

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

In the Matter of:)
)
 E S) OAH No. 12-0922-SNA
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (Division) was correct to terminate Mr. S's Food Stamp benefits issued under the Supplemental Nutrition Assistance Program. The Division terminated Mr. S's benefits, effective November 30, 2012, based on the assertion that his monthly countable income exceeds the Food Stamp program's monthly countable income limit for a one person household. Mr. S's monthly countable income currently exceeds the Food Stamp program's applicable monthly income limit. Accordingly, the Division's November 15, 2012 decision terminating Mr. S's Food Stamp benefits is affirmed.

II. Facts

Mr. S lives alone.¹ He was continuously employed, with the same employer, from 2002 - 2012.² In August 2012 he was forced to resign from his job for medical and personal reasons.³ Since then he has not had enough money to pay his bills (including doctor bills) and to buy enough food to live on.⁴

Mr. S began receiving unemployment insurance benefits in November 2012.⁵ Records from the Alaska Department of Labor and Workforce Development (DOL) indicate that Mr. S receives \$332.00 per week in unemployment benefits; that his first benefit payment was for the week of November 11 - 17, 2012; and that, if he remains unemployed, he will continue to receive these benefits for 24 weeks.⁶ Mr. S's unemployment benefits are currently his sole source of income.⁷

¹ Ex. 2.0. Mr. S is married, but his wife is currently out of the country (hearing testimony at 11:50).
² Ex. 2.0.
³ Ex. 2.0; E S hearing testimony at 11:20 - 11:30.
⁴ E S hearing testimony at 9:25 - 9:45.
⁵ Ex. 2.17.
⁶ Ex. 2.17.
⁷ Exs. 2.0, 2.3.

On November 6, 2012 Mr. S completed, signed, and submitted an application for Food Stamp benefits and participated in an eligibility interview with a Division Eligibility Technician.⁸ At the time of his application for Food Stamps, Mr. S had not yet applied for unemployment benefits and had no income.⁹ On his application Mr. S stated that his recurring expenses consisted of property taxes (\$500.00 per year or about \$42.00 per month), and charges for electric and telephone service in an unspecified amount.¹⁰ The next day (November 7, 2012) the Division notified Mr. S that he had been found eligible for Food Stamp benefits and that he would receive \$199.00 in benefits for the month of November 2012.¹¹

One week later, on November 14, 2012, Mr. S notified the Division that he had begun to receive unemployment benefits.¹² The Division then recalculated Mr. S's monthly income to determine whether he remained eligible to receive Food Stamp benefits.¹³ First, the Division multiplied Mr. S's weekly UIB of \$332.00 by 4.3 (because there are an average of 4.3 weeks per month)¹⁴ to arrive at monthly gross income of \$1,427.60.¹⁵ This amount was \$86.40 less than the \$1,514.00 gross income limit for a one person household. Accordingly, the Division proceeded to subtract applicable deductions to determine Mr. S's countable or net income.¹⁶ The Division subtracted the standard deduction of \$256.00 from Mr. S's gross income of \$1,427.60, resulting in monthly countable or net income of \$1,171.60.¹⁷ The Division concluded that Mr. S's monthly countable income of \$1,171.60 exceeded the monthly countable income limit for a household of one (\$1,165.00) by \$6.60.¹⁸

⁸ Exs. 2.0 - 2.9.

⁹ Ex. 2.3.

¹⁰ Ex. 2.6.

¹¹ Ex. 2.15.

¹² Ex. 2.16. Mr. S testified that he receives unemployment benefits, in the net amount of \$593.00, every two weeks.

¹³ Exs. 2.18, 2.19.

¹⁴ Use of the conversion factor of 4.3 weeks per month is required by 7 CFR § 273.10(c)(2)(i).

¹⁵ Ex. 2.18. Based on records provided by the Alaska Department of Labor and Workforce Development (DOL) (Ex. 2.17), Mr. S is receiving \$664.00 every two weeks. However, Mr. S testified that the amount of the check he receives every two weeks is \$593.00. Unemployment benefits are taxable. *See* 26 U.S.C. § 85.

Accordingly, the \$71.00 difference between the gross amount reflected in DOL's records, and the net amount of the checks received by Mr. S would appear to be federal income taxes withheld by DOL.

¹⁶ Ex. 2.18; Terri Gagne hearing testimony.

¹⁷ *Id.* The Division also applied a monthly property tax deduction of \$27.28 and a monthly heating fuel deduction of \$338.00, but because of the way in which the Food Stamp program calculates countable/net income, these deductions did not reduce Mr. S's countable income.

¹⁸ Ex. 2.19; Terri Gagne hearing testimony.

On November 15, 2012 the Division notified Mr. S that his Food Stamp benefits would be terminated after November 30, 2012 because his monthly countable income exceeded the Food Stamp program's applicable countable income limit.¹⁹ Mr. S requested a hearing on November 27, 2012.²⁰ The hearing was held on December 14, 2012. Mr. S participated in the hearing by phone, represented himself, and testified on his own behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone, represented the Division, and testified on its behalf. The record was closed at the end of the hearing.

III. Discussion

The Food Stamp program is a federal program administered by the states; its statutes are codified at 7 U.S.C. Sections 2011 – 2029. The United States Department of Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp program; those regulations are codified primarily at 7 C.F.R. Sections 271-274. The Department of Health and Social Services (DHSS) administers the Food Stamp program in Alaska. DHSS has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

Under 7 C.F.R. § 273.9, a household which (as here) does not contain an elderly or disabled member is required to satisfy both gross income eligibility standards and net income eligibility standards in order to qualify for Food Stamp benefits. These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. 9902(2) and are adjusted periodically for inflation. The current income limits are published in the Division's Food Stamp Program Manual at Addendum 4.²¹ During the period October 2012 through September 2013 the income limits for a one person household are \$1,514.00 (gross) and \$1,165.00 (net).²²

The parties agreed at hearing that there are no disputed factual issues to be decided in this case. The only issue is whether the Division correctly applied the relevant Food Stamp regulations. The procedures for determining gross and countable/net income, specified by regulation, are as follows:²³

¹⁹ Ex. 2.20.

²⁰ Exs. 2.26, 2.27.

²¹ Ex. 15.0.

²² *Id.*

²³ See 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska's Food Stamp Manual at § 603-2.

1. The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned. Here, Mr. S had no earned income; his gross unearned income was \$1,427.60.
2. Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household's size (set forth in Food Stamp Manual at Addendum 4). The current gross monthly income limit for a household of one is \$1,514.00.²⁴ Mr. S's monthly gross income of \$1,427.60 is less than the applicable maximum gross income limit of \$1,514.00. Accordingly, Mr. S passed the "gross income test," and the Division proceeded to the determination of his net income.
3. The Division then subtracts the standard deduction for the household size from the total net income.²⁵ The standard deduction amounts are set forth in the Food Stamp Manual at Addendum 4.²⁶ The standard deduction for a one person household is \$256.00.²⁷ Subtracting \$256.00 from Mr. S's \$1,427.60 in gross income results in net or countable income of \$1,171.60.²⁸
4. The Division then compares the net income determined above (here \$1,171.60) to the maximum net monthly income standard for the appropriate household size (here \$1,165.00).²⁹ Only those households with net monthly income not exceeding the maximum limit, and which meet the other eligibility requirements, are eligible to participate in the Food Stamp Program.

In this case, the Division properly found that Mr. S's net income was \$6.60 more than the applicable maximum net income limit. This result may seem harsh given the small amount by which Mr. S's countable income exceeds the maximum net income limit. However, there are no provisions in the state or federal Food Stamp regulations for the granting of exceptions to the eligibility rules. Accordingly, the Division correctly concluded that Mr. S was no longer financially eligible to receive Food Stamp benefits.³⁰

²⁴ Ex. 15.0.

²⁵ If Mr. S had earned income, the Division would first normally apply a 20% earned income deduction (Ex. 2.18). However, Mr. S currently has no earned income, so this step was necessarily skipped in this case.

²⁶ Ex. 15.0.

²⁷ *Id.*

²⁸ The Division also applied a property tax deduction of \$27.28 and a heating fuel deduction of \$338.00 (Ex. 2.18). However, based on the formula used for calculating deductions, Mr. S's total itemized deductions would have had to exceed \$585.80 before they would actually reduce his net income (Ex. 2.18).

²⁹ Ex. 2.19.

³⁰ *See Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

IV. Conclusion

Mr. S's net income, as calculated under the applicable Food Stamp regulations, is \$6.60 greater than the Alaska Food Stamp Program's countable or net monthly income limit for a one person household. Mr. S is therefore no longer financially eligible for Food Stamp benefits. Accordingly, the Division's decision closing Mr. S's Food Stamp case and terminating his Food Stamp benefits is affirmed.

Dated this 27th day of December, 2012.

Signed _____
Jay Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 7th day of January, 2013.

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

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