

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

In the Matter of:)
)
 J E-D) OAH No. 13-0750-SNA
) DPA Case No.

DECISION

I. Introduction

There are two issues in this case. The first issue is whether two vehicles left in Ms. E-D's name constitute a countable resource for purposes of eligibility for the Supplemental Nutrition Assistance Program (SNAP).¹ The second question, legally dependent on the first, is whether Ms. E-D is required to pay back SNAP benefits that the State of Alaska Division of Public Assistance (DPA or Division) determined were issued to her in error because of those vehicles.

Based on the record in its entirety, the two vehicles in Ms. E-D's name were not a countable resource for her household, and for this reason the E-D family remained eligible for participation in SNAP during the period in question. As a result, she was not overpaid benefits totaling \$9,252 for the period from May 2012 through April 2013, and the Division may not seek reimbursement from Ms. E-D for them. Accordingly, the Division's decision establishing a claim against Ms. E-D for \$9,252 is REVERSED.

II. Facts

Ms. E-D's household consists of herself and her three children: N, 16, D, 14, and B, 5.² Their household has received SNAP benefits since about April 2008.³

Ms. E-D's parents currently live in Florida. They recently lived in Alaska and owned a construction company. In August 2011, Ms. E-D's father, H D, transferred ownership to her of a 2002 Ford truck to hold for her nephew, his grandson. The agreement was that if the grandson kept his grades up and graduated from high school with a "B" average, Ms. E-D would sign the truck over to him and it would thereafter belong to him.⁴ In the meantime, she did not use or drive the truck. Mr. D put the vehicle in Ms. E-D's name so as to make dealing with tags and licensing easier; it understood that he was not giving her the truck to do with as she pleased. Unfortunately, the grandson did not

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). This decision uses the new "SNAP" terminology.

² Ex. 2.1.

³ Ex. 2.13.

⁴ Letter from H D, received June 28, 2013.

graduate with a sufficient grade point average. As a result, Mr. D directed Ms. E-D to sell the vehicle and transfer the funds to him, which she did.⁵

In May 2012, H D put a 2008 VW Bug in Ms. E-D's name with the intent that it be transferred to her daughter, N, upon graduating from high school with a sufficient grade point average, the same arrangement they had for Ms. E-D's nephew.⁶ The difference with the VW is that N is currently using the car for her own transportation. Ms. E-D stated she believes her daughter will meet her grandfather's grade requirement and be given the vehicle when she graduates in the near future. Ms. E-D does not drive or otherwise use the VW.

In September 2012, Mr. D loaned Ms. E-D a 2001 Ford van.⁷ As with the other vehicles, he put it in her name for ease in dealing with the tags and license; he did not give it to her.

On April 12, 2013, Ms. E-D submitted a recertification application to the Division. During the interview she revealed that she had the three vehicles discussed above and that they were licensed in her name. The Division checked Department of Motor Vehicle records and verified Ms. E-D as the registered owner. Excluding one of them for Ms. E-D's exemption,⁸ the Division determined the other two placed her over the maximum countable resource limit of \$2,000 and as a result, denied her application.

On April 29, 2013, the Division reviewed Ms. E-D's case back to May 2011 and determined, based on the dates the vehicles were placed in her name, that she was not eligible for benefits for May 2012 through September 2012, October 2012, and November 2012 through April 2013. This resulted in an overpayment totaling \$9,252 for the months in question. On May 17, 2013, the Division notified Ms. E-D of its findings and that it was initiating recoupment of the overpayment amount due to "inadvertent household error".⁹

Ms. E-D contacted the Division and requested a fair hearing on May 29, 2013. The hearing was held on June 28, 2013. Both Ms. E-D and Public Assistance Analyst Terri Gagne appeared by telephone. The hearing was recorded.

III. Discussion

The first issue in this appeal is whether Ms. E-D owned the vehicles put in her name by her father for the purpose of gifting them to his grandchildren. The second issue is whether the Division

⁵ *Id.*

⁶ Ex. 2.11.

⁷ Ex. 2.8.

⁸ There is no dispute that there are only two vehicles at issue – the 2001 Ford pickup and the 2008 VW Bug. The third vehicle is exempt under 7 CFR § 273.8(f)(2)(ii).

⁹ Ex. 2.15.

may recoup the benefits it alleges Ms. E-D received in error because she was not financially eligible for benefits.

Food Stamps is a federal program administered by the State.¹⁰ The Code of Federal Regulations (C.F.R.) contains the rules for determining a household's financial eligibility, which is determined, in part, based upon the resources (assets) owned by the household members. The program has a resource limit of \$2,000 for a household whose members are under 60 years of age.¹¹ Vehicles are normally counted as a resource.¹²

At the hearing, Ms. E-D argued that although they were in her name, she did not exercise control of the two vehicles at issue and therefore she did not actually own the vehicles. Her father, H D, lives out of state and put them in her name so that she could transfer ownership of them to his grandchildren, her nephew and daughter, and that Mr. D actually was in control of how the vehicles were to be handled. When her nephew failed to make the required grades, her father directed her to sell it and transfer the proceeds to him, which she did. The 2008 VW Bug was handled in the same way – that her father put it in her name so she would be able to transfer it to her daughter, N, who is currently 16 years of age. N is driving the vehicle at this time and it is expected her daughter will earn the grades necessary for the vehicle to be given to her when N graduates.

Ms. E-D's testimony is corroborated by a letter from Mr. D.¹³ Mr. D wrote that he purchased the two vehicles for his grandchildren and put them in Ms. E-D's name for ease in dealing with the tags and licenses. He added that when the truck meant for his grandson was sold, Ms. E-D did not get any of the funds, but, as directed, transferred the money to him.¹⁴

The Division argues that Ms. E-D was the owner of the two vehicles at issue because they were in her name, and because she was free to sell them at any time, that they meet the criteria for being a countable resource for her household.

While it is true that the vehicles were in her name, Ms. E-D's father placed conditions on their transfer and Ms. E-D was not free to dispose of the vehicles absent direction from her father. When he did direct her to sell the 2002 Ford truck because her nephew did not meet the minimum grade requirement his grandfather had set, Ms. E-D sold the truck and sent the funds to her father.

¹⁰ 7 C.F.R. § 271.4(a).

¹¹ 7 C.F.R. § 273.8(b).

¹² 7 C.F.R. § 273.8(c)(2).

¹³ Letter from H D, received June 28, 2013.

¹⁴ *Id.*

Thus, based on the unique facts of this case, Ms. E-D met her burden of proof¹⁵ and established that the two vehicles in question should not be counted as a resource for the purpose of determining her household's eligibility for food stamps. As a result, she remains financially eligible for SNAP benefits for the months in question. Accordingly, the Division's decision to recoup overpaid benefits totaling \$9,252 is reversed.

IV. Conclusion

Ms. E-D met her burden of proof and established that the two vehicles in question should not be counted as a resource for the purpose of determining her household's eligibility for the SNAP program from May 2011 through April 2013. She remains financially eligible for that period of time and has not been paid benefits totaling \$9,252 in error. The Division's decision to seek recovery of these SNAP benefits is therefore REVERSED.

Dated this 5th day of July, 2013.

Signed _____
Kay L. Howard
Administrative Law Judge

Non-Adoption Options

D. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Rejected- The ALJ's conclusion(s) are not supported by the evidence presented.

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 1st day of August, 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.]

¹⁵ See 7 AAC 64.290(e).