

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

In the Matter of:)
)
 B V) OAH No. 13-0422-SNA
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether B V and his roommate M N should be treated as a single household, or as two separate households, for purposes of the Food Stamp program.¹ The State of Alaska Division of Public Assistance (DPA or Division) determined that Mr. V and Ms. N constitute a single household for Food Stamp purposes because they do not customarily purchase their food and prepare meals for home consumption separate and apart from each other. Accordingly, the Division closed Mr. V's Food Stamp case and added him to Ms. N's Food Stamp case. Mr. V requested a hearing on the issue.

This decision finds that while the testimony of Mr. V and the four witnesses called by him is credible in some respects, the Division's witness and its records are equally credible. Because the law places the burden of proof in this case on Mr. V, he is required to prove that it is *more likely than not* that his factual assertions are true. Where (as here) the evidence is equivocal and both parties' evidence is equally credible, the party bearing the burden of proof must lose. Accordingly, based on the evidence, the Division was correct to determine that Mr. V and Ms. N have a single household for purposes of the Food Stamp program. The Division's decision is therefore affirmed.

II. Facts

A. Uncontested Facts and Procedural History

Mr. V lives in an apartment with M N.² Mr. V is not currently employed; he was receiving unemployment insurance benefits, but those ended prior to January 15, 2013.³ Ms. N's only sources of income are her monthly Adult Public Assistance payments of \$362.00, her Social Security

¹ Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program ("SNAP"). However, the program is still commonly known as the Food Stamp program, and so this decision also refers to the program as the Food Stamp program.

² Ex. 2.0; hearing testimony of Mr. V and Ms. N.

³ Ex. 2.1; B V hearing testimony.

disability payments of \$514.00, her Supplemental Security Income payments of \$216.00, and periodic dividends from two native corporations.⁴

Mr. V has received Food Stamp benefits, through his own case, since October 2011.⁵ Ms. N has also previously received Food Stamp benefits through her own case.⁶

On December 31, 2012 Ms. N submitted a Food Stamp recertification application to renew her benefits.⁷ Her application stated that Mr. V was living with her and that they shared payment of the rent and utilities.⁸ At one place in the application she described Mr. V as a "friend;" in another place she described him as a "cotentant."⁹ On January 31, 2013 the Division closed Mr. V's case and added him to Ms. N's case.¹⁰ On March 20, 2013 the Division notified Mr. V that it had closed his case, and added him to Ms. N's case, effective February 1, 2013.¹¹ On April 3, 2013 the Division notified Ms. N that, as a result of her new Social Security disability income, and the addition of Mr. V to her case, her Food Stamp benefits would decrease from \$285.00 per month to \$188.00 per month beginning in April 2013.¹²

Mr. V requested a hearing to contest the Division's consolidation of the two Food Stamp cases on March 29, 2013.¹³ Mr. V's hearing was held on May 28 and June 28, 2013. Mr. V participated in the hearing by phone, represented himself, and testified on his own behalf. M N, Z N, T O, and R S also participated by phone and testified on Mr. V's behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone and represented the Division. DPA eligibility technician Teresa Komakhuk testified by phone on the Division's behalf. The record closed at the end of the hearing.

B. Contested Facts

Mr. V testified at hearing that he and Ms. N were a couple "back in the day," but that was "many years back." He stated they now live together only because they cannot afford the expense of living separately. He stated that they purchase and prepare their food separately.

⁴ Exs. 2.1, 2.7.

⁵ Ex. 1.

⁶ Ex. 2.2.

⁷ Exs. 2.2 - 2.5.

⁸ Exs. 2.2, 2.4.

⁹ Exs. 2.2, 2.4.

¹⁰ Ex. 2.0.

¹¹ Ex. 2.9. However, both federal Food Stamp regulations, and Alaska's "Fair Hearings" regulations, require that the Division provide notice of adverse action to a recipient *prior* to taking the proposed action. Accordingly, because the Division did not notify Mr. V of the closure of his case until March 20, 2013, it cannot make the closure of his case effective prior to March 31, 2013. See 7 CFR § 273.13; 7 AAC 49.060.

¹² Exs. 2.7, 2.8.

¹³ Ex. 2.10.

Ms. N testified at hearing that she and Mr. V had known each other for 15 - 20 years, but that she never told the Division that she was Mr. V's girlfriend. She and Mr. V have lived together in low-income housing for about two years, but he sleeps in his own bedroom and she sleeps in the living room. Her rent is about \$230.00 per month and her electric bill is about \$100.00 per month, and they split those expenses. He is an authorized signer on her bank account, but only because she needs assistance managing her finances. They shop separately and prepare and eat their food separately. He has no income; she does not know how he buys his food. He keeps his perishable food in a small refrigerator in his room; she keeps hers in the kitchen refrigerator.

R S testified at hearing that he is a friend of Mr. V and Ms. N and has known them for 10 - 15 years. Mr. V and Ms. N were formerly a couple but "as far as he knows" are now just roommates. He stated they sleep in different areas, eat different food, and prepare their food separately. However, he also stated that on one occasion he came over for dinner and the two prepared chicken using the stove in the kitchen.

T O testified at hearing that she is Ms. N's daughter. She stated that Mr. V and Ms. N were formerly a couple but that now they are just room-mates. They sleep in separate rooms. She goes grocery shopping with her mom so she knows that the two purchase their food separately. She has seen her mother prepare her food separately.

Z N testified at hearing that she is M N's daughter, and that Mr. V and her mother sleep separately, purchase their food separately, and eat at different times.

Teresa Komakhuk testified at hearing that she has been an eligibility technician with the Division for almost 18 years. She is the person who consolidated Mr. V's Food Stamp case with Ms. N's Food Stamp case. On March 19, 2013 she contacted Mr. V's landlord and was told that Mr. V and Ms. N were a "couple" and had lived together for 21 years.¹⁴ She testified that neither Mr. V nor Ms. N initially objected to the consolidation of their cases, and that it only became an issue when Ms. N's Food Stamp benefits decreased as a result of her receipt of new Social Security disability benefits.

T O, Z N, and R S each provided letters stating that Mr. V and Ms. N do not sleep together, purchase food together, or eat together.¹⁵

Mr. V provided a photograph of his room showing a bed, mini refrigerator, microwave oven, coffee pot, and what appears to be a bin containing groceries.¹⁶ He also provided a photograph of

¹⁴ Ex. 2.8 indicates, however, that the landlord told Ms. Komakhuk that Mr. V and Ms. N had only lived together since 2007.

¹⁵ Exs. A, B, C.

the living room of the apartment he shares with Ms. N, which shows a couch with blankets and pillows on it, and what appears to be a mattress standing up behind the couch.¹⁷

At hearing the Division introduced into evidence a printout of the account history for Mr. V's Electronic Benefits Transfer card ("EBT card").¹⁸ The printout shows that Mr. V's EBT card had a balance of \$2,952.15 as of March 31, 2013.

III. Discussion

A. The Applicable Statutes and Regulations

The Food Stamp program is a federal program administered by the states.¹⁹ Eligibility for the Food Stamp program, and the amount of Food Stamp benefits awarded, depends primarily on household size, household income, and applicable income exclusions and deductions.²⁰

The Food Stamp program awards benefits by the household rather than by the individual.²¹ In general, for purposes of the Food Stamp program, a household consists of one or more individuals who live together and customarily purchase food and prepare meals *together* for home consumption.²² There is an exception to this rule which makes it possible for there to be more than one Food Stamp "household" living under the same roof. However, to qualify for this exception, the persons claiming separate household status must share common living quarters *but purchase and prepare their food separately*.²³ Further, the persons claiming separate household status *bear the burden of proving that they purchase and prepare their food separately*.²⁴

B. Application of the Law to the Facts of This Case

¹⁶ Ex. D.

¹⁷ Ex. E.

¹⁸ Exs. 2.13, 2.14.

¹⁹ 7 C.F.R. § 271.4(a).

²⁰ See 7 U.S.C. § 2012(o); 7 U.S.C. § 2017(a); 7 C.F.R. § 273.10(e)(2)(ii)(A), Alaska Food Stamp Manual, Addendum 4, *Ruhe v. Block*, 507 F.Supp. 1290 (D.C.Va. 1981); and *Murray v. Lyng*, 854 F.2d 303, 304 (8th Cir. 1988).

²¹ 7 CFR § 273.1.

²² 7 CFR § 273.1(a)(1); 7 CFR § 273.1(a)(3).

²³ See Federal Food Stamp statute 7 U.S.C. § 2012(n)(1)(A) (defining "household" in relevant part as "an individual who . . . while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others . . . "); Federal Food Stamp regulation 7 C.F.R. § 273.1(a) (defining "household" in relevant part as "[a]n individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others . . . "); Alaska Food Stamp Manual § 602-1A(b) (defining a household as including "[a]n individual or group of individuals living with others, but that customarily purchase food and prepare meals for home consumption separate and apart from the others"); and Alaska Food Stamp Manual § 600-2.

²⁴ 7 CFR § 273.2(f)(x) requires that state agencies "verify factors affecting the composition of a household," and states in relevant part that "[i]ndividuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency." Similarly, Alaska Food Stamp Manual § 602-3 states in relevant part that "[i]ndividuals claiming separate household status from others living in the same residence are responsible for verifying their separate status . . .".

The ultimate issue in this case is whether the Division was correct to close Mr. V's Food Stamp case, and add Mr. V to Ms. N's Food Stamp case, based on the assertion that Mr. V and Ms. N are part of the same household for purposes of the Food Stamp program. The issue of whether Mr. V is a member of Ms. N's household for Food Stamp purposes depends in turn on whether Mr. V and Ms. N customarily purchase their food and prepare their meals separately. If they do, then they must be treated as separate households. If they do not, then they are considered to be a single household for purposes of the Food Stamp Program. This is a purely factual issue on which Mr. V bears the burden of proof.

The hearing testimony and other evidence in this case was contradictory. The undersigned thus had to assess witness credibility. In doing so, the undersigned considered (1) the witness's relationship to the other parties in the case; (2) whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; (3) the inherent probability or improbability of the witness's testimony; (4) whether the witness's testimony was consistent or inconsistent with other evidence in the case (i.e. the presence or absence of corroborating evidence); (5) the witness's opportunity and ability to see or hear or know the things about which the witness testified; and (6) the apparent quality of the witness's memory, knowledge, and understanding.

Supporting the existence of separate Food Stamp households was the fact that Mr. V, M N, Z N, T O, and R S all testified that Mr. V and M N customarily purchase their food and prepare their meals separately. Detracting from the strength of this testimony was the fact that Mr. V and M N both have a financial stake in the outcome of the case; that Z N and T O are daughters of M N; and that Mr. S is a longtime friend of Mr. V and Ms. N. Further detracting from the strength of this testimony is the inherent improbability that two persons who by their own admission were romantically involved in the past, would be able to live together on a long-term basis without purchasing their food and preparing their meals together.

On the other hand, the testimony of the Division's only witness was not very strong either. Although the eligibility technician was a credible witness, she had no first-hand knowledge of Mr. V's living arrangements. Her testimony was mostly hearsay, based on what Mr. V's landlord (who herself apparently had no first-hand knowledge) had told her.

The most persuasive evidence in this case was not testimony but rather documentary evidence. The Division's electronic records indicate that Mr. V's EBT card (basically a debit card

for accessing Food Stamp benefits) had a balance of \$2,952.15 as of March 31, 2013.²⁵ During the year prior to the Division's closure of his case, the amount of Food Stamp benefits received by Mr. V ranged from \$218.00 to \$239.00 per month.²⁶ In order to accrue a benefit balance of \$2,952.15, Mr. V would have to have saved a minimum of 12 months' worth of Food Stamp benefits. The fact that Mr. V has been "banking" instead of using his Food Stamp benefits, coupled with Mr. V's own testimony that he is not working and has no income, necessarily means that *someone else* has been purchasing his food. Because Mr. V lives with Ms. N, and because the two previously had a personal relationship, it is most probable that Ms. N has been purchasing Mr. V's food. Finally, because the roommates' food is being *purchased* together, it seems highly probable that the two are also *preparing* the food together.

Even viewing the evidence in the light most favorable to Mr. V, the evidence is at best equivocal. In cases (like this one) in which the evidence for both sides is comparable, the burden of proof becomes determinative. In this case, Mr. V bears the burden of proving, by evidence more credible than that of the Division, that he and Ms. N purchase and prepare their food separately. The undersigned finds that Mr. V failed to carry that burden. Accordingly, Mr. V and Ms. N are considered a single household for purposes of the Food Stamp program.

IV. Conclusion

Mr. V failed to carry his burden and did not prove, by a preponderance of the evidence, that he and Ms. N customarily purchase food and prepare meals for home consumption separate and apart from one another. Accordingly, they are considered a single household for purposes of the Food Stamp program, and the Division was correct to close Mr. V's Food Stamp case and add Mr. V to Ms. N's Food Stamp case. The Division's decision is therefore affirmed.

Dated this 26th day of July, 2013.

Signed
Jay Durych
Administrative Law Judge

²⁵ Ex. 2.13.

²⁶ Ex. 2.12.

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 6th day of August, 2013.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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