

The notice then explained that “[r]esults are rounded at each step.”⁹ The notice showed the calculation as follows: “ $5 * 1.30 * 1.00 * 0.20 = 1.95$.”¹⁰ Because the regulations require a minimum score of two to be eligible, this score was too low for Ms. J to be eligible for assistance.¹¹ The notice advised that she could reapply at any time before April 30, and provided the name and phone number of a caseworker.¹²

Ms. J did call the caseworker because she noticed an error.¹³ She lives in a mobile home, not a house, and she learned that the factor used for mobile homes is 1.4, not 1.3. She calculated that she would be eligible if a factor of 1.4 was used.¹⁴ In response to this information, the Division obtained the legal description of Ms. J’s residence from the City and Borough of No Name. Based on this information, the Division continued to use a factor of 1.3, and calculated that Ms. J remained ineligible for heating assistance. According to Ms. J, she was never informed of the reason for this determination.¹⁵

On March 21, 2013, Ms. J wrote an email to Commissioner Streur.¹⁶ In this email, Ms. J stated that she had asked the Division several times to explain why she was not eligible for heating assistance, but Division personnel had never provided any explanation.¹⁷ The Commissioner referred the email to Division Director Ronald Kerher, and the Division treated Ms. J’s email as a request for a fair hearing.¹⁸

A hearing was held on April 10, 2013. Ms. J appeared for herself, and the Division was represented by Jeff Miller. At the hearing, it was discovered that Ms. J had never received the Division’s Position Statement. While on the record on April 10, Mr. Miller gave an explanation of the decision, and arranged to email the Statement to Ms. J. Then, to give Ms. J an opportunity to respond to the position statement and the explanation, a second hearing was scheduled for April 11.

At the first hearing, Mr. Miller explained that, based on the legal description of her property, Ms. J’s mobile home was 960 square feet, and that the mobile home factor is only

⁹ Division Exhibit 3.

¹⁰ *Id.*

¹¹ 7 AAC 44.340(k). For the regulations governing the factors and the community heating cost points, see 7 AAC 44.340 and Appendix A to 7 AAC 44.

¹² *Id.*

¹³ Division Exhibit 4.

¹⁴ Division Exhibit 4; Division Position Statement at 1.

¹⁵ Division Exhibit 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

applied to mobile homes larger than 980 square feet.¹⁹ Accordingly, Ms. J's mobile home received a dwelling factor of 1.3. He also explained that her income was calculated based on the total cash receipts for the month of October.²⁰ For the month of October, the printout from the Department of Labor showed that she had received six unemployment checks, which totaled \$2052.²¹ He then also explained the formula for calculating eligibility, and showed that mathematically, Ms. J was not eligible for heating assistance at the time that she had applied.²²

In the second hearing, held on April 11, Ms. J explained that while it was permissible to treat her email to Commissioner Streur as a request for a hearing, what she had really requested, and never received, was answers.²³ She had been led to believe that a mistake had been made in her application being scored as a home, instead of a mobile home, and only at the April 10 hearing did she learn that was not, in fact, an error.²⁴ And only at her April 10 hearing did she discover that her unusually large October income was a factor that made her ineligible.²⁵ Ms. J believed that these facts warranted some remedy from the Division.

Ms. J testified that she first called the Division for an explanation in February 2013.²⁶ The record was held open so that the Division could research whether Ms. J's February phone call could be treated as a reapplication. The Division filed a notice that the regulations require an actual application, and that it could not treat a telephone inquiry as an application.²⁷

III. Discussion

The heating assistance program provides assistance to low-income residents to offset the cost of home heating.²⁸ Payments under the program are made directly to the vendor that provides the energy or fuel used by the participant for heating, unless the participant's vendor does not participate in the program or heating costs are included in rent.²⁹ As explained above, eligibility for assistance is determined under a formula adopted in regulation. An independent

¹⁹ Miller testimony; *see* 7 AAC 44.340(f)(1) and (f)(6).

²⁰ Miller testimony; *see* 7 AAC 44.230(c).

²¹ Division Exhibit 5-5.1.

²² Miller testimony.

²³ J testimony.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Division's Second Supplemental Position Statement.

²⁸ 7 AAC 44.210. The Alaska heating assistance program has more generous income limits than the federal heating assistance program.

²⁹ 7 AAC 44.260.

check of the Division's calculations of Ms. J's application revealed that the Division did not make any arithmetic errors in applying the formula.

At the April 11 hearing, Ms. J made two arguments in support of her view that she deserves a remedy for the Division's denial of assistance, and its failure to explain to her the reason for the denial. First, she noted that the Department of Labor printout showed that two of the six checks she received in October were actually based on benefits for the month of September.³⁰ She testified that a normal month would bring only four paychecks.³¹ She argued that the regulations provide for a prorating of income for self-employed or seasonal employees, and said that if she were to receive the benefit of prorating, her income would level out for the months in which she drew unemployment, making her eligible.³² In response to questions at hearing, however, Ms. J admitted that she was not a seasonal worker or self-employed, and that her bank statements confirmed that the electronic transfers for the six payment had occurred in the month of October.³³

Under the governing regulations, the Division must "calculate the household's gross monthly income by counting total cash receipts before taxes, earned or unearned, derived from any source by any member of the household in the calendar month before the date of the signature on the completed application."³⁴ Under this regulation, the Division must count all cash *received* during the month before the application was submitted, even if, as here, some of the money was actually earned or accrued in the previous month. Because Ms. J applied in November, the Division must count all of her October income, even though it was unusually large. And the Division is not allowed to prorate income unless the applicant is self-employed or a seasonal worker, and then it prorates the income over 12 months.³⁵ Ms. J is not self-employed, and she is not a seasonal worker, so the Division could not prorate her October income.

Ms. J's second argument regarding the income factor went to her frustration in not getting answers from the Division. She asserted that if she had been told that her October income was the issue that prevented her from being eligible, she could have immediately

³⁰ *Id.* (referring to Division Exhibit 5-5.1).

³¹ J testimony.

³² *Id.* (referring to 7 AAC 44.230(c)).

³³ J testimony.

³⁴ 7 AAC 44.230(c).

³⁵ *Id.*

reapplied.³⁶ In her view, she would likely have been eligible upon reapplication, because her monthly income in months after October would have been four unemployment checks, not six.³⁷

The question Ms. J raises in this argument is not part of this appeal. This appeal concerns only the application that Ms. J filed in November. The Division correctly processed that application, and correctly determined that Ms. J was not eligible for heating assistance. No other application has been filed and denied, and the Division cannot treat her February call as an application.³⁸

VI. Conclusion

Ms. J was not eligible for heating assistance in November 2012 because her location, type of dwelling, fuel type, and monthly income, when converted to factors for purposes of heating assistance eligibility, put her outside of the eligibility cut off under the regulations. Therefore, the Division's denial of heating assistance benefits is affirmed.

DATED this 7th day of May, 2013.

Signed _____
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of June, 2013.

By: *Signed* _____
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]

³⁶ *Id.*

³⁷ *Id.*

³⁸ 7 AAC 44.210; *see also* 7 AAC 44.230(c).