental braces which Claimant asserts should be an expense deducted from her daughter's income. Finally, Claimant believes that by including her college age daughter's income when calculating her household's benefit, her daughter unjustly is being made to help support the rest of Claimant's family.

The Division's Hearing Representative asserted that Claimant's daughter must be included in its determination of the household's income and as a member of the household because the Food Stamp rules and regulations require her to be included.

After hearing, analysis, and review of the Division's action, the Division has been found to correctly included Claimant's daughter's income to calculate the household's Food Stamp benefit.

FACTS ON WHICH THE DECISION IS BASED

This decision is supported by the following facts that have been proved by a preponderance of the evidence:

1. Claimant applied for Food Stamp benefits as a household consisting of herself and six children by submitting an Application for Services signed on October 3, 2011.³ (Ex. 2.0-2.6)
2. The parties agree that one of Claimant's children became 18 years old in April 2011, attends college full time during the school year, works more than 20 hours per week and lives in the household. (Claimant's testimony; Exs. 2.1; 3.0-3.1)
3. On October 4, 2011, Claimant participated in an eligibility interview by telephone. (Ex. 3.0) The Eligibility Technician obtained income information for Claimant and her oldest daughter. (Ex. 3.0)
4. The Eligibility Technician contacted the daughter's employer, McDonalds, and obtained gross income information for five pay periods (each for two weeks) immediately preceding the date of Application as follows (Exs. 3.1-3.2):

August 8	\$ 802.66	representing 75.69 hours worked
August 22	\$ 481.31	representing 44.23 hours worked
September 5	\$ 902.88	representing 84.05 hours worked
September 19	\$ 1,029.59	representing 92.35 hours worked

³ Claimant also applied for other benefits that are not at issue in this case.

October 3	\$ 866.84	representing 81.30 hours worked
Total:	\$ 4,083.28	377.62 total hours worked

5. The Eligibility Technician also learned from the daughter’s employer that Claimant’s daughter was paid every two weeks at the rate of \$10.45 per hour, worked 6-9 hours per day, 4-5 days a week and had started working on June 9, 2010. (Ex. 3.2)

6. The Eligibility Technician averaged the income for Claimant’s daughter for five pay periods:

Total pay	\$4,083.28	
Divided by 5 equals:	816.66	average income per pay period.

(Ex. 3.1; Hearing Representative’s testimony)

7. The pay period (bi-weekly) average income was multiplied by a factor of 2.15 to convert the averaged income per two week pay period to an average monthly income, resulting in an average monthly income of \$1,755.82. (Ex. 3.1; Hearing Representative’s testimony) This average monthly income was included in the calculations which resulted in Claimant’s household’s Food Stamp benefit amount for October and November 2011. (Exs. 5.5; 5.12; 6.0-6.1; Hearing Representative’s testimony)

8. Claimant’s daughter has medical expenses for dental braces that the Division should allow as a deduction from her income if it insists in including her daughter’s income as part of household income. (Claimant’s testimony)

MAIN LEGAL AUTHORITY SUPPORTING THE DECISION

III. Food Stamp Program

The Food Stamp Program is a federal program administered by the States. 7 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining if individuals qualify for Food Stamp benefits. *See*, 7 C.F.R. § 271 – 273.

A. Administration of The Food Stamp Program

Congress created the Food Stamp Program: “[t]o alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet....” 7 CFR § 271.1(a) (quoting Section 2 of the Food Stamp Act of 1977 in part). The regulation establishing the purpose and scope of the Food Stamp Program, states in part, the Program is to “promote the general welfare and safeguard the health and well being of the nation’s population by raising the levels of nutrition among low-income households.” 7 CFR § 271.1(a).

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 C.F.R. § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp Program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations in 7 C.F.R. § 271 – 274. The duties of the Alaska Department of

Health and Social Services, in regard to the Food Stamp Program, include “comply[ing] with the requirements of 7 U.S.C. 2011-2036 (Food Stamp Program).” AS 47.25.980(a)(3).

B. Calculation of Household Income

Food Stamp eligibility and benefits are based on the income available to the household. 7 C.F.R. § 273.9(a). Household income is “all income from whatever source...” 7 C.F.R. § 273.9(b). Earned income includes all wages and salaries. 7 C.F.R. § 273.9(b)(1)(i). A person under 22 years of age who is living with her parents must be considered a member of the household. 7 C.F.R. § 273.1(b)(1)(ii). The earned income of any household member who is under 18 years old and who is a student of an elementary school or secondary school is excluded. 7 C.F.R. § 273.9(c)(7).

Deductions from income are limited to those items identified in Food Stamp regulation 7 C.F.R. § 273.9(d). A deduction for dental care in excess of \$35 per month is allowed to any household member who is elderly or disabled. 7 C.F.R. § 273.9(d)(3)(i),(vi).

Food Stamp regulation 7 C.F.R. § 273.10(c)(1) provides:

(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.

(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.

Furthermore, the State agency may average income according to methods adopted by the State agency. 7 C.F.R. §273.10(c)(3)(1) “When averaging income, the State agency shall use the household’s anticipation of monthly income fluctuations over the certification period.” 7 C.F.R. § 273.10(c)(3)(i).

B. Student Eligibility Requirements

Food Stamp regulation 7 C.F.R. § 273.5(a) makes clear that an individual who is enrolled at least one-half time in an institution of higher education is a student not eligible to participate in the Food Stamp Program, unless that person qualifies for one of the exemptions in subparagraph (b) of the regulation.

Food Stamp regulation 7 C.F.R. § 273.5(b) sets out several exemptions by which such an individual may receive benefits. To be eligible for Food Stamps, a student must meet at least one of the criteria constituting an exemption from non-eligibility. The exemption applicable to this case is:

(5) Be employed for a minimum of 20 hours per week and be paid for such employment....

ANALYSIS OF THE ISSUES

I. Burden of Proof

Applicants for Food Stamp Program benefits must meet the eligibility requirements of the Food Stamp Program for each period they are certified to receive benefits. *Banks v. Block*, 700 F.2d 292, 296-97 (6th Cir. 1983). Therefore, Claimant, as an applicant for Food Stamps, has the burden of proving the Division should not have included her daughter's income when determining Claimant's household's eligibility for, and amount of Food Stamps.

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

“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) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

Consequently, Claimant has the burden of proving by a preponderance of the evidence that the Division incorrectly included her daughter's income when it determined Claimant's household's eligibility for and amount of Food Stamps.

III. Undisputed facts

The parties agreed that Claimant applied for Food Stamps for her household. The parties agree that Claimant's household includes a daughter over 18 years old, who is attending college full time, and earns income from working more than 20 hours per week.

IV. Discussion of the Issues

1. Was the Division correct to include Claimant's 18 year old daughter's earned income as part of the household's income?

It is undisputed that Claimant's daughter is over 18 years old and living in her mother's household. The Food Stamp regulations clearly require a child under the age of 22 years who is living with a parent to be included in the household. 7 C.F.R. § 273.1(b)(1)(ii). Therefore, the Division was correct to include Claimant's daughter as a member of Claimant's household.

Claimant's daughter is over 18 and under 22 years of age, earning income by working more than 20 hours per week while a full time college student living with her mother. The Food Stamp regulations require that once a child is 18 or older, if that child has earned income, it must be included in the income attributed to the household if the child is living in the household and working at least 20 hours per week while attending an institution of higher education at least half-time. 7 C.F.R. § 273.9(b)(1)(i), (c)(7) & 7

C.F.R. § 273.5(b)(5). Therefore, the law requires the Division to include Claimant's daughter's income when determining Food Stamp eligibility and benefits for Claimant's household and the Division was correct.

2. Was the Division correct to average Claimant's daughter's income from the five pay periods that immediately preceded the date of Claimant's Application?

Claimant testified that her daughter's income and work hours during the summer months are greater than during the school year. Claimant argued that her daughter's income from the five pay periods used by the Division to average her daughter's income was higher than the income her daughter would have during the school year. The Division asserted that the five pay periods spanned from August 8 through October 3 and therefore did not represent earnings of the summer months of May, June and July. The Division correctly asserted that in Alaska, neither August nor September is considered a summer month.

Claimant did not provide evidence as to when her daughter began attending classes in fall 2011, if not in September, or what she considered to be representative income during pay periods while her daughter is attending classes. The evidence is clear that Claimant's daughter had worked for more than one year (beginning June 2010) and Claimant could have provided evidence concerning the months of October through March, based on the 2010 school year. Claimant did not meet her burden of proving her assertion.

In addition, the Division averaged Claimant's daughter's work of 377.62 hours over the 10 weeks represented in the pay periods ending August 8 through October 3, 2011. This yields an average work week of 37.76 hours. The highest pay periods of September 5 and September 19 represent work during the end of August and the first half of September.⁴ The pay period of October 3rd includes the remainder of work done in September. The two week pay period ending August 8 necessarily includes the final week of July 2011. Claimant did not suggest omitting the August 8 pay period from the income averaging process.

The Division gave Claimant the benefit of a larger period of averaged income by including the August 8 pay period income. If the August 8 pay period information is excluded, then the highest pay periods of September 5 and September 19 raise the daughter's average income. For example, adding pay periods from August 22 through October 3 (\$481.31 + \$902.88 + \$1,029.59 + \$866.84) equals \$3280.62. This total, divided by 4 pay periods, yields \$820.15 average income per two week pay period. This is more than the \$816.66 average income per two week pay period calculated by the Division when it used all five pay periods.

Food Stamp regulation 7 C.F.R. § 273.10(c)(1)(i) requires the Division to consider income "already received by the household during the certification period and any anticipated income the household and

⁴	August 8	\$ 802.66	representing 75.69 hours worked
	August 22	\$ 481.31	representing 44.23 hours worked
	September 5	\$ 902.88	representing 84.05 hours worked
	September 19	\$ 1,029.59	representing 92.35 hours worked
	October 3	\$ 866.84	representing 81.30 hours worked
	Total:	\$ 4,083.28	377.62 total hours worked

the State agency are reasonably certain will be received during the remainder of the certification period.” Therefore, the Division was required to include the income from the October 3, 2011 pay period when calculating benefits for October 2011.

Moreover, the Division is required by regulation 7 C.F.R. § 273.10(c)(1)(ii) to use the “income received during the past 30 days”... “as an indicator of the income that is and will be available to the household during the certification period.” In this case, the “past 30 days” was the month of September 2011, or alternatively the most recent two pay periods (September 19 and October 3). If the Division used only these two most recent pay periods, Claimant’s daughter’s average income would have been even greater: $(\$1,029.59 + \$866.84)$ equals $\$1,896.43$ divided by two, results in an average pay period income of $\$948.21$. This substantially exceeds the average pay period income of $\$816.66$ that the Division used to calculate the household’s benefit. In short, the Division’s methodology not only applied the Food Stamp regulations, it was the one most beneficial to Claimant’s household.

Therefore, the Division was correct to use all five pay periods to average Claimant’s daughter’s income.

3. Should the Division have deducted Claimant’s daughter’s expenses for dental braces from her income?

Claimant asserted that if the Division includes her daughter’s income, it should reduce her income by her dental brace expense. Claimant did not provide a dollar amount that her daughter paid for her dental braces. Deductions from income are limited to those items identified in Food Stamp regulation 7 C.F.R. § 273.9(d). A deduction for dental care in excess of \$35 per month is allowed to any household member who is elderly or disabled. 7 C.F.R. § 273.9(d)(3)(i),(vi). However, because Claimant’s daughter is neither disabled nor elderly, she does not qualify for an excess medical deduction from income. Therefore, the Division was correct not to reduce Claimant’s daughter’s income by the amount of her dental brace expense.

Finally, Claimant asserts that counting her daughter’s income as household income means that the daughter’s income is being used to support Claimant and the other household members, which is unjust. Claimant thinks her daughter should be able to keep the income she earns to apply to her own needs, especially as preparation for her future of living on her own.

The federal Food Stamp regulations are clear and neither the Division nor the Office of Hearings and Appeals may choose not to follow the federal regulations. “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).

CONCLUSIONS OF LAW

1. Claimant's daughter is over 18 years old, living at the home of her parent while a full time student enrolled at an institution of higher learning and employed more than 20 hours per week. Therefore, Claimant's daughter must be included in the household and her income must be included as household income for purposes of determining eligibility for Food Stamps and the monthly benefit amount. 7 C.F.R. § 273.9(b)(1)(i), (c)(7).
2. The Division properly averaged Claimant's daughter's income from her five pay period immediately preceding the date of Application. 7 C.F.R. § 273.10(c)(1)(i), (ii).

DECISION

The Division was correct to include Claimant's daughter as a member of the household and to include her average income as household income for purposes of determining eligibility for Food Stamps and of calculating the benefit amount.

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
P.O. Box 110640
Juneau, AK 99811-0640


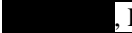
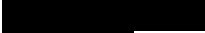
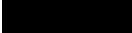

Dated this December 12 2011

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on December 12, 2011 true and correct copies of the foregoing were sent to:
Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), on December 13, 2011 as follows:

, Hearing Representative
, Hearing Representative
, Chief, Policy & Program Dev.
, Administrative Assistant II
, Staff Development & Training

J. Albert Levitre, Jr., Law Office Assistant I