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

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| In the Matter of |) | |
| |) | |
| ██████████, |) | OHA Case No. 10-FH-179 |
| |) | |
| Claimant. |) | Division Case No. ██████████ |
| _____ |) | |

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a recipient of ongoing Alaska Temporary Assistance, Medicaid, and Food Stamp benefits. (Ex. 1) After a change in Claimant's circumstances, the Division of Public Assistance (Division) sent her a request for information on April 28, 2010. (Ex. 7) The Division alleges Claimant failed to provide that information, and therefore, on May 14, 2010, the Division sent Claimant notice her Alaska Temporary Assistance, Medicaid, and Food Stamp benefits were ending on May 31, 2010. (Exs. 9 – 9.1) The Claimant requested a fair hearing on June 2, 2010. (Ex. 10.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on June 24, 2010. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. ██████████, Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

ISSUE

Was the Division correct to terminate Claimant's Food Stamp and Alaska Temporary Assistance benefits¹ on May 31, 2010 because she failed to comply with the Division's requests for information?

¹ Claimant's hearing request also included the issue of denial of her Medicaid benefits. However, at the hearing she verbally withdrew her hearing request pertaining to Medicaid benefits because she had resolved the issue of her Medicaid coverage with the Division prior to the hearing. She applied for Alaska Temporary Assistance, Food Stamp, and Medicaid benefits after her benefits were terminated.

FINDINGS OF FACT

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

1. Claimant was receiving Food Stamp and Alaska Temporary Assistance benefits when she moved to Anchorage on February 1, 2010. (Ex. 2). She reported this move to the Division on March 4, 2010, and did not show her husband as a member of the household. She also stated she was employed. (Ex. 2.1)
2. On March 11, 2010, the Division sent Claimant a request for information. In that request, the Division stated it needed information regarding the new rent, heating and electrical expenses, and employment information. This information was due on March 22, 2010. (Ex. 3)
3. On April 23, 2010, the Division called Claimant's employer. After faxing the proper forms to the employer, the Division received confirmation regarding Claimant's start date, rate of pay, average hours per week, pay periods/how often paid. (Exs. 4 – 4.1)
4. In that phone call with the employer, the Division caseworker also learned that Claimant's position would end at the end of April, but the employer was trying to keep the current employees employed in other positions. (Ex. 4)
5. On April 26, 2010, Claimant called the Division and stated she was back together with her husband, but he had been in and out of jail since the move to Anchorage. (Ex. 6) She reported that when he is out of jail, his primary residence is her home. (Ex. 6)
6. On April 26, 2010, the Division's Eligibility Technician contacted the correctional facility and learned that Claimant's husband had been incarcerated from March 9, 2010 to March 11, 2010 and from March 19, 2010 until April 16, 2010. (Ex. 6)
7. On April 28, 2010, the Division sent Claimant a request for information. The information requested was:
 - 1) Statement regarding your continued employment with the census bureau. It was my understanding that the census bureau was intending to retain what employees they currently have, but move them into different positions. Please have the employer confirm if you will be retained after 4/30/10 & if so, how many hours per week your [sic] will be working, your hourly rate, when the pay periods end, & the pay dates are [sic]."
 - 2) David must pursue unemployment benefits; and
 - 3) we will need proof of all of [REDACTED]'s earnings from 2/10 – present for any job held while he was living back in the home or when he was incarcerated, if applicable. This information must be turned into the Muldoon office, where I will be sending your case today. Until such time

that you are assigned a worker, you will need to contact me to report any changes in your circumstances. . . .

Again, the above requested information must be provided to the Muldoon public Assistance office not later than 5/10/10

(Ex. 7)

8. On April 28, 2010, the Division sent an additional notice stating Claimant's husband must apply for unemployment benefits and provide verification by May 10, 2010. (Ex. 7.1)

9. On May 6, 2010, Claimant spoke with her Nine Star case worker.² (Ex. 5.11) Claimant told the Division her husband was currently in her home on an ankle monitoring system for two weeks, but was leaving for Valdez by the weekend. Claimant's Nine Star case worker advised Claimant to contact her Division Eligibility Technician concerning her husband being in the household, even if it was for a short period of time. (Ex. 5.11) Claimant also stated she would continue her employment through June at a reduced hourly rate. At that time, Claimant's Nine Star caseworker advised her she needed to drop off the needed paperwork at the Division's Muldoon office. (Ex. 5.11) The Nine Star caseworker acknowledged that Claimant still did not have a Division Eligibility Technician at the Muldoon office to talk to. (Ex. 5.11)

10. Claimant confirmed at the June 24, 2010 hearing that her husband's move to Valdez was a permanent removal from her household.

11. Claimant did not provide the documentation requested in the April 28, 2010 notice to the Division Muldoon office. This finding is based on the fact there is no documentation in the Division file. (Entire Hearing Record)

12. On May 14, 2010, the Division sent notices to the Claimant stating her Temporary Assistance, Food Stamp, and Medicaid benefits would end on May 31, 2010 for failing to provide: 1) statement regarding Claimant's continued employment, including confirmation from the employer; 2) proof Claimant's husband applied for unemployment benefits; and 3) proof of all Claimant's husband's earnings from February 2010 to the present. (Ex. 9)

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, Alcohol 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).

² The agency Nine Star was assisting Claimant in obtaining work and becoming independent. (Exs. 5 – 5.12) Nine Star is a designee of the State of Alaska when working with Temporary Assistance recipients.

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The rules that control an applicant's eligibility and the application process are set out in the Code of Federal Regulations (CFR).

Federal Food Stamp regulations require households to report a change in household composition. 7 CFR 273.12(a)(1)(C) Household must also report a change in the source of income, including starting or stopping a job. 7 CFR 273.12(a)(1)(B)

An applicant's household income is a factor used in determining Food Stamp eligibility and benefit levels. 7 CFR 273.10. The Division is required to verify a household's gross income on an initial application. 7 CFR 273.2(f)(1)(i). It is also required to verify a Food Stamp applicant's questionable information:

The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level.

7 CFR 273.2(f)(2)(i).

Federal Food Stamp regulations also state a household shall be determined ineligible if it refused to cooperate in reviews generated by reported changes. 7 CFR 273.2(d)(1) & 7 CFR 273.2(f)(8)(ii). The Division shall not verify changes in income "if the source has not changed and if the amount has changed by \$50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated." 7 CFR 273.2(f)(8)(ii)

7 CFR 273.2(f)(5) states:

The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency must assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. . . .

A refusal to cooperate with the Division's request for verification is grounds for denial of a Food Stamp application; a mere *failure to cooperate* is not. 7 CFR 273.2(d)(1) provides in pertinent part:

For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility,

including reviews generated by reported changes and applications for recertification. . . .

A Temporary Assistance recipient must satisfy the eligibility requirements for financial need. 7 AAC 45.210(b) and 7 AAC 45.275(b). The Temporary Assistance program also has verification requirements. These are set forth in 7 AAC 45.175, which states as follows:

(a) Except as provided by 7 AAC 45.180 and 7 AAC 45.255, an applicant's claim for assistance must be supported by verification satisfactory to the department that the applicant meets all eligibility requirements. An applicant or a recipient who refuses to provide the department with verification of eligibility required under this section is not eligible to receive ATAP benefits.

(b) The department will determine whether the verification and documentation received is satisfactory by considering

(1) its necessity for making an eligibility determination;

(2) whether it reasonably proves the fact that requires verification or documentation;

(3) all other information contained in the application and case file; and

(4) what alternative types of verification or documentation are obtainable and which are not obtainable.

ANALYSIS

This case presents the issue of whether the Division was correct when it terminated the Claimant's Food Stamp and Temporary Assistance benefits on May 31, 2010, because she did not comply with the Division's requests for information.

Because this case involves the Division terminating benefits, it seeks to change the status quo. Accordingly, it has the burden of proof in this case by a preponderance of the evidence. *State, Alcohol 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).

The Division learned of two changes in Claimant's household. On April 23, 2010, the Division learned, through Claimant's employer, that Claimant's current position would end at the end of the month, but that she may receive another position. (Ex. 4) On April 26, 2010, the Division learned, through a telephone call from Claimant, that Claimant's husband was residing in her home. (Ex. 6) Both the change in job and the addition of Claimant's husband as a household member were changes in circumstance.

Based on these changes in circumstances, on April 28, 2010, the Division requested documentation from Claimant regarding her continued employment and also the employment and earnings of her husband and his efforts to seek unemployment benefits. This information was to be sent to the Division's Muldoon office. (Ex. 7) Claimant did not have an Eligibility Technician in the Muldoon office. (Ex. 5.11)

The following analysis discusses this request and the resulting action.

Food Stamps

A Food Stamp recipient's household income is a factor used in determining Food Stamp eligibility and benefits levels. 7 CFR 273.10. The Division must verify changes in income if the information received is incomplete, inaccurate, inconsistent, or outdated. 7 CFR 273.2(f)(8)(ii).

On April 28, 2010, when the Division issued its information request, the only pertinent information it had was that Claimant's employment was changing and that Claimant's husband was now a member of the household. This information regarding the household's income was therefore incomplete. Accordingly, the Division was required to verify the changes. 7 CFR 273.2(f)(8)(ii)

Claimant, as a household member, had primary responsibility for providing documentary evidence to support the information. 7 CFR 273.2(f)(5). The Division had instructed the Claimant to provide specific documentation to the Muldoon office. That documentation included employer verification regarding Claimant's job. The Division also required documentation regarding Claimant's husband's efforts at securing unemployment benefits and also his earnings from February 2010 to the time of the notice. (Ex. 7) The Division has the burden to prove that Claimant **refused** to cooperate in providing that information, not merely failed to cooperate. 7 CFR 273.2(d)(1).

a. Claimant's employment information.

On May 6, 2010, Claimant spoke to her Nine Star caseworker and told her verbally the hours she was to be working and the rate of pay. (Ex. 5.11 & Finding of Fact 11). The Nine Star caseworker told her to provide the proper documentation to the Division's Muldoon office. (Ex. 5.11) There is no evidence indicating Claimant made any effort to provide documentation to the Division.

The Food Stamp regulation differentiates between a household's "refusal" to provide the information as opposed to a "failure" to provide. 7 CFR 273.2(d)(1) In the past, the Division had obtained the information directly from the employer. (Ex. 4) In this instance, Claimant went to her Nine Star worker and told her of her future employment conditions. The Nine Star worker told her to provide the proper documentation to the Division Muldoon office. Claimant did not state to the Nine Star worker that she was refusing to provide the information or would refuse to provide the information. (Ex. 5.11) The fact that she verbally informed the Nine Star worker of the information is an indication that there was no refusal. Accordingly, when Claimant failed to

provide the proper documentation, it was a failure to provide the documentation, not a refusal to provide the documentation.

b. Husband's employment and unemployment information.

On May 6, 2010, Claimant also spoke to her Nine Star caseworker regarding her husband. Claimant stated her husband was moving out of her home. (Ex. 5.11) The caseworker's notes indicate the caseworker understood Claimant's husband was only to be in the home for a short time. Claimant confirmed at hearing that when her husband was present in the home on May 6, 2010, it was not on a permanent basis.

The Nine Star caseworker instructed Claimant that she needed to provide the documentation to the Division's Muldoon office. Claimant did not have a Division Eligibility Technician in the Muldoon Division office.³ Therefore, she had no person in that office to explain that her husband had only lived with her for a few weeks and then left the household. The May 6, 2010 Nine Star caseworker notes do not state Claimant was refusing or stated she was going to refuse to provide the information. (Ex. 5.11) Again, there was no indication Claimant was refusing to provide the information requested.

The Food Stamp regulation differentiates between a household's "refusal" to provide the information as opposed to a "failure" to provide. 7 CFR 273.2(d)(1) Based on the preponderance of the evidence, the Division has "failed" to prove Claimant "refused" to provide the documentation requested in the Division's April 28, 2010 request. Therefore, the Division was not correct to terminate Food Stamp benefits on May 31, 2010.

Temporary Assistance

The Temporary Assistance Program also has verification requirements, which are set forth in 7 AAC 45.175. The Division must determine whether the verification and documentation is satisfactory by considering: 1) its necessity; 2) whether it reasonably proves the fact that requires verification; 3) all other information contained in the case file; and 4) what alternative types of verification or documentation are obtainable and which are not obtainable. 7 AAC 45.175(b).

When the Division requires verification information from a Claimant, the information requested must be necessary for making an eligibility determination for the Temporary Assistance Program. 7 AAC 45.175(b)(1) It is necessary for the Division to know a Claimant's household's income, as the Division must determine whether a Claimant satisfies the requirements of financial need. 7 AAC 45.210(b). The Division learned of the changes to the household income, both by a change in Claimant's job, and also by the inclusion of her husband in the household. Therefore, the request for documentation on Claimant and her husband's household income was necessary as required by 7 AAC 45.175(b)(1) because it was necessary for making an eligibility determination.

³ It should be noted that as of May 6, 2010, Claimant did not have a Division Eligibility Technician in Anchorage, despite informing the Division two months earlier, on March 10, 2010, of her change in residence.

The Division's request for information must also reasonably prove the fact that requires verification or documentation. 7 AAC 45.175(b)(2). The Division's request for verification on employment income or unemployment benefits would certainly impact the Division's determination regarding Claimant's eligibility for Temporary Assistance benefits.

The Division request must not be in other information contained in the case file. 7 AAC 45.175(b)(3) The Division's April 28, 2010 request was based on changes of circumstances, which only happened within the last week, therefore, there was no other verification in the file.

The fourth consideration regarding verification is discussed below:

a. Claimant's employment information.

The Division must also determine alternative types of verification or documentation that is obtainable and which is not obtainable. 7 AAC 45.175(b)(4) The Division has already demonstrated that it could directly contact Claimant's employer and receive the information directly from it. (Ex. 4) Therefore, there were alternative types of documentation obtainable regarding Claimant's own income.

b. Husband's employment and unemployment information.

Claimant never submitted any documentation to the Division's Muldoon office regarding her husband. There was no evidence to indicate the Division had any other alternative means of obtaining that information. Therefore, the Division was correct to terminate Claimant's Temporary Assistance benefits on May 31, 2010 because it did not have the proper documentation regarding Claimant's household income.

In summary, the division met its burden of proof with regard to its request for the Alaska Temporary Assistance Program. The Division proved it there was not satisfactory documentation submitted pursuant to 7 AAC 45.175

CONCLUSIONS OF LAW

1. The Division was correct in making its April 28, 2010 information request regarding Claimant's employment, Claimant's husband's unemployment benefits, and Claimant's husband's income for the Temporary Assistance and Food Stamp Programs. 7 CFR 273.10, 7 CFR 273(f)(8)(ii) (Food Stamps), 7 AAC 45.175, 7 AAC 45.210(b) (Temporary Assistance).
2. Pursuant to 7 CFR 273.2(d)(1), the Division failed to prove by a preponderance of the evidence that Claimant "refused" to provide the information requested and therefore failed to comply with the requirements of the Food Stamp Program regulation. Therefore, the Division was incorrect to terminate Claimant's Food Stamp benefits on May 31, 2010.

