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

)

In the Matter of

FΗ

OAH No. 13-0169-SNA Agency No.

## DECISION

### I. Introduction

F H challenged the Division of Public Assistance's denial of her Supplemental Nutrition Assistance Program (SNAP) (commonly referred to as Food Stamps<sup>1</sup>) application.

Eligibility determinations are assessed as directed by applicable regulations and the division's manual. Ms. H did not establish that the division misapplied the program's rules and regulations. Therefore the division's decision is affirmed.

#### II. Facts

The material facts are not in dispute. There are a total of eight people in the H household: Ms. H, her husband, their three children, and Ms. H's three nephews. Ms. H is requesting the benefits for her nephews, not her husband or her three children. Ms. H explained she did not think it was fair that "they made us responsible for those kids. For us to provide food and living expenses" and then be denied benefits that would help her provide for the boys.<sup>2</sup>

Ms. H is disabled and does not work. In December 2012, when she applied for benefits, Ms. H received the following monthly assistance: Adult Public Assistance, \$430; Temporary Assistance, \$656; and Social Security Disability, \$835. Two of her children are under the age of 18. The minor children each receive social security in the amount of \$98 per month.

Ms. H's husband is categorized for purposes of food stamps as an ineligible alien.<sup>3</sup> The income information provided was for the end of November and the month of December.<sup>4</sup> When adjusted to reflect that Mr. H is paid every two weeks, these checks revealed that Mr. H's gross wages averaged \$4,107.68 per month. Ms. H agrees that this amount accurately reflects his holiday earnings. She testified that his checks reflected the additional hours he worked during the holidays and questioned whether Mr. H actually earned this amount during the rest of the

<sup>&</sup>lt;sup>1</sup> Congress renamed the Food Stamp program in 2008. Food, Conservation, and Energy Act of 2008, Public Law No. 110-246, §4001. The term "Food Stamp" is still used in regulations, manuals, and forms.

<sup>&</sup>lt;sup>2</sup> Exh. 2.3 - 2.8; Testimony of E. H. Ms. H did not identify who "they" were or how she had been "made" responsible.

<sup>&</sup>lt;sup>3</sup> Mr. H's status as an ineligible alien is based on the representations of the parties and not a finding by this tribunal.

year. Ms. H also noted, that effective January 2013, she would no longer receive \$430 in Adult Public Assistance benefits.

The division denied the application because the household income exceeded the maximum allowable net income for a seven person household.<sup>5</sup> This was true even when the income was adjusted to reflect that, effective January 2013, Ms. H no longer received \$430 in Adult Public Assistance.<sup>6</sup>

#### III. Discussion

Food Stamps is a federal program administered by the State.<sup>7</sup> In Alaska, the Division follows the rules contained in the Code of Federal Regulations (C.F.R.) when determining both Food Stamp eligibility and benefit amounts.<sup>8</sup> Food Stamp benefit amounts are calculated based upon a household's monthly income, after allowable deductions are taken from the household's gross monthly income, and the number of eligible people living in the household.<sup>9</sup>

Ms. H sought the benefit for her three nephews who were living with Ms. H's family. Her application was denied because her household income exceeded the maximum household net income for a household of her size. This appeal followed. Ms. H sought to have her husband's income excluded from the household income calculation because the nephews were not his responsibility. She also believed that his income should not be included because his alien status rendered him ineligible for benefits, and in the alternative, to the extent his income should be included it was overstated.

A household includes individuals who live together and customarily purchase food and prepare meals together.<sup>10</sup> It also includes spouses and children under the age of 18 who live with, and are under the parental control of a nonparent household member, regardless of whether they purchase and prepare meals together.<sup>11</sup> The Division was required to count all of the children, both Ms. H's children and the three nephews, as part of the household. The H household would therefore normally consist of eight persons, however, Mr. H is not eligible for

<sup>&</sup>lt;sup>5</sup> Exh. 2.29.

<sup>&</sup>lt;sup>6</sup> If the H household's total adjusted income (TAI) is reduced by \$430, the new monthly income is \$3,864.37. This amount exceeds the maximum allowable income by \$224.37. However, if Mr. H was eligible for food stamps then the TAI would not exceed the maximum for a family of eight, \$4,052.

 $<sup>7</sup> C.F.R. \S 271.4(a).$ 

<sup>&</sup>lt;sup>8</sup> 7 AAC 46.010.

<sup>&</sup>lt;sup>9</sup> 7 C.F.R. § 273.9(b) and (d); 7 C.F.R 273.10(e). <sup>10</sup> 7 C.F.R (273.10)

<sup>&</sup>lt;sup>10</sup> 7 C.F.R. § 273.1(a)(3). <sup>11</sup> 7 C F R. § 272.1(b)

<sup>&</sup>lt;sup>11</sup> 7 C.F.R. § 273.1(b).

Food Stamp benefits because of his "ineligible alien" status.<sup>12</sup> Therefore, the division correctly counted that there were seven household members: Ms. H, her three children, and the three nephews, when determining the "household" size for purposes of food stamp eligibility and benefit amount.

Household income means all income from whatever source less allowable deductions.<sup>13</sup> When, as here, the household income includes income from an ineligible alien, that income is still counted as part of the household's total income.<sup>14</sup> A seven person household may not make more than \$3,640 a month in income, after deductions are applied, and financially qualify for benefits.<sup>15</sup> In this circumstance Mr. H's income is counted as income to the household less Mr. H's pro rata share as determined under 7 C.F.R. 273.11(c).<sup>16</sup> That total amount is \$4,992.37.<sup>17</sup>

It is undisputed that the division's calculation used income and expense information for Ms. H's household at the time of her application and this amount exceeds the maximum for a household of seven persons. If Ms. H's household situation has changed, for example, if her unearned income is reduced or if Mr. H becomes eligible, nothing in this decision precludes Ms. H from reapplying

## IV. Conclusion

The division's conclusion that Ms. H's application for food stamps should be denied is affirmed.

DATED this 13<sup>th</sup> of March, 2013.

By:

Signed Rebecca L. Pauli Administrative Law Judge

<sup>12</sup> Some persons who are not citizens of the United States are not eligible for Food Stamp benefits. *See* 7 C.F.R. §§ 273.1(b)(7)(i), 273.4.

<sup>&</sup>lt;sup>13</sup> 7 C.F.R. § 273.9(b).

<sup>&</sup>lt;sup>14</sup> 7 C.F.R. § 273.11(c)(3).

<sup>&</sup>lt;sup>15</sup> Alaska Food Stamp Manual Addendum 4.

<sup>&</sup>lt;sup>16</sup> 7 C.F.R. § 273.9(b)(3).

<sup>&</sup>lt;sup>17</sup> See Exhibits 2.24 and 2.25 for the division's calculations.

# Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27<sup>th</sup> day of March, 2013.

By:

<u>Signed</u> Signature <u>Rebecca L. Pauli</u> Name <u>Administrative Law Judge</u> Title

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