

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

In the Matter of)
)
C F)
_____)

OAH No. 13-1474-SNA
Agency No.

DECISION

I. Introduction

C F is a Food Stamp recipient. The Division of Public Assistance (division) provided notice that her monthly Food Stamp allotment would be reduced from \$113 to \$18 because of a change in allowable expenses. Ms. F requested a hearing. The hearing provided her with an opportunity to present evidence not previously available to the division. The record developed at hearing establishes by a preponderance of the evidence that the division was correct to deny some, but not all, of the submitted medical expenses. The division's decision is affirmed in part, and reversed with instructions to recalculate Ms. F's Food Stamp benefit in accordance with this decision.

II. Facts

The facts are not in dispute. Ms. F contends the division erred when it disallowed numerous medical expenses. The disallowed medical expenses fall into one of two categories: expenses incurred for her service animal, and for other over-the-counter medical expenses.

Ms. F is a Food Stamp recipient who uses a service dog. She suffers from a variety of conditions, including malabsorbtion syndrome, chronic kidney disease, post traumatic stress syndrome, and bi-polar disorder. In late September 2013 or early October 2013, Ms. F began submitting receipts associated with her service dog. She also provided the division with receipts for items she was claiming as a medical expense. Her intention was that these expenses would be used for calculating her household's benefit. Some of these additional expenses were disallowed. Using these new figures, the division concluded that Ms. F's countable income was \$764, resulting in a reduction of her Food Stamp benefit from \$113 per month to \$18 per month effective November 2013.

III. Discussion

A. Applicable Law and Arguments of the Parties

The Food Stamp program is a federal program administered by the states.¹ Benefit amounts are based primarily on the number of people living in the household,² and on the monthly income (after applicable deductions) received by those household members.³ In general, the greater a household's income, the smaller the amount of Food Stamp benefits the household will receive each month.⁴ Because the amount of a household's deductions affects its countable income, the greater the amount of a household's deductions, the greater its benefit amount will be. Because Ms. F is an individual experiencing disabilities, she is allowed a medical expense deduction for the amount of her eligible medical expenses that exceed \$35 per month.⁵

The only issue in this case is whether the expenses Ms. F submitted are allowable medical expenses. Ms. F contends that the division erred when it disallowed \$328.94 in medical expenses, thereby increasing her countable income. Because it is reducing her benefits, the division has the burden of proof.⁶ To prevail, the division must establish that it is more likely than not that the expenses at issue are not allowable medical expenses.

The division disallowed over-the-counter items such as protein supplements, vitamins, sleep aids, stool softeners, etc. Ms. F requires many of the disallowed items, such as additional protein, and vitamins, to keep her from entering a malnourished state.⁷ She will need these items for the rest of her life.⁸ The division denied those items because it believes protein powders and bars fall under the category of special diets, which are disallowed.

Other over-the-counter items such as vitamins, sleep aids, and stool softeners were disallowed because the division had limited expense information and these items were not verified as an allowable medical expense.⁹ After the hearing, Ms. F submitted additional evidence aimed at providing the required verification.

¹ 7 C.F.R. § 271.4(a).

² At the start of the hearing Ms. F wanted to claim her service animal as a household member (dependent). Service animals are not counted when determining the size of a household for Food Stamps.

³ 7 C.F.R. § 273.10(e)(2)(ii)(A).

⁴ See Alaska Food Stamp Manual (Manual), Addendum 4.

⁵ 7 C.F.R. § 273.9(d)(3).

⁶ 7 AAC 49.135.

⁷ Exhibit 6.3, 6.4; Approval dated November 11, 2013 by Lisa Saft, R.N.

⁸ *Id.*; F Testimony.

⁹ 7 C.F.R. § 273.9(d)(3) (verification required by requiring certain items be prescribed or approved before counted as an allowable expense); Alaska Food Stamp Manual, 602-4D(3) (describing the verification process).

Allowable deductions also include the expense of securing and maintaining a service animal.¹⁰ Ms. F believes that some of the disallowed items such as sandwich bags, paper towels, and vinegar are allowable because they are part of the cost of cleaning and maintaining her service dog.

The challenged expenses are found at Attachments A and B to this decision. Attachment A contains the expenses that the division concluded were not allowable medical expenses for the service animal, and Attachment B identifies the remaining disallowed medical expenses.

B. Evidence Considered

As a preliminary issue, the division objected to the Commissioner considering evidence submitted by Ms. F after the division made its decision.¹¹ In a *de novo* review such as this, the administrative law judge and the final decisionmaker must consider new evidence that tends to establish eligibility at the time of the original determination, regardless of whether the eligibility technician had access to that evidence.¹² In resolving this dispute, the entirety of the record is considered when determining whether the expense is a verified allowable expense.

C. Service Animal

1. *Documented Costs*

The “cost of securing and maintaining a service animal including the cost of food and veterinarian bills” is an allowable medical expense.¹³ The word “including” means “including but not limited to” the cost of food and veterinarian bills.¹⁴ When the expenses submitted as service animal costs are considered, all but a few items are allowable expenses. The disallowed expenses (sandwich bags, trash bags, vinegar, bleach, paper towels) are everyday nonfood items found in a household, regardless of whether a service animal is present. It is counter intuitive to

¹⁰ 7 C.F.R. § 273.9(d)(3); Alaska Food Stamp Manual, 602-4D(1).

¹¹ Ms. F submitted several prescriptions after the October 21, 2013 hearing. A status conference was held and the record was reopened to accept the additional evidence and provide an opportunity for the division to respond.

¹² *In re C.M.*, OAH No. 12-0998-CMB page 3, (February 7, 2013) (Commissioner of Health and Social Services); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M. App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); *see also* 42 C.F.R. § 431.242(c), (e); *cf. Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

¹³ 7 C.F.R. §273.9(3)(vii) (Although restricted to a seeing eye or hearing dog, the same cost categories are identified as allowable medical expenses); Manual 602-4 D(1)(f).

¹⁴ AS 01.10.040(b) (providing for the construction of the word “including” in legislation. There is no reason it should not be similarly construed in this instance.)

count an item that would be present in the household regardless of the service animal as an allowable medical expense.

The Food Stamp calculation generally does not consider any medical expenses, but in limited situations allows medical expenses in excess of \$35. Food Stamp benefits are designed to provide assistance with nutrition, not medical costs. The exception for limited medical expenses cannot be used to transform everyday nonfood items, typically found in households regardless of whether a service animal is present, into medical items. Instead, the costs that may be deducted are those that would not be present in the household in any amount in the absence of a service animal.

The disallowed items (paper towels, vinegar, trash bags) are everyday nonfood items typically found in households. Ms. F testified that these items were for the maintenance of the service animal. Her testimony alone is not enough to show the expense was required when it is not service-animal specific. The remaining items totaling \$138.46 are allowable because they are costs incurred for the service animal. These include items such as a leash, chew toys, and training aids for service and house breaking.

2. *Future Costs*

Ms. F testified that she was expecting upcoming expenses associated with her service animal. Ordinarily, anticipated changes in medical expenses over the certification period can be considered.¹⁵ However the record is insufficient at this time to verify the expense as well as the amount of expected expense.

D. Other Expenses

Allowable medical expenses include both prescription medications prescribed by a licensed practitioner and over-the-counter medications when approved by a licensed medical practitioner or other qualified medical professional. They also include medical supplies. However costs for special diets are not allowed as a deduction.¹⁶

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¹⁵ Manual 602-4 D(4).
¹⁶ 7 C.F.R. § 273.9(d)(3).

1. Protein Supplements

Special diets are not an allowable medical expense. Ms. F submitted several notes from health care providers indicating that she requires additional protein to supplement her food intake. Two previous decisions touch on special diets as an allowable medical expense.

In Case No. 10-FH-223¹⁷, the eligibility technician included as one of many allowable medical expenses prescribed nutritional products plus shipping costs.¹⁸ The decision cites to the rules governing medical expenses, noting that the cost of a special diet is not an allowable medical expense.¹⁹ Without discussion or explanation, the decision treated the prescribed nutritional product as an allowable medical expense.

In a more recent case, *In re F.L.*, the household submitted the nutritional drink Glucerna, used by diabetics, as an allowable medical expense. The Commissioner excluded the Glucerna based on the regulation disallowing a deduction for special diets.²⁰ This decision did not mention the former decision, offering no reason for the diverging results.

The Food Stamp regulation is clear: a Food Stamp recipient may deduct “[t]hat portion of medical expenses in excess of \$35 per month, excluding special diets. . . .”²¹ The division’s current interpretation of this regulation instructs “[E]xpenses not allowable are the cost of a special diet”²² There is no qualifier, as there is with over-the-counter medications, that would allow a deduction if the special diet is prescribed by a medical professional.²³ It is well settled that regulations should be read together as a harmonious whole.²⁴ Concluding that a special diet is not an allowable medical expense, regardless of whether it is prescribed, gives effect to each section of the rules and regulations governing allowable medical expenses. For this reason, that portion of the decision in OHA Case No. 10-FH-223 allowing a deduction of the prescribed nutritional product is rejected. The shakes, powders, and protein bars are a special diet and not an allowable medical expense.

¹⁷ Office of Hearings and Appeals, 2011.

¹⁸ OHA Case No. 10-FH-223 pages 6, 7.

¹⁹ *Id.* page 11.

²⁰ *In re F.L.*, OAH No. 12-0663-SNA (Commissioner of Health and Social Services 2012), page 5.

²¹ 7 C.F.R. § 273.9(d)(3).

²² Manual 602-4 D(2).

²³ *See, e.g.*, 7 C.F.R. § 273.9(d)(3)(iii); Manual 602-4 D(1)(c).

²⁴ Whenever possible, a court interprets each part or section of a statute with every other part or section, so as to create a harmonious whole. *Rydwell v. Anchorage Sch. Dist.* 864 P.2d 526, 530-31 (Alaska 1993). This is equally applicable to interpreting regulations.

2. *Post Surgical Medical Supplies*

Ms. F testified credibly that she required the Kotex and Equate pads as a result of a recent vaginal surgery. It is reasonable that these pads would be used post-vaginal surgery. The division offered no evidence to the contrary. As such, these items are limited to the facts of this case and will be treated as a medical supply, which is an allowable medical expense.²⁵

3. *Over-the-Counter Drug Costs*

Allowable medical expenses include both prescriptions and over-the-counter medications approved by a licensed practitioner.²⁶ The remaining items claimed by Ms. F fit within this category. Ms. F has provided a series of letters and prescriptions from her providers identifying the over-the-counter medications and the medical reasons for those medications. The most comprehensive list is exhibit 6.3, a letter from Dr. L D dated March 25, 2013 for submission to AHFC. It identifies not only the medications and medical reason, but also the dosage for each item. This is sufficient verification to consider these items an allowable medical expense.

E. Calculation of Food Stamp Benefit

A household's monthly medical deduction is based on information reported and verified by the household. The division has an internal rule that directs how allowable medical expenses are budgeted.²⁷ Under this rule, a household may include anticipated changes in the medical expenses that can reasonably be expected to occur during the certification period. One-time medical expenses are averaged over the remaining months, the period dependent upon whether the household is certified for more than 12 months.

Neither party addressed how the medical expense should be budgeted. Therefore, the division should recalculate Ms. F's Food Stamp benefit in accordance with this decision. Ms. F will have hearing rights associated with that calculation.

IV. **Conclusion**

The record now contains evidence sufficient to establish the majority of the submitted expenses as deductible medical expenses. The division's decision is affirmed in part, and

²⁵ 7 C.F.R. § 273.9(d)(3)(iii); Manual 602-4 D(1)(c).

²⁶ 7 C.F.R. § 273.9(d)(3)(iii); Manual 602-4 D(1)(c).

²⁷ Manual 602-4 D(4)

reversed in part with instructions to recalculate Ms. F's Food Stamp benefit in accordance with this decision.

DATED this 21st day of November, 2013.

Signed _____
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 2nd day of December, 2013.

By: *Signed* _____
Signature
Rebecca L. Pauli _____
Name
Administrative Law Judge _____
Title

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