

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

In the Matter of)
)
 J Q)
_____)

OAH No. 13-0299-SNA
Agency No.

DECISION

I. Introduction

The Division of Public Assistance granted J Q’s request for food stamps for herself and her children beginning March 2013, but denied her request for food stamps for January and February 2013.¹ During January and February, a food stamp benefit for her and her children had already been allocated to her former boyfriend’s household. The Division did not learn that Ms. Q and her children had left their previous household in time to change the distribution of the January and February benefits. Ms. Q requested a fair hearing concerning the denial of the benefit for January and February. A telephonic hearing was held on March 26, 2013, at which Jeff Miller represented the Division, and Ms. Q represented herself. Because the Division cannot award a benefit to the same person in two different households, the Division’s decision is affirmed.

II. Facts

J Q is a working mother of two-year-old twin daughters. In December 2012, Ms. Q and her children moved into the home of Ms. Q’s boyfriend, H D.² On January 10, 2013, Mr. D asked the Division to increase his food stamps to the benefit level for a household of four.³ The next day the Division mailed a notice to Mr. D, approving his request and calculating the benefit amount for January and February based on a household of four.⁴ Mr. D’s electronic benefit transfer (EBT) card was updated to reflect the new benefit amount.

¹ The Food Stamp Act was amended in 2008, and the Food Stamp program was renamed the “Supplemental Nutrition Assistance Program.” *See Allen v. State, Dep’t of Health and Soc. Serv.*, 203 P.3d 1155, 1158 n.1 (Alaska 2009) (citing Pub.L. No. 110–234, 122 Stat 923, 1092 (May 22, 2008)). This decision will use the familiar term “food stamps” because that is the term used by the Division, the regulations, and the public.

² Division’s Fair Hearing Position Statement at 1.

³ Division’s Exhibit 1.

⁴ Division’s Exhibit 2 at 2-2.1. The benefit for February (\$571) was less than the benefit for January (\$674) because Ms. Q was working full time and she lived in household the entire month of February, which meant that her entire monthly income was included in the calculation of February benefits. *Id.* at 2.1

Although some of the food stamp benefit was for her benefit, Ms. Q did not have an EBT card, and did not have any way to access the benefit herself. Ms. Q testified, however, that she knew and approved of Mr. D's application for benefits on her behalf.⁵ She stated that she knew that only he would have access to the benefit, and she was comfortable with this arrangement because she was happy to have him take care of all the problems, as long as she was living in the house and receiving some of the benefit.⁶

On January 23, 2013, however, one of Mr. D's roommates evicted her and her two children from Mr. D's house.⁷ Ms. Q testified at the hearing that the eviction occurred in the middle of the night.⁸ She said that she and her children had no place to go, and the women's shelter refused to admit them, saying that Ms. Q and her children were not victims of abuse.⁹

Ms. Q further testified that when she did find a place to live, she had to struggle to find the resources to feed her children.¹⁰ Her paycheck went toward rent and other expenses, and for the month of February, they subsisted off handouts and WIC, which meant a lot of noodles and rice.¹¹ She testified that she asked Mr. D for her share of the February food stamp benefit, but he refused, saying it was issued to him.¹² Ms. Q testified that these conversations took place in emails or Facebook postings, and that she could supplement the record with copies of Mr. D's refusal to share the February benefit.¹³ The record was held open for two weeks so she could submit copies of all relevant emails or Facebook postings, but she did not do so.

On January 28, 2013, Ms. Q informed the Division that she had moved out of Mr. D's household, and she filled out an application for food stamps for her household, which included her two children and her mother.¹⁴ The Division interviewed Ms. Q on January 31, 2013, and confirmed that Ms. Q's household met income eligibility requirements.¹⁵ On February 1, the Division sent a notice to Ms. Q, saying that Ms. Q's household would be eligible for \$47 of food

⁵ Q testimony.

⁶ *Id.*

⁷ Exhibit 3.1; Q testimony.

⁸ Q testimony.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* Ms. Q also said that she had contacted the Division by email to inform it that Mr. D's household included his roommates, who shared in the benefit, so he should not be receiving food stamps as a single individual, and that the Division had responded that it would look into the situation.

¹⁴ Division Exhibit 3.

¹⁵ Division Exhibit 7.

stamp benefits for January, \$371 for February, and \$751 in March.¹⁶ The January and February benefit amounts were based only on the eligibility of Ms. Q's mother.¹⁷ The Division determined that it could not provide any benefit in January or February based on the eligibility of Ms. Q and her two children, because benefits based on their eligibility were already being paid to Mr. D's household for those two months, and the regulations prohibited a person from being in more than one household for purposes of food stamp benefits.¹⁸

The Division also determined that it could not change Mr. D's benefit for February because it could not give him notice of an adverse action in time to affect the distribution of benefits.¹⁹ On January 30, 2013, the Division sent a notice to Mr. D that his March benefit would be reduced to \$371.00 after Ms. Q and her children were removed from his food stamp case.²⁰

On February 19, 2013, Ms. Q filled out a request for a fair hearing, which was received by the Division on March 4.²¹ In this request, she explained why she thought the Division was wrong:

My ex-boy friend received my daughters & [my] benefits. January 1 he received his \$300 something. January 21 he received over \$600. February 1 he received over \$500. He is 1 adult w/ roommates and received over \$1400. My daughters, mother & I received est. \$300. We have rent & bills & children to pay for & support. He has no bills & still he got all our benefits.²²

On March 6, 2013, after reviewing Ms. Q's protest, the Division issued Ms. Q an EBT card to access the food stamp benefit given to Mr. D.²³ Ms. Q testified, however, that she did not know Mr. D's PIN, so she was not able to use the EBT card to gain access to the February benefits.²⁴ Her hearing was held on March 26, 2013. Following the hearing, the record was held open until April 8, 2013, to provide Ms. Q an opportunity to supplement the record and for the Division to respond to inquiries about possible recoupment of benefits from Mr. D.

¹⁶ Division Exhibit 8-8.1.

¹⁷ *Id.*

¹⁸ Division Exhibit 9.

¹⁹ Division Exhibit 4.

²⁰ Division Exhibit 5.

²¹ Division Exhibit 9.1.

²² Division Exhibit 9.1.

²³ Division Exhibit 9.

²⁴ Q testimony.

III. Discussion

The only issue in this case is whether the Division should have allocated to Ms. Q's household food stamp benefits for Ms. Q and her children for January 28-31 and all of February. Because the Food Stamp program is a federal program, the Division must comply with the federal regulations that govern the program.²⁵

Under federal law, “[n]o individual may participate [in the food stamp program] as a member of more than one household or in more than one project area, in any month.”²⁶ Here, for January 28-31, and for all of February, Ms. Q and her children were participating in the Food Stamp program as members of Mr. D's household. Therefore, during January and February, the Division could not award a food stamp benefit for Ms. Q and her children as members of Ms. Q's household.

Under these facts, this result is unfortunate. Ms. Q is exactly the person whom the law was intended to help. She is a working mother who must care for two children. She was turned out on the street in the middle of the night. During the time in question, she needed assistance in purchasing food. As the Alaska Supreme Court has said, “[w]here the recipient has a ‘brutal need’ for the benefit at issue, as is the case with food stamps, ‘courts have traditionally required that agencies go to greater lengths—incurring higher costs and accepting inconveniences—to reduce the risk of error.’”²⁷ Therefore, here, additional inquiry is needed to determine whether the agency should have gone to greater lengths on Ms. Q's behalf.

Two issues deserve further scrutiny. First, should the agency have acted more quickly to remove Ms. Q and her children from Mr. D's household and then transfer the benefit to Ms. Q's household? Second, should the agency now begin a recoupment process, to recoup any benefit intended for Ms. Q and her children that was awarded to Mr. D, and then transfer that benefit to Ms. Q and her children?

On the question of whether the Division should have acted more quickly to change Mr. D's benefit amount, the Division had to give Mr. D notice before it could reduce his benefit.²⁸ The Division treats each month as a benefit period, and it would not reduce a person's benefit for

²⁵ See, e.g., *Allen*, 203 P.3d at 1162 (holding that state agency must comply with federal food stamp requirement to recoup overpayments).

²⁶ 7 C.F.R. § 273.3.

²⁷ *Allen*, 203 P.3d at 1167 (quoting *Baker v. State, Dep't of Health & Soc. Servs.*, 191 P.3d 1005, 1010 (Alaska 2008)).

²⁸ 7 C.F.R. § 273.13(a) (state must “provide the household timely and adequate notice before the adverse action is taken”).

a month unless it can give that person notice 10 days in advance. Here, the Division did not learn that Ms. Q had left Mr. D's household until January 28th. The Division did not have time to notify Mr. D of any benefit reduction before the February benefit was allocated to Mr. D. Therefore, the Division did not make a mistake when it allocated the full household benefit to Mr. D for the month of February.

With regard to whether the Division should recoup the benefit from Mr. D that was allocated to him on behalf of Ms. Q and her children, the Division was asked at the hearing whether it could undertake such a recoupment. The concept was that if these payments were recouped, then Ms. Q and her children would not have participated as members of Mr. D's household for January 28-31 and February 2013, and no barrier would exist to prevent them from receiving benefits as part of Ms. Q's household for that time period. The Division agreed to research the issue, and then provide a supplemental filing.

In its supplemental filing, the Division stated that it would not attempt to recoup any allocation made to Mr. D because Mr. D did not violate any regulations, and it had no basis to process an overpayment.²⁹ In this situation, unless Mr. D voluntarily agreed to return the benefit, the Division would have a hard time establishing that Mr. D received benefits to which he was not entitled. On this record, the Division is not required to take additional action.

Moreover, any legal action the Division could have taken to change the situation and make Ms. Q eligible in her own household would inevitably have been too late to help during Ms. Q's critical time of need. Getting Ms. Q access to benefits during the time of crisis would be much better than trying to recoup and redistribute benefits months later. Here, the Division attempted to do the right thing by issuing Ms. Q her own EBT card so that she could access the benefit herself.³⁰ Given the requirements of the federal law that prohibit awarding benefits to a person in two different households in one month, the division's approach is the correct approach. Therefore, the denial of additional benefits for Ms. Q and her children for her own household during the time that they were participating in Mr. D's household is affirmed.

²⁹ Letter from Jeff Miller to J Q (March 29, 2013). Recoupment can occur even without a violation, but only if the Division can establish an overpayment. 7 C.F.R. § 273.18 (defining a "claim" to include inadvertent household error or agency error).

³⁰ Although here the issuance of the EBT was after the crisis had passed, and ineffective because Ms. Q did not have Mr. D's PIN, it was the correct process. If similar cases arise in the future, this process can be made to be more effective.

IV. Conclusion

A person cannot participate in the Food Stamp program as a member of more than one household in any one month. Because Ms. Q and her children participated in the Food Stamp program during January and February 2013 as part of Mr. D's household, they could not also participate as part of their own household. Therefore, the Division's denial of benefits to Ms. Q's household for January and February 2013 is affirmed.

DATED this 12th day of April, 2013.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, 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 Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of April, 2013.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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