

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

In the Matter of )  
 )  
 K X ) OAH No. 12-0817-SNA  
 ) Agency Case No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

K X applied for Food Stamp<sup>1</sup> benefits for a two person household on September 13, 2012.<sup>2</sup> The Department of Health and Social Services, Division of Public Assistance (Division) approved her application, but only issued benefits for a one person household.<sup>3</sup> Ms. X requested a hearing.<sup>4</sup>

Ms. X's hearing was held on November 16, 2012. She represented herself and testified on her own behalf. Terri Gagne, a Public Assistance Analyst with the Division, represented the Division.

The Division's decision that Ms. X's Food Stamp application should only be approved for a one person household is AFFIRMED.

**II. Facts**

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

Ms. X has a 2007 felony drug conviction from the State of Washington.<sup>5</sup> She received Food Stamp benefits from the State of Washington through the spring 2012, while living in Washington State.<sup>6</sup> Ms. X and her significant other moved to Alaska in June 2012.<sup>7</sup> On September 13, 2012, Ms. X applied for Food Stamp benefits from the State of Alaska for her two person household, which consisted of Ms. X and her significant other.<sup>8</sup> Her Food Stamp

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<sup>1</sup> Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). However, the program is still commonly referred to as the Food Stamp program.

<sup>2</sup> Exs. 2.0 – 2.6.

<sup>3</sup> Exs. 2.10 – 2.11.

<sup>4</sup> Exs. 4.1 – 4.2.

<sup>5</sup> Exs. 2.1, 2.8.

<sup>6</sup> Exs. 2.1, 2.8; X testimony.

<sup>7</sup> Ex. 2.7.

<sup>8</sup> Exs. 2.0 – 2.6.

application disclosed that she had been convicted of a drug related felony in 2007.<sup>9</sup> She has completed her probation for that conviction.<sup>10</sup>

The Division determined that Ms. X was “disqualified from getting Food Stamps in Alaska because of a prior drug felony conviction” and approved her application for only a one person household, despite there being two people in her household.<sup>11</sup>

### III. Discussion

The issue in this case is whether Ms. X’s Food Stamp application should have been approved for a two person household instead of for a one person household. The reason the Division gave for only approving the application for a one person household was that Ms. X was herself not eligible for benefits due to her felony drug conviction.

Food Stamps is a federal program administered by the State.<sup>12</sup> The Code of Federal Regulations contains the rules for determining whether individuals qualify for Food Stamp benefits. The federal Food Stamp regulations state:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996.<sup>13</sup>

“Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction” may not receive Food Stamp benefits.<sup>14</sup>

Ms. X argued that because she had received Food Stamp benefits from Washington State, she should also be allowed to receive them in Alaska. A state has the ability to adopt exemptions

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<sup>9</sup> Ex. 2.1.

<sup>10</sup> X testimony.

<sup>11</sup> Exs. 2.10 – 2.11.

<sup>12</sup> 7 C.F.R. § 271.4(a).

<sup>13</sup> 7 C.F.R. § 273.11(m) (emphasis in original).

<sup>14</sup> 7 C.F.R. § 273.1(b)(7)(vii).

which allows its residents to receive Food Stamp benefits despite having a felony drug conviction.<sup>15</sup> Alaska, however, does not have an exemption that allows a person with a felony drug conviction to obtain Food Stamp benefits.<sup>16</sup> Alaska also has not limited the length of time during which an applicant can be excluded from receiving Food Stamp benefits due to a felony drug conviction, nor does it allow an exemption for someone who has completed her probation.<sup>17</sup>

Ms. X made the point that persons with non-drug felony convictions are not limited from receiving Food Stamp benefits. This is essentially a facial challenge to the federal regulation on constitutional grounds (violation of the equal protection requirements of the United States Constitution). In the circumstances of this case, where neither the regulation in question nor a virtually identical regulation has previously been ruled unconstitutional by the judicial branch, an executive branch decisionmaker cannot rule on a constitutional challenge that seeks to nullify the regulation.<sup>18</sup> As a result, Ms. X's equal protection argument is noted for the record, but will not be addressed further.

As a purely legal issue, Ms. X is not able to receive Food Stamp benefits in the State of Alaska. This means that even though she applied for benefits for her two person household, her other household member was the only person in her household eligible for Food Stamp benefits.

#### **IV. Decision**

The Division's decision that Ms. X's Food Stamp application should only be approved for a one person household is **AFFIRMED**.

DATED this 21st day of November, 2012.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>15</sup> 7 C.F.R. § 273.1(m).

<sup>16</sup> The Alaska regulations which contain the state options for the Food Stamp program do not contain any exemptions from the federal requirement, under 7 C.F.R. § 273.1(m), that bar a person with a drug felony conviction from receiving Food Stamp benefits. *See* 7 AAC 46.010 *et. seq.*

<sup>17</sup> *See* 7 AAC 46.010 *et. seq.*

<sup>18</sup> *See, e.g., Johnson v. Robinson*, 415 U.S. 361, 368 (1974).

## 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 5<sup>th</sup> day of December, 2012.

By: Signed  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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