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

In the Matter of )  
 )  
 T. J., )  
 ) OHA Case No. 12-FH-147  
 ) Division Case No.  
 Claimant. \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. T. J. (Claimant) completed, signed and submitted an Application for Food Stamp<sup>1</sup> benefits<sup>2</sup> (Application) on April 9, 2012, which the Division received that same day. (Ex. 2.0-2.7) Also on April 9, 2012, during the eligibility interview, the Division of Public Assistance (Division) informed Claimant she was not eligible for Food Stamp Program benefits. (Ex. 3) On April 10, 2012, the Division informed Claimant by written notice that her application for Food Stamps had been denied. (Ex. 4)

Claimant requested a Fair Hearing on April 12, 2012. (Exs. 5-5.1) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010 *et. seq.* and 7 CFR § 273.15.

The Fair Hearing took place on May 17, 2012. Claimant appeared telephonically, represented herself and testified on her own behalf. Mr. Jeff Miller, Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division. All exhibits offered were admitted.

**ISSUE**

Was the Division correct to deny Claimant's April 9, 2012 application for Food Stamp benefits on April 9, 2012?

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<sup>1</sup> 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.

<sup>2</sup> Concurrently, Claimant sought other public assistance benefits which are not at issue in this case. (Ex. 2.0)

## **FINDINGS OF FACT**

The following facts were established by a preponderance of the evidence:

1. Claimant completed, signed and submitted an Application for Food Stamp benefits (Application) on April 9, 2012. (Ex. 2.0-2.7) The Division received this application on April 9, 2012. (Ex. 2.0)
2. In response to Application question 4, Claimant disclosed she had been convicted of a drug-related felony for an offense that occurred on or after August 22, 1996. (Ex. 2.1)
3. Claimant participated in an eligibility interview on April 9, 2012. (Ex. 3) During the interview, Claimant informed the Eligibility Technician that she had been convicted of a drug related felony in the State of XXXXX in 2001. (Ex. 3) The Eligibility Technician confirmed that Claimant received Food Stamps in 2012 while in XXXXX State but denied Claimant's application for Food Stamps. (Ex. 3)
4. On April 10, 2012, the Division gave written notice to Claimant that her application for Food Stamps had been denied because of her prior drug-related felony conviction from XXXXX in 2001. (Ex. 4)
5. Claimant requested a Fair Hearing on April 12, 2012. (Exs. 5-5.1) Claimant asserted that she deserved Food Stamps, had been drug-free for four years, and had received Food Stamps in XXXXX State for years. (Ex. 5.1)
6. Claimant acknowledged she was convicted of possession of "meth," for which she was charged on XXXXX 27, 2000. (Ex. 6.1)
7. During the Fair Hearing, Claimant acknowledged a copy of a Thurston Superior Court Case Summary for case number XX-X-XXXXX-X, marked as Exhibit 6.1, was a record of her case showing a judgment and sentence on XXXXX 10, 2000 for her drug-related felony conviction. (Ex. 6.1; Claimant's testimony)

## **PRINCIPLES OF LAW**

### **I. Burden of Proof**

Ordinarily the party seeking a change in the status quo has the burden of proof. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

### **II. Standard of Proof**

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *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, 493 (Alaska 2003).

### III. Applicable Law

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 whether individuals qualify for Food Stamp benefits. *See*, 7 C.F.R. § 271 – 273.

The Alaska legislature has enacted statutes implementing a food stamp program at AS 47.25.975-AS 47.25.990. The Alaska “food stamp program” means the federal food stamp program authorized by 7 U.S.C. 2011-2036. AS 47.25.990(4). 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). Alaska Statutes pertaining to the food stamp program are found at AS 47.25.975, .980, .985 and .990.

The regulations adopted by the Alaska Department of Health and Social Services concerning the Alaska food stamp program are found at 7 AAC 46.010 - .990. Alaska regulation 7 AAC 46.010, in part provides: “[f]ederal food stamp program regulations, including subsequent changes, at 7 C.F.R. 271-274 are adopted by reference.” Moreover, “[t]he division administers the [Alaska] food stamp program in accordance with the Food stamp Act of 1977, as amended (7 U.S.C. 2011 – 2029) and federal regulations promulgated under the Food Stamp Act of 1977, as amended....” 7 AAC 46.010.

Alaska implements a federal Food Stamp regulation which provides “[i]ndividuals who are ineligible under §273.11(m) because of a drug-related felony conviction” may not receive Food Stamp benefits. 7 C.F.R. § 273.1(b)(7)(vii). Regulation 7 C.F.R. § 273.11(m) states, in relevant part:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to conviction based on behavior which occurred after August 22, 1996.

7 C.F.R. § 273.11(m) (emphasis in original).

Thus, federal Food Stamp regulation 7 C.F.R. § 273.11(m) imposes a lifetime ban on eligibility for benefits that is applicable to individuals who have been convicted of a drug-related felony arising from conduct occurring after August 22, 1996. In addition 7 C.F.R. § 273.11(m) permits

individual states to enact legislation changing the period of disqualification from eligibility from the period of a lifetime ban to a period determined by the state legislature. The Alaska legislature has not enacted legislation which alters the federally imposed lifetime ban on eligibility for Food Stamps.

Fair Hearings arising from an action of the Department of Health and Social Services are authorized by Alaska regulations 7 AAC 49.010-.900. Regulation 7 AAC 49.170 “Limits of the hearing authority,” states:

Except as otherwise specified in applicable federal regulations and 7 AAC 49.160, the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefits amount, if in dispute, is in accordance with them.

Alaska Regulation 7 AAC 49.160 describes the duties of the hearing authority as to hold a hearing, receive the evidence, and render a decision based on law and the evidentiary record.

There is no Alaska regulation or federal Food Stamp regulation which grants the Alaska Office of Hearings and Appeals Hearing Authority the right to deviate from federal Food Stamp laws as implemented by Alaska.

## ANALYSIS

### I. Burden of Proof

Ordinarily the party seeking a change in the status quo has the burden of proof. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Because Claimant is applying for benefits, Claimant has the burden of proof in this case.

### II. Standard of Proof

A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is probably true. Claimant must meet her burden of proof by a preponderance of the evidence.

### III. Issue

Was the Division correct to deny Claimant’s April 9, 2012 application for Food Stamp benefits on April 9, 2012?

### IV. The Division is Required to Deny Claimant’s Application

The parties do not dispute Claimant was convicted of a drug-related felony for conduct occurring after August 22, 1996 in XXXXX State.

Federal Food Stamp regulations 7 C.F.R. § 273.1(b)(7)(vii) and § 273.11(m) clearly state that an individual who has been convicted of a drug-related felony for conduct occurring after August 22, 1996 is not eligible for Food Stamps. The only exception arises if the legislature of the state where the applicant is seeking Food Stamps has enacted legislation shortening the lifetime ban on eligibility. 7 C.F.R. § 273.11(m). If the legislature has reduced the time of ineligibility, once that period has elapsed, the individual might be eligible.

Because Claimant was receiving Food Stamps in XXXXX State, it is reasonable to assume the XXXXX State legislature enacted legislation reducing the time eligibility is banned under 7 C.F.R. § 273.11(m) in XXXXX. However, the Alaska State legislature has not enacted legislation limiting the period of ineligibility imposed by 7 C.F.R. § 273.11(m). Therefore, Claimant is not eligible to receive Food Stamps from the State of Alaska.

#### V. Claimant's Argument

Claimant argues the Division's denial of her Application should be deemed erroneous because she deserves Food Stamps and has been drug-free for four years. Claimant seeks to have the Hearing Authority make an exception to the law where the legislature has not.

Alaska regulation limits the role of a hearing authority. 7 AAC 49.170. The role of the hearing authority is to ascertain whether the laws, regulations and policies have been properly applied in the case and to determine if the benefit amount has been correctly computed in accordance with them. 7 AAC 49.170. The duties of the hearing authority is to hold hearings, receive evidence, apply it to law, regulation and policy, and render a decision, which then is disseminated to the parties. 7 AAC 49.160.

These Alaska regulations do not authorize the Hearing Authority to make exceptions to laws and/or regulations. The Hearing Authority is bound to enforce the laws, absent legal basis to exercise discretion or make exceptions. There is no legal basis for exception from the law barring Claimant's eligibility for Food Stamps in Alaska.

#### VI. Conclusion

The Division was correct when it applied the Food Stamp regulations, 7 CFR 273.1(b)(7)(vii) and 7 CFR 273.11(m), and denied Claimant's April 9, 2012 application for Food Stamp benefits.

### **CONCLUSIONS OF LAW**

Claimant did not meet her burden of proving by a preponderance of the evidence that she is eligible for Food Stamp benefits notwithstanding her conviction of a drug-related felony offense occurring after August 22, 1996.

### **DECISION**

The Division was correct to deny Claimant's April 9, 2012 Food Stamp application on April 9, 2012.

## APPEAL RIGHTS

If, for any reason, Claimant is not satisfied with this decision, Claimant has the right to appeal by requesting a review by the Director. To do this, 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

If 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.

Dated this June 7, 2012.

\_\_\_\_\_  
*/Signed/*  
Claire Steffens  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on June 7, 2012 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.  
and to other listed persons (via secure, encrypted e-mail), as follows:

Terri Gagne, Hearing Representative  
Jeff Miller, Hearing Representative  
Joy Dunkin, Staff Development & Training  
Kari Lindsey, Admin. Asst., Dir.  
Erin Walker-Tolles, Chief, Policy & Program Dev.  
Courtney Wendell, Admin. Asst., Policy

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*/Signed/*  
J. Albert Levitre, Jr., Law Office Assistant I