

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
 B B. H) OAH No. 12-0650-SNA
) DPA Case No.
_____)

DECISION

I. Introduction

The issue in this case is whether B H notified the Alaska Division of Public Assistance (DPA or Division) of a decrease in her household income soon enough to qualify for increased Supplemental Nutrition Assistance Program (SNAP or Food Stamp)¹ benefits effective June 2012. This decision finds that while Ms. H's testimony (that she notified the Division of her decrease in household income prior to June 1, 2012) was credible, the Division's records (indicating that Ms. H did not notify the Division until June 4, 2012) are equally credible. Because the law places the burden of proof in this case on Ms. H, she is required to prove that it is *more likely than not* that her factual assertions are true. Where (as here) both parties' evidence is equally credible, the party bearing the burden of proof must lose. Accordingly, based on the evidence, the Division was correct to increase Ms. H's SNAP benefits effective July 1, 2012 rather than June 1, 2012.

II. Facts

Ms. H has a five-person household which has participated in SNAP since April 2010.² Ms. H works as a teacher's aid for the No Name School District.³ Her employment is seasonal; it ends in May at the close of each school year and begins again in September with the start of the new school year.⁴

Ms. H's last day of work for the 2011-2012 school year fell on Friday, May 18, 2012.⁵ Ms. H testified that sometime the next week (the week of May 20-26) she stopped by the local

¹ Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). This decision uses the new ("SNAP") terminology.

² Ex. 1.

³ Exs. 2.1, 2.2, H hearing testimony.

⁴ Ex. 2.2, H hearing testimony.

⁵ Ex. 2.2, H hearing testimony.

DPA office to submit a change form.⁶ She testified that she could not locate a reporting form on the forms rack in the lobby so she asked a DPA employee at the front desk for a form.⁷ Ms. H testified that she filled-out the change reporting form and handed it back to the DPA employee.⁸

On June 4, 2012 Ms. H realized that her June SNAP allotment had not increased. She contacted the Division by phone and then went to the local DPA office in person. She turned in a copy of her last pay statement. Ms. H testified that she spoke with an employee named "Cami" or "Kami." Ms. H testified that the employee accessed her file and said she could see that Ms. H turned in a report of change on May 23, 2012. Ms. H testified that the employee told her that the DPA office was currently behind in processing its paperwork and that she would check and see what date's paperwork was then being processed. Ms. H testified that the employee returned and told her that the DPA office was processing filings from May 23, 2012 that very day, and that she expected that Ms. H's change form would be processed "within the next couple days."⁹

On June 18, 2012 the Division mailed a notice to Ms. H stating that, because she was no longer receiving income from her job with the school district, her household's SNAP benefits would increase effective July 2012.¹⁰ Later that day Ms. H visited the local DPA office and inquired as to why her benefits had not increased effective June 2012.¹¹ She was told that the Division had no record of her advising it of her change in income until June 4, 2012 and that, based on the June 4 notification date, her benefit increase would not take effect until July.¹² Ms. H requested a Fair Hearing on the issue later that day (June 18, 2012).¹³

Ms. H's hearing was held as scheduled on July 23, 2012. The hearing was recorded. Ms. H participated in the hearing by telephone, represented herself, and testified on her own behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone, represented the Division, and testified on its behalf. All testimony and exhibits offered by the parties were admitted into evidence. At the conclusion of the hearing the record was closed and the case became ripe for decision.

⁶ Households participating in SNAP are required to report certain changes in circumstances that affect their eligibility or allotment. See 7 CFR 273.12 and Alaska Food Stamp Manual Section 604-3. Changes can be reported on a change report form, by telephone, letter, or in person. *Id.*

⁷ H hearing testimony.

⁸ H hearing testimony.

⁹ All findings in this paragraph from H hearing testimony.

¹⁰ Ex. 2.4.

¹¹ Ex. 2.5.

¹² Ex. 2.5.

¹³ Exs. 2.6, 2.7.

III. Discussion

The regulation pertinent to this case is federal SNAP regulation 7 CFR 273.12. That regulation, titled "Reporting Requirements," provides in relevant part as follows:

(c)(1) Increase in benefits. (i) For changes which result in an increase in a household's benefits . . . the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a \$30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

Based on 7 CFR 273.12(c)(1)(i), the Division *must* implement a report of change which results in an *increase* in the recipient's benefits by *no later than* the first benefit allotment due 10 days or more after receipt of the report of change. The regulation does not, however, *prohibit* the Division from increasing a recipient's benefits effective with the first allotment due *immediately* after a report of change is received.¹⁴ For example, if the Division receives a report of change which would result in an increase of benefits on May 31st, 7 CFR 273.12(c)(1)(i) gives the Division the *discretionary option or ability* to increase benefits effective June 1st, but it *must* increase benefits no later than July 1st.

The Division has, by policy, chosen to exercise the discretion allowed it by 7 CFR 273.12(c)(1)(i) in the manner most favorable to the recipient. Alaska Food Stamp Manual Section 604-3D(1) provides in relevant part that "[c]hanges that result in increased benefits are effective the first day of the month following the agency's receipt of the report of change . . . ". Based on this policy, if a recipient notifies the Division of a change which would increase the recipient's benefits on May 31st, DPA must increase the recipient's benefits effective June 1st.

Under 7 CFR 273.12(c)(1)(i) and Alaska Food Stamp Manual Section 604-3D(1), the ultimate issue in this case is thus whether or not Ms. H notified the Division of her decrease in income by May 31, 2012. This is a purely factual issue as to which the evidence is basically equivocal. On one hand, Ms. H testified fairly convincingly that she reported her change to the Division during the week of May 21-25, 2012, and most probably on May 23rd. On the other hand, the Division's representative gave credible testimony as to procedures which ensure the accuracy of the Division's electronic records, and the lack of records showing contact from Ms. H during the relevant period prior to June 4, 2012.

¹⁴ Alaska Food Stamp Manual Section 604-3C has the same effect.

In cases (like this one) in which the evidence for both sides is comparable, the burden of proof becomes determinative. In this case, Ms. H bore the burden of proving, by evidence *better* than that of the Division, that she reported her decrease in income by May 31, 2012.¹⁵ The undersigned finds that Ms. H failed to carry that burden.

IV. Conclusion

Ms. H had the burden of proving, by a preponderance of the evidence, that she notified the Division of her decrease in income soon enough to require that her SNAP benefit increase be made effective June 1, 2012. She failed to carry this burden. Accordingly, the Division's decision implementing Ms. H's SNAP benefit increase effective July 1, 2012 is AFFIRMED.

Dated this 27th day of July, 2012.

Signed
Jay Durych
Administrative Law Judge

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 6th day of August, 2012.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge

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

¹⁵ State regulation 2 AAC 64.290, applicable here, provides in relevant part as follows:
(e) Unless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing or made the motion under consideration, and the standard of proof is preponderance of the evidence. To prove a fact by a preponderance of evidence, a party with the burden of proof must show that the fact more likely than not is true.