

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

In the Matter of: )  
 )  
 E E ) OAH No. 13-1256-SNA  
 ) DPA Case No.  
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 \_\_\_\_\_ )

**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Public Assistance (Division) may count, as members of a Food Stamp household, persons previously counted as members of a different household within the same month. This decision concludes that, pursuant to applicable federal Food Stamp regulations, no individual may be counted as a member of, or receive benefits as, a member of more than one household in a single month. Accordingly, the Division was correct to exclude two of Mr. E's children from being counted as members of his household in August and September 2013, even though they were in fact living with him, because they had previously been counted as part of their mother's household for the same two months. In turn, because the two children were excluded from Mr. E's household, the Division was correct to consider Mr. E's household as a three-person household, instead of a five-person household, for Food Stamp purposes. Mr. E's gross income exceeded the Food Stamp program's applicable gross income limit, for a household of three, during the period at issue. The Division's September 10, 2013 decision denying Mr. E's August 2013 Food Stamp application is therefore affirmed.

**II. Facts**

Mr. E has a five-person household consisting of himself and his four children.<sup>1</sup> He works full time (which for his employer is 37.5 hours per week), and earns \$19.49 per hour.<sup>2</sup> His gross monthly income, for purposes of the Food Stamp Program, is \$3,109.23.<sup>3</sup>

Mr. E's wife V<sup>4</sup> was incarcerated for significant periods of time from October 23, 2011 through August 31, 2013.<sup>5</sup> At those times during this period when V was not incarcerated, she

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<sup>1</sup> Exs. 1, 2.1.

<sup>2</sup> Ex. 2.3.

<sup>3</sup> Ex. 3. At hearing, Mr. E and his representative did not contest the Division's income calculations. Rather, they simply asserted that it is not fair for the Division to calculate Food Stamp eligibility and award benefits for the months in question based on a household of three, when Mr. E actually had a household of five.

maintained a household separate from Mr. E's household.<sup>6</sup> V was scheduled to have custody of the two youngest children, D and W, during the summer of 2013, and she did have them for part of the summer.<sup>7</sup> But V was arrested and incarcerated on August 3, 2013,<sup>8</sup> which required D and W to move back to their father's house.

V had an open Food Stamp case during the summer of 2013.<sup>9</sup> Because D and W were living with V earlier in the summer, they had been "put on her case" (*i.e.* had been included in her household for Food Stamp purposes).<sup>10</sup> Accordingly, the Division credited D and W's benefits on V's electronic benefits card, or "Quest" card, at the start of each month.<sup>11</sup> D and W's August 2013 benefits had already been placed on V's Quest card at the time V was arrested on August 3, 2013.<sup>12</sup>

Mr. E submitted his own application for Food Stamp benefits to the Division on August 12, 2013.<sup>13</sup> By that time, D and W were once again living with Mr. E, and so he included them as members of his household when he completed his application.<sup>14</sup>

Mr. E's eligibility interview was not conducted until September 9, 2013, almost one month after he submitted his application.<sup>15</sup> During this interview, the Division's eligibility technician determined that benefits had already been issued for D and W, as members of V's household, for the months of August and September 2013.<sup>16</sup> Accordingly, the eligibility technician determined that D and W could not be counted as part of Mr. E's household during those months.<sup>17</sup> This caused Mr. E's application to be processed as a three-person household, instead of as a five-person household having higher gross and net income limits.<sup>18</sup>

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<sup>4</sup> It is not clear from the record whether the person identified by the court records as V M Q is Mr. E's current wife, or (rather) his former wife. This issue does not, however, affect the outcome of this case.

<sup>5</sup> Ex. A.

<sup>6</sup> Exs. 9.0, 9.1, and C E hearing testimony.

<sup>7</sup> Ex. 3 and C E hearing testimony.

<sup>8</sup> Ex. A.

<sup>9</sup> Ex. 3; Jeff Miller hearing testimony.

<sup>10</sup> Ex. 3; Jeff Miller hearing testimony.

<sup>11</sup> Jeff Miller hearing testimony.

<sup>12</sup> Ex. 5.0, Ex. 9, Ex. A.

<sup>13</sup> Ex. 6.

<sup>14</sup> Ex. 2.1.

<sup>15</sup> Ex. 3; Jeff Miller hearing testimony.

<sup>16</sup> Exs. 3, 5.0, 5.1.

<sup>17</sup> Ex. 3; Jeff Miller hearing testimony.

<sup>18</sup> Ex. 3; Jeff Miller hearing testimony.

On September 10, 2013 the Division notified Mr. E that his application for Food Stamp benefits had been denied because his monthly countable income of \$3,109.23 exceeded the Food Stamp program's monthly countable income limit for a three person household (\$2,645.00).<sup>19</sup>

Mr. E requested a hearing on September 12, 2013 to contest the denial of his application.<sup>20</sup> At the time he submitted his hearing request, Mr. E stated that it was not fair to deny his application based on excess income, since D and W had actually been living with him, and since V had not given him any money for food for the two children.<sup>21</sup>

Mr. E's hearing was held on October 2, 2013. Mr. E participated in the hearing by phone and testified briefly. Mr. E's brother C E participated in the hearing by phone, represented his brother, and testified on his behalf. Public Assistance Analyst Jeff Miller participated in the hearing by phone and represented the Division. The record was left open after the hearing for post-hearing filings. The record closed on October 11, 2013.

### **III. Discussion**

#### *A. Food Stamp Program - Overview and Applicable Income Limits*

The Food Stamp program is a federal program administered by the states. The amount of Food Stamp benefits for which a household is eligible is based primarily on the number of people living in the household, and on the monthly income (after applicable deductions) received by those household members.<sup>22</sup> All other factors being equal, the more people are included in the household, the greater the household's monthly Food Stamp benefits will be.

A household, which (as here) does not contain an elderly or disabled member, is required to satisfy both a gross income eligibility standard and a net income eligibility standard in order to qualify for Food Stamp benefits.<sup>23</sup> These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. § 9902(2) and are adjusted periodically for inflation.<sup>24</sup> For the period from October 2012 through September 2013, the income limits for a three-person household were \$2,586.00 (gross) and \$1,990.00 (net).<sup>25</sup> During the same period the income limits for a five-person household were \$3,659.00 (gross) and \$2,815.00 (net).<sup>26</sup> Thus,

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<sup>19</sup> Ex. 6.

<sup>20</sup> Exs. 8.0, 8.1.

<sup>21</sup> Exs. 8.0, 8.1.

<sup>22</sup> 7 CFR 273.10(e)(2)(ii)(A).

<sup>23</sup> 7 CFR 273.9(a).

<sup>24</sup> 7 CFR 273.9(a).

<sup>25</sup> Alaska Food Stamp Manual, Addendum 4.

<sup>26</sup> Alaska Food Stamp Manual, Addendum 4.

during this period a five person household could receive about \$1,000 more per month than a three person household and still not exceed the Food Stamp program's applicable income limit.

*B. Food Stamp Program - The "One Person, One Household, One Month" Rule*

Pursuant to federal Food Stamp program regulation 7 CFR 273.3(a), no individual may participate as a member of more than one household, or in more than one project area, in any given month.<sup>27</sup> The preponderance of the evidence indicates, and Mr. E did not dispute, that D and W were members of V's Food Stamp household during August 2013 and September 2013.

Accordingly, 7 CFR 273.3(a) prohibited the Division from also counting D and W as members of Mr. E's Food Stamp household during the same two months.<sup>28</sup>

*C. Mr. E's Gross Income Exceeded the Limit for a Three-Person Household*

By the time Mr. E completed his eligibility interview, the Division had already issued benefits for D and W, as part of V's household, for August and September 2013. As discussed above, under 7 CFR 273.3(a), the Division could not also count D and W as part of Mr. E's household for the same months. Because these two children could not be counted, Mr. E's household became a three-person household, instead of a five-person household, for Food Stamp purposes. Mr. E's monthly gross income for the months in question, for purposes of the Food Stamp program, was \$3,109.23. Mr. E's monthly gross income of \$3,109.23 was \$523.23 greater than the maximum gross income limit for a three-person household (\$2,586.00) during the months in question. Mr. E's household was therefore not financially eligible for Food Stamp benefits during August 2013 and September 2013, and the Division was therefore correct to deny Mr. E's August 2013 application for Food Stamp benefits.

*D. Though the Result in This Case Seems Unfair, the Division Does not Have the Authority to Disregard the Applicable Federal Regulations*

Mr. E and his brother / representative testified that Mr. E's household has a great need for Food Stamp benefits. It is not disputed that Mr. E's household of five has a significant need for food. It is also not disputed that Mr. E's financial resources are limited. However, the Division is not at liberty to ignore the federal regulations governing the Food Stamp program, or its own Policy

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<sup>27</sup> The only exception to this rule pertains to persons fleeing from domestic violence, who were initially members of the household containing the abuser, and who, upon fleeing from that household, then became residents of a shelter for battered women and children as defined in 7 CFR 271.2.

<sup>28</sup> In this case, V spent the benefits credited to her Quest card for D and W for the months of August 2013 and September 2013 (see Exs. 9.0 and 9.1). However, even had she not already spent those benefits, the Division could not transfer those benefits to Mr. E's household because, pursuant to 7 CFR § 273.12(a)(5)(v), V did not have the legal obligation to report that D and W had left her household until such time as she might reapply for Food Stamps at the end of the six month reporting period.

Manual provisions implementing those regulations.<sup>29</sup> Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to these regulations.<sup>30</sup> To provide Food Stamp benefits for children switching households during a certification period, under circumstances such as existed in this case, would require amendments to existing law. Those changes cannot be made through the hearing process. However, as discussed during the hearing, D and W were not issued benefits as part of V's household in October 2013. Accordingly, if Mr. E reapplies, he will have a five-person household for purposes of the Food Stamp program. Assuming other factors bearing on his household's eligibility have not changed since the time of his prior application, his household should be income-eligible for benefits beginning in October 2013.

#### **IV. Conclusion**

Pursuant to applicable federal Food Stamp regulations, no individual may receive benefits as a member of more than one household in a single month. Accordingly, the Division was correct to exclude two of Mr. E's children from being counted as members of his household in August and September 2013, even though they were in fact living with him, because they had previously been counted as part of their mother's household for the same two months. Because the two children were excluded from Mr. E's household, the Division was correct to consider Mr. E's household as a three-person household, instead of a five-person household, for Food Stamp purposes. It was not disputed that Mr. E's gross income exceeded the Food Stamp program's applicable gross income limit, for a household of three, during the period at issue. The Division's September 10, 2013 decision denying Mr. E's August 2013 Food Stamp application, based on excess income, is therefore affirmed.

Dated this 15th day of October, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>29</sup> “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>30</sup> See 7 AAC 49.170 (limits of the hearing authority).

## Adoption

The undersigned, by delegation from of 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 29<sup>th</sup> day of October, 2013.

By: Signed  
Signature  
Jay D. Durych  
Name  
Administrative Law Judge  
Title

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