

III. Discussion

The issue in this case is whether M N is eligible for ATAP. She is not.

Eligible Alaska Natives that live within the service area of a Native family assistance program are not eligible for ATAP. 7 Alaska Administrative Code 45.276 states:

a) Except as provided in (c) of this section, a person who lives within the service area of a tribal or Native family assistance program operated under 42 U.S.C. 612 or AS 47.27, and is a member of the service population eligible to be served by that program, is not eligible to receive assistance under ATAP. If that person applies for or is receiving assistance from ATAP, the department will take one of the following actions:

- (1) the department will not accept an application for ATAP from the person;
- (2) the department will deny any pending application for ATAP for the person;
- (3) the department will terminate the person from participation in ATAP.¹²

The Ns live in No Name and Ms. N is eligible for services through NNA.¹³ Regulations do not offer the option to choose between receiving benefits from NNA or the Division. Because of this, Ms. N is not eligible for ATAP.

Whether or not race is a legitimate basis for denial of an ATAP application is beyond the scope of this hearing.¹⁴

IV. Conclusion

The Division's decision to deny Ms. N's ATAP application is affirmed.

DATED this 3rd day of February, 2014.

Signed

Bride Seifert
Administrative Law Judge

¹⁰ Exhibit 5; N testimony.

¹¹ N testimony.

¹² Ms. N does not meet the ineligibility exception under (c).

¹³ Exhibit 2, Gagne presentation.

¹⁴ See *Holiday Alaska, Inc.*, OAH No. 04-0271-TOB. (noting administrative proceedings are not the proper venue to challenge a regulation's validity. Rulings on the facial constitutionality or statute or regulations are generally for the courts to make) (citations omitted).

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

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

DATED this 20th day of February, 2014.

By: Signed
Name: Bride Seifert
Title/Division: ALJ/OAH

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