

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

In the Matter of)	
)	OAH No. 13-0497-SNA ¹
B B aka)	
B C)	Division No.
_____)	

DECISION

I. Introduction

B B receives Food Stamp (also referred to as Supplemental Nutrition Assistance Program) benefits. She applied to renew those benefits. Upon recertification, the Division of Public Assistance (Division) lowered her monthly benefit amount to \$207 from \$797. Ms. B requested a hearing.

Ms. B's hearing was held on May 3, 2013. Ms. B represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division.

Ms. B had a reduction in the number of people in her home and an increase in her income. This caused a reduction in the amount of Food Stamp benefits she was entitled to receive. However, the Division overestimated the amount of Ms. B's average gross monthly income as being \$2,067. It is, instead, \$1,723.04 per month. The Division is therefore required to recalculate and issue Ms. B benefits beginning with April 2013, based upon \$1,723.04 in gross monthly income.

II. Facts

Ms. B received \$797 in Food Stamp benefits in March 2013. That benefit amount was based on her having no income and a total of four persons in her household.² She applied to renew her Food Stamp benefits on March 5, 2013. In her application, she notified the Division that there were only three people in her household and that she had obtained a job.³

The Division asked Ms. B to provide it with information about her income, including three paystubs.⁴ On April 1, 2013, the Division received a statement from Ms. B's employer

¹ This case was originally referred to the Office of Administrative Hearings as an Alaska Temporary Assistance matter. *See* Ex. 2.22. However, the case only involves Food Stamp benefits, and the caption is correspondingly corrected.

² Ex. 2.13.

³ Exs. 2.0 – 2.5.

⁴ Exs. 2.6 – 2.8.

stating that she worked 32 hours per week, was paid either \$10 or \$11.75 per hour, and was paid twice per month.⁵ The Division also received a copy of two of Ms. B's paystubs. One showed a paycheck issued on January 15, 2013, for December 30, 2012 through January 13, 2013, with gross pay of \$857.75 (61 regular hours at \$11.75; 8 holiday hours at \$17.625). That same paystub showed year to date gross pay of \$1,678.00.⁶ The other paystub showed a paycheck issued on March 15, 2013, for March 1, 2013 to March 13, 2013, with gross pay of \$538.25 (39 hours at \$11.75; 8 hours at \$10.00). That same paystub showed year to date gross pay of \$5,169.13.⁷

The Division calculated that Ms. B's average gross monthly income was \$2,067. It arrived at this figure using Ms. B's gross year to date income of \$5,169.13, as shown on her March 15, 2013 paystub, as a starting point. The Division determined this was Ms. B's fifth paycheck for the year, took this amount, and divided it by 5 to arrive at figure of \$1,033.83 per pay period. It then multiplied the \$1,033.83 by two, since Ms. B gets paid twice per month, to arrive at the figure of \$2,067.66.⁸ The Division issued Ms. B monthly Food Stamp benefits in the amount of \$207 beginning in April 2013, based upon that income amount.⁹

The household size, income, and expenses used in the Division's calculations were reviewed with Ms. B. Her only area of disagreement was with the amount of employment income counted by the Division in arriving at her benefit amount. She testified that the Division was overestimating her income, that her work hours fluctuated, and that she worked four days per week for only 35 hours per week. She stated the reduction in her Food Stamp benefits was a hardship and causing her children to go hungry.¹⁰

Ms. B was provided the opportunity to submit additional pay information post-hearing. She provided three paystubs which were not in the previous record, one from August 2012, one from September 2012, and one dated May 1, 2013.¹¹ The May 1, 2013 paycheck was for the gross amount of \$705 (60 hours at \$11.75).¹²

⁵ Ex. 2.9.

⁶ Ex. 2.10.

⁷ Ex. 2.11.

⁸ Ex. 2.12.

⁹ Ex. 2.23. The Division's calculations of the Food Stamp benefit amount are contained in Exs. 2.18 – 2.20.

¹⁰ Ms. B testimony.

¹¹ Ex. A, pp. 2 – 4.

¹² Ex. A, p. 2.

III. Discussion

Food Stamps is a federal program administered by the State.¹³ 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.¹⁴ 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 people living in the household.¹⁵

Food Stamp benefit calculations begin with a household's gross monthly income. The next step is to subtract the standard deduction, which is \$256 for a household of 5 persons or less. A household with earned income is entitled to an additional deduction which is based upon the amount income earned by the household.¹⁶

After subtracting the standard deduction from the household's gross monthly income, the household's "shelter expenses" (rent and utilities) are taken into account. A Food Stamp recipient may deduct only those shelter costs that exceed 50 percent of income less the standard deduction.¹⁷ After applying the "shelter expenses" deduction, the result is the household's net income.

The final step in the Food Stamp benefit calculation process is to subtract 30 percent of the household's net income from the maximum Food Stamp benefit for the household size. The result is the household's Food Stamp benefit.¹⁸ The maximum Food Stamp allotment for a three person household located in an urban area in Alaska is \$627.¹⁹

This case does not involve any disagreement regarding the household size, shelter costs, other deductions, or the Division's calculations. The dispute is over the amount of employment income the Division attributed to Ms. B for April 2013 forward.

The Division is required to engage in prospective budgeting, that is, make an estimate of a recipient's income, when it calculates Food Stamp benefits.²⁰ Usually, it would rely upon the income received during the past thirty days when estimating future income. However, Ms. B did not supply the Division with three paystubs as requested. Instead, she supplied the Division with

¹³ 7 C.F.R. § 271.4(a).

¹⁴ 7 AAC 46.010.

¹⁵ 7 C.F.R. § 273.9(b) and (d); 7 C.F.R. 273.10(e).

¹⁶ 7 C.F.R. § 273.9(d).

¹⁷ 7 C.F.R. § 273.9(d)(6)(2)(ii).

¹⁸ 7 C.F.R. § 273.10(e)(1) and (2).

¹⁹ *Alaska Food Stamp Manual Addendum 4*; Ex. 16.1.

²⁰ 7 AAC 46.020(a)(48); 7 C.F.R. § 273.21(a)(2).

only two paystubs, one dated January 15, 2013 and the other dated March 15, 2013. Because these paystubs were separated in time by two months, the Division was not able to determine Ms. B's actual income for the thirty days preceding her application. However, the Division is allowed to average income over time to arrive at an estimated income figure.²¹ This is exactly what the Division did in Ms. B's case, when it took her gross pay from March 15, 2013 and divided it by five, which was the number of times it determined Ms. B had been paid through March 15, 2013. That would have been correct if Ms. B's first paycheck for 2013 had been issued on January 15, 2013, and she was paid twice monthly thereafter. However, when the record at a whole is examined, Ms. B is paid twice a month – on the 1st and then midmonth. This factual finding is arrived at by looking at Ms. B's January 15, 2013 paystub, which reveals that it was her second paycheck for January, since the January 15 paystub, reflected gross pay for the pay period of \$857.75, with a year to date gross pay of \$1,678.00, *i.e.*, Ms. B had an earlier paycheck issued in January 2013 with gross pay of \$820.25 for the earlier paycheck.²² This meant that Ms. B's March 15, 2013 paycheck would have been her sixth paycheck of the year (January 1, January 15, February 1, February 15, March 1, March 15), not her fifth. As a result, the Division should have divided the year to date gross income contained on Ms. B's March 15 paystub by six instead of five to arrive at her average income per pay period. That figure is \$861.52.²³ When \$861.52 is multiplied by two, because Ms. B is paid twice per month, her average gross monthly income is \$1,723.04.²⁴

Ms. B had a household of four persons and no income when she was receiving Food Stamps in the amount of \$797. The decrease in her household size and the fact that she was earning income required a decrease in her Food Stamp benefits. Because Ms. B provided the Division with limited information about her pay, the Division was correct to average her income by taking the year to date gross income on her March 15, 2013 paystub. However, the Division treated her March 15, 2013 pay check as being her fifth pay check of the year, and divided the year to date gross income on it to arrive at average monthly income of \$2,067. Because the March 15, 2013 pay check was Ms. B's sixth pay check of the year instead of her fifth, as

²¹ 7 C.F.R. § 273.10(c).

²² \$1,678 (January 16, 2013 year to date gross income) - \$857.75 (January 16, 2013 pay period gross income) = \$820.25. *See* Ex. 2.10.

²³ \$5,169.13 ÷ 6 = \$861.52.

²⁴ When this same methodology is used with Ms. B's May 1, 2013 paystub (Ex. A, p. 2), the amount is \$1,714.81 (\$7,716.63 ÷ 9 pay periods = \$857.40 per pay period; \$857.40 x 2 pay periods per month = \$1,714.80 per month).

explained above, her average monthly income was actually \$1,723.04, not \$2,067. The Division's calculations resulted in an overestimation of Ms. B's gross income by \$344 per month. The Division should therefore recalculate Ms. B's Food Stamp benefits based upon \$1,723.04 in gross monthly income.

IV. Conclusion

The Division was correct to reduce Ms. B's monthly Food Stamp benefit amount because she had a decrease in her household size and an increase in her income. However, the Division's benefit amount calculations were based upon her having an average gross monthly income of \$2,067, when it is \$1,723.04. However, the Division is required to recalculate and issue her benefit amounts beginning with April 2013, based upon \$1,723.04 in gross monthly income.

DATED this 16th day of May, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

Non-Adoption Options

C. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

The evidence in the record does support 5 wage payments and not six at the time of eligibility determination. Twice monthly wage payments vary in amounts and timing and the department correctly interpreted the submitted evidence of earnings and five payments. The ALJ's conclusions are not supported by the evidence.

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 14th day of June, 2013.

By: *Signed*

Ree Sailors, Deputy Commissioner
Department of Health and Social Services

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