

water or electricity. There are no food storage or preparation facilities in the shed. She and X do not ordinarily prepare food there or eat together there.

T is a high school student, and she receives breakfast and lunch through a homeless program at school. For other meals, she generally has been buying a sandwich at Safeway. Currently, she has no income and receives no Food Stamps, and this food is purchased with X's money (at the time of her application in September, however, when she had some work income of her own, there is no evidence that he purchased food for her).

X has been working in a restaurant six days a week, where he receives a daily lunch. He does not eat breakfast; for his dinner, he generally picks up prepared food.

III. Discussion

Food Stamps is a federal program administered by the state.⁵ Alaska follows the rules in the Code of Federal Regulations (C.F.R.) when determining Food Stamp eligibility.⁶

The only issue in this case is whether T and X's living situation, as of September, constituted a "household." In general, 7 C.F.R. § 273.1 provides that a "household" is one of the following:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.⁷

The Division contends that T and X fit under the third category. However, T and X do not customarily "prepare meals together for home consumption." They do not prepare meals, and they do not consume meals together at home. T U does not clearly fit in categories (1) or (2) either: She has not been "living alone" (category 1), and she is not "customarily purchasing food and preparing meals for home consumption separate and apart" from X (category 2), because there is no meal preparation for home consumption.

Although not relied on by the Division, the applicable federal regulation, 7 C.F.R. § 273.1, does contain a provision for exceptional situations:

⁴ Ex. 7.2.

⁵ 7 C.F.R. § 271.4(a).

⁶ 7 AAC 46.010.

⁷ 7 C.F.R. § 273.1(a).

(c) For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

Alaska has not yet adopted a policy to address these situations.

It is possible to adopt a policy by means of an administrative adjudication.⁸ Here, the thrust of the federal regulatory system seems to be that people who live under the same roof will be considered a unified household if they customarily—that is, most of the time—obtain their main nourishment in cooperation with each other, pooling their financial and labor resources. In keeping with this theme, a couple who live under the same roof but are unable to prepare food at home should be considered a household if they usually purchase and consume their main meals together.

Applying this definition to T and X, they do not appear to constitute a single household. T has been obtaining the bulk of her nutrition through a homeless meals program, independent of X. Accordingly, X's income should not have been considered in evaluating T U's September 2013 Food Stamps application.

No finding is made as to whether the receipt of meals from a homeless meals program alters T's Food Stamp eligibility or benefits in any way. The Division is not precluded from considering that circumstance in reevaluating the application, if statutes or regulations permit it to do so.

IV. Conclusion

The Division should not have considered T U and her boyfriend X as a single household in evaluating T U's September 2013 Food Stamps application. This matter is remanded to the Division to reconsider the application on the basis that T U constituted a household of one.

DATED this 21st day of November, 2013.

Signed

Christopher Kennedy
Administrative Law Judge

⁸ See, e.g., *Amerada Hess Pipeline Corp. v. APUC*, 711 P.2d 1170, 1179 (Alaska 1986).

Non-Adoption Options

B. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set forth below, and adopts the proposed decision as revised:

The case is to be remanded to the agency for review and re-determination.

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 20th day of December, 2013.

By: Signed _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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