

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT HOMER

C J, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, DEPT. OF )  
 HEALTH AND SOCIAL SERVICES, )  
 )  
 Appellee. )  
 \_\_\_\_\_ ) Appeal No. 3HO-13-00000 CI

**DECISION ON APPEAL**

Appellant C J (“J”) filed an appeal from a decision by the Office of Administrative Hearings (“OAH”) granting the Department of Health and Social Services’ (“DHSS”) motion for dismissal.

**FACTS AND PROCEEDINGS**

The parties do not dispute the facts. J received food stamps in 2013 under the Federal Food and Nutrition Act of 2008.<sup>1</sup> DHSS administers food stamps pursuant to 7 Alaska Administrative Code (AAC) 46.010 et seq.

J’s benefits are subject to review and a household must reapply to continue receiving benefits.<sup>2</sup> Once DHSS receives an application, the division has 30 days to process the application.<sup>3</sup>

On March 18, 2013, DHSS notified J his certification period would end on April 30, 2013, and, to avoid a delay in benefits, he needed to provide DHSS with his

<sup>1</sup> 7 U.S.C. § 2011 et seq. (2006); 7 C.F.R. § 271.1 et seq. (2008).

<sup>2</sup> Order Granting Dismissal at 1.

<sup>3</sup> *Id.*

application no later than April 15, 2013.<sup>4</sup>

As the deadline for his application approached, J attempted to contact the closest division office with questions.<sup>5</sup> The closest division office was over 70 miles away and experiencing phone problems.<sup>6</sup> J filed his application on April 30, 2013.<sup>7</sup>

J's food stamp benefits expired on May 1, 2013.<sup>8</sup> J received his benefits on May 2, 2013.<sup>9</sup> J received May's full benefit.<sup>10</sup>

J requested a "fair hearing" to address his complaints over DHSS services. DHSS denied his request.<sup>11</sup> J then appealed that denial to OAH.<sup>12</sup> Administrative Law Judge ("ALJ") Rebecca Pauli heard arguments and issued an order granting DHSS' petition to dismiss, finding that "no active case or controversy presented for resolution."<sup>13</sup>

This court has jurisdiction to hear an appeal of the OAH decision under AS 22.10.020(d) and Alaska Rule of Appellate procedure 601.

### **ISSUE ON APPEAL**

1. Whether OAH was correct in granting DHSS' petition to dismiss.<sup>14</sup>

### **STANDARD OF REVIEW**

Alaska employs four principal standards of review for administrative decisions.<sup>15</sup> The courts utilize the "substantial evidence" test for questions of fact.<sup>16</sup> The "reasonable

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<sup>4</sup> Order Granting Dismissal at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Brief for Appellee, Exc. 7 at 1.

<sup>12</sup> Order Granting Dismissal at 1; OAH No. 13-0648-APA.

<sup>13</sup> Order Granting Dismissal at 2.

<sup>14</sup> In his brief, J frames the issue as whether DHSS was correct in denying his request for a fair hearing. However, since J appeals the OAH decision, he is really appealing the ALJ's decision to grant the dismissal. J also offers other issues, such as the phone system outage, which are outside the scope of this appeal.

basis” test applies to questions of law involving agency expertise.<sup>17</sup> The courts utilize the “substitution of judgment” test for questions of law where no expertise is involved.<sup>18</sup> The “reasonable and not arbitrary” test applies to reviews of administrative regulations.<sup>19</sup>

In the present case, the court will employ the substitution of judgment test.<sup>20</sup> The court will substitute its judgment for that of the agency, reviewing legal issues de novo and adopting the rule of law most persuasive in light of precedent, reason, and policy.<sup>21</sup>

### **DISCUSSION**

The food stamp program represents a joint federal-state effort, subject to federal regulation but administrated by the States.<sup>22</sup> Federal regulations set forth procedures under which a benefit claimant can request a “fair hearing” regarding their benefits.<sup>23</sup>

7 C.F.R. § 271.7 provides:

[a]ny household that has its allotment reduced, suspended or cancelled as a result of an order issued by FNS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by

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<sup>15</sup> Handley v. State, Dep't of Revenue, 838 P.2d 1231, 1233 (Alaska 1992).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Since the parties agree on the material facts, the court does not need to employ the substantial evidence test.

<sup>21</sup> Allen v. State, Dep't of Health & Soc. Servs., Div. of Pub. Assistance, 203 P.3d 1155, 1160 (Alaska 2009).

<sup>22</sup> 7 U.S.C. § 2020.

<sup>23</sup> 7 C.F.R § 273.15; 7 C.F.R § 271.7.

more than the amount by which the State agency was directed to reduce benefits.<sup>24</sup>

Alaska incorporates the Federal “fair hearing” standard in 7 AAC 49.020:

An opportunity for a hearing must be granted to a recipient whose  
(1) request for financial, food, or medical assistance is denied or is not acted upon with reasonable promptness; or  
(2) financial, food, or other medical assistance benefits are suspended, terminated, or reduced.<sup>25</sup>

**1. The ALJ did properly grant DHSS’ motion for dismissal.**

Under the substitution of judgment test, the court agrees with ALJ Pauli’s decision to grant DHSS’ motion to dismiss because J is not entitled to a hearing under either the Federal standard or the Alaska standard.

J argues that he fits the Federal standard under 7 C.F.R. § 273.15. However, 7 C.F.R. § 273.15 is modified by 7 C.F.R. § 271.7. It provides: “[e]xcept as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.”<sup>26</sup> That is, 7 C.F.R. § 273.15 only requires the State provide a fair hearing if the purpose for the hearing falls within the requirements of 7 C.F.R. § 271.7.

7 C.F.R. § 271.7 requires a “fair hearing” if the claimant argues the benefit level was computed incorrectly or that the rules were misapplied or misinterpreted.<sup>27</sup> J does not claim any of those circumstances occurred in his case; instead, he requests a fair hearing to address the telephone problems and equitable administration of the program. Therefore, J is not entitled to a “fair hearing” under the Federal standard.

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<sup>24</sup> 7 C.F.R § 271.7.

<sup>25</sup> 7 AAC 49.020.

<sup>26</sup> 7 C.F.R § 273.15.

<sup>27</sup> 7 C.F.R § 271.7.

Alaska's Administrative Code models the Federal standards.<sup>28</sup> DHSS must hold a hearing if it denied J's request for food stamps or if DHSS did not act upon the request with reasonable promptness.<sup>29</sup> Alternatively, DHSS must hold a hearing if J's food stamps are suspended, terminated or reduced.<sup>30</sup>

DHSS did not deny, suspend, terminate or reduce J's food stamp benefits. J's benefits expired on May 1, 2013, as a result of J not turning in his recertification application until the day before. Moreover, when his benefits were approved on May 2, 2013, J received May's full benefit.

DHSS did act upon J's recertification application with reasonable promptness. J submitted his application on April 30, 2013.<sup>31</sup> J received his benefits on May 2, 2013. Therefore, it took DHSS less than three days to process the application. Three days fits well within the federal mandate that an application be processed within 30 days of its filing.<sup>32</sup> Moreover, DHSS informed J in March that he needed to submit his recertification application by April 15, 2013, to avoid delays.

In summary, J does not satisfy either prong of Alaska's Administrative Code or the Federal regulations. Since the court adopts the rule of law most persuasive in the light of precedent, reason and policy, the court determines that J is not entitled to a fair hearing under the Alaska or Federal standard. The court upholds ALJ Pauli's decision to grant DHSS' motion to dismiss.

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<sup>28</sup> 7 AAC 49.020.

<sup>29</sup> 7 AAC 49.020.

<sup>30</sup> 7 AAC 49.020.

<sup>31</sup> Order Granting Dismissal at 1.

<sup>32</sup> 7 C.F.R § 273.2(g).

**CONCLUSION**

For the reasons stated above, the court finds ALJ Pauli did not error in granting DHSS' motion for dismissal.

THEREFORE IT IS HEREBY ORDERED that ALJ Pauli's decision to grant DHSS' motion for dismissal is AFFIRMED and J's appeal is DENIED.

DATED in Kenai, Alaska, this 23<sup>rd</sup> day of July, 2014.

*Signed* \_\_\_\_\_  
ANNA M. MORAN  
Superior Court Judge

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