

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

In the Matter of:)
)
 T X) OAH No. 13-0057-SNA
) DPA Case No.
 _____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (Division) was correct to deny T X's recertification application for Food Stamp benefits issued under the Supplemental Nutrition Assistance Program. The Division denied Ms. X's recertification application based on the assertion that her household's gross monthly income exceeds the Food Stamp program's gross monthly income limit for a four-person household. Based on the evidence presented, the Division's January 7, 2013 decision denying Ms. X's Food Stamp recertification application is affirmed.

II. Facts

Ms. X has a household of four, consisting of herself, her husband, and two minor children.¹ She works full time.² She also receives child support.³

Ms. X's household was receiving Food Stamp benefits in November 2012.⁴ On December 24, 2012, Ms. X submitted a renewal (recertification) application for Food Stamp benefits.⁵ Submitted with her application were pay statements for the periods October 16 - October 31, November 1 - November 15, and November 16 - November 30, 2012.⁶ These pay statements reported gross income (total income prior to any deductions) of \$1,352.00, \$1,352.00, and \$1,294.81, respectively.⁷ Based on this, the Division calculated that Ms. X's average monthly income from employment was \$2,657.88.⁸

¹ Exs. 1, 2.0.

² Ex. 2.1.

³ Ex. 2.2.

⁴ Exs. 1, 2.0.

⁵ Exs. 2.0 - 2.5.

⁶ Exs. 2.8 - 2.10.

⁷ Exs. 2.8 - 2.10.

⁸ Ex. 2.6. The actual average monthly gross income figure was about \$9.00 greater than the figure the Division calculated (\$2,665.87). This difference, which favors Ms. X, resulted from the Division's policy of not including earnings disbursed directly to legal trusts (*see* Ex. 2.6, Alaska Food Stamp Manual at Section 602-3D).

The Division also calculated Ms. X's average income from child support.⁹ The Division based its average on information obtained from the Child Support Services Division.¹⁰ This information showed average monthly child support of \$501.28 per month over the two-year period from January 6, 2011 through January 3, 2013.¹¹ However, the eligibility technician who calculated Ms. X's child support income believed that this figure was not representative of Ms. X's current income from child support, and averaged only the past two months' payments.¹² Based on this, the Division calculated Ms. X's average monthly income from child support as \$547.20.¹³ The Division then added Ms. X's average employment income of \$2,657.88 per month to Ms. X's average child support income of \$547.20 per month, and concluded that Ms. X's average gross monthly income was \$3,205.08.¹⁴ Using this figure, the Division then concluded that Ms. X's gross monthly income exceeded the Food Stamp program's gross income limit for a household of four (\$3,123.00) by \$82.08.¹⁵

On January 7, 2013, the Division notified Ms. X that her Food Stamp recertification application had been denied because her monthly income exceeded the Food Stamp program's applicable monthly income limit.¹⁶ Ms. X requested a hearing on January 14, 2013.¹⁷ Ms. X's hearing was held on February 4, 2013. Ms. X attended the hearing in person, represented herself, and testified on her own behalf. Ms. X's husband also attended the hearing but did not testify. Public Assistance Analyst Terri Gagne participated in the hearing by telephone and represented the Division. 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. §§ 2011 – 2029. The United States Department of Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp program, which are codified primarily at 7 C.F.R. §§ 271-274. The Department of Health and Social Services (DHHS) administers the Food Stamp program in Alaska and has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

⁹ Ex. 2.6.

¹⁰ Ex. 2.7.

¹¹ Ex. 2.7.

¹² Ex. 2.7; *see also* discussion at Section III, below.

¹³ Ex. 2.7.

¹⁴ Ex. 2.11; Terri Gagne hearing testimony.

¹⁵ Ex. 2.11; Terri Gagne hearing testimony.

¹⁶ Ex. 2.13.

¹⁷ Exs. 2.15 - 2.17.

A household, which (as here) does not contain an elderly or disabled member, is required to satisfy both a gross income eligibility standard and a net income eligibility standard in order to qualify for Food Stamp benefits.¹⁸ 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.¹⁹ The current income limits are published in the Division's Food Stamp Program Manual at Addendum 4.²⁰ For the period from October 2012 through September 2013, the income limits for a four-person household are \$3,123.00 (gross) and \$2,402.00 (net).²¹

Ms. X's income is not in dispute, so the only issue in this case is whether the Division correctly applied the relevant Food Stamp regulations. The process for determining gross income, specified by the Food Stamp regulations, has two steps.²²

The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned. Here, Ms. X had gross monthly earned income from employment of \$2,665.87, and gross monthly unearned income from child support of \$501.28,²³ for total gross monthly income of \$3,167.15.

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 four is \$3,123.00.²⁴ Ms. X's monthly gross income of \$3,167.15 is \$44.15 greater than the applicable gross income limit of \$3,123.00. Ms. X's household thus fails the gross income test, and it is therefore unnecessary to proceed to the net income test.

Ms. X's primary complaint concerning the Division's determination is that it does not seem fair to her to utilize a *gross income test* for Food Stamp benefits given that *only net income* is actually available to a household to live on. However, the federal Food Stamp regulations explicitly define "household income" as "all income from whatever source" except those sources explicitly

¹⁸ 7 C.F.R. § 273.9(a).

¹⁹ 7 C.F.R. § 273.9(a).

²⁰ Ex. 11.

²¹ *Id.*

²² 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.

²³ The Division determined that Ms. X's average monthly income from child support was about \$46.00 higher (\$547.20) by looking solely at the past one or two months of child support received by Ms. X (Exs. 2.6, 2.7). However, the child support records (Ex. 2.7) show a significant fluctuation in the amount of child support received over the past two years, and even over the past two months. Where (as here) income fluctuates to the extent that a 30 day period alone cannot provide an accurate indication of anticipated income, income should be averaged over a longer period of time, to provide a more accurate indication of future income, pursuant to 7 C.F.R. § 273.10(c).

²⁴ Ex. 11.

excluded.²⁵ The income counted by the Division in this case is not within any of the categories specifically excluded.²⁶ The Division was thus required by federal regulation to include the gross income at issue in making its financial eligibility determination.²⁷

Ms. X also testified that her household has a great need for Food Stamp benefits, and this need was not contested by the Division. Again, however, the Division and the Commissioner are required to follow the Food Stamp program's income eligibility regulations as currently written. To provide Food Stamp eligibility for someone with Ms. X's current income level would require amendments to existing law. Those changes cannot be made through the hearing process.

IV. Conclusion

Only those households with gross monthly income that does not exceed the maximum limit, and which meet the other eligibility requirements, are eligible to participate in the Food Stamp program. The Division properly found that Ms. X's gross monthly income exceeds the Food Stamp program's gross monthly income limit for her household's size. Accordingly, the Division correctly concluded that Ms. X was no longer financially eligible to receive Food Stamp benefits. The Division's decision denying Ms. X's Food Stamp recertification application is therefore affirmed.

Dated this 11th day of February, 2013.

Signed _____
Jay Durych
Administrative Law Judge

²⁵ 7 C.F.R. § 273.9(b). The regulation further states that "[e]arned income shall include . . . [a]ll wages and salaries of an employee."

²⁶ 7 C.F.R. § 273.9(c).

²⁷ This result may seem harsh given the small amount by which Ms. X's household's gross income exceeds the applicable gross income limit. However, there are no provisions in the state or federal Food Stamp regulations for the granting of exceptions to these eligibility rules, and the Division is compelled to follow its regulations just as the public is bound by them. See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

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 20th day of February, 2013.

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

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