

2013 recertification application. Ms. Gagne also pointed out a discrepancy in the fair hearing request, which was filled out by a DPA employee.⁶ Ms. Gagne accurately described the fair hearing request as noting that Ms. W used the drop box, as opposed to bringing it inside to the counter, because Ms. W had to get to work. Ms. W was not employed on November 19, 2013.

Ms. W testified that she was not heading to a job, but to a job interview on November 19, 2013⁷. When asked, she detailed that it was a 1:30 p.m. interview at the No Name. She did not get the job, but offered to obtain a letter confirming her interview.⁸

DPA's position statement notes that Ms. W should have contacted DPA to confirm its receipt of her recertification application early in December, when no SNAP benefit was deposited to her Quest card.⁹ Ms. W testified that in early December her then-landlord entered her home at night and attempted to sexually assault her.¹⁰ Ms. W and her son were forced to vacate the premises and found shelter at the No Name.¹¹ No Name provided meals for Ms. W and her son and did not allow personal food storage.¹² As such, Ms. W testified that she was not using her Quest card during this time period.¹³ It was only after Ms. W and her son moved to the No Name shelter, that she attempted to use her Quest card.¹⁴ Ms. W contacted DPA and filed her recertification that day, December 30, 2013.¹⁵

Ms. W's hearing was held on January 22, 2014. The hearing was recorded. Ms. W participated in the hearing by telephone, represented herself, and testified on her own behalf. Terri Gagne, a Public Assistance Analyst and Hearing Representative employed by the Division, participated in the hearing by telephone, represented the Division, and presented evidence on its behalf. All testimony and exhibits offered by the parties were admitted into evidence. At the conclusion of the hearing the record was left open until January 27, 2014, in order for Ms. Gagne

⁶ Ex. 6.4. The DPA employee name is unclear from the signature.

⁷ W testimony.

⁸ *Id.*

⁹ Fair Hearing Position Statement, (January 7, 2014); Gagne hearing presentation.

¹⁰ W testimony.

¹¹ *Id.* No Name is an emergency shelter run by the No Name.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* Ms. W's contact number is the No Name and Ms. W's No Name case worker, Ms. T, was with Ms. W during the hearing.

¹⁵ *Id.*

to provide the OAH and Ms. W additional documentation from the DPA database.¹⁶ Ms. Gagne provided the additional documentation later on January 22, 2014, the same day as the hearing.

III. Discussion

The pertinent regulation is federal SNAP regulation 7 CFR 273.2. That regulation, titled "Office operations and application processing," provides in relevant part:

(c) Filing an application--

(1) Household's right to file. Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application... State agencies must document the date the application was filed by recording the date of receipt at the food stamp office.

(g) Normal processing standard—

(1) Thirty-day processing... An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative.

It is a well-established evidentiary rule that absence of documentation in regularly kept records is admissible to prove the nonoccurrence of nonexistence of the matter.¹⁷ However, this alone is not dispositive. Ms. W presented credible testimony regarding her delivery of the recertification application to the Muldoon office. Likewise, Ms. W's testimony on the change in her living situation and use of her Quest card was sufficient to rebut DPA's assertion that she should have contacted DPA to ensure its receipt of her recertification application in early December. The credibility finding is also based on Ms. W's report of a November 19, 2013, recertification application filing date. Ms. W, if inclined, could have reported a filing date of November 15, 2013, the presumed deadline from DPA's letter. However, Ms. W reported a filing date four days after the deadline.¹⁸

The undersigned has no doubt that Ms. Gagne accurately portrayed DPA's records and application recording process. DPA processes a very high case load with large amounts of

¹⁶ Specifically, Ms. W requested information showing that DPA misplaced her information and inappropriately closed her case in the past. Ms. Gagne provided additional documentation from Ms. W's last three recertifications. The record indicates that DPA approved Ms. W's benefits each time. However, one case note display screen does indicate that DPA "found information in buckets rec'd 7/03/13." While this may indicate misplaced documentation in the past, this decision gives this information little weight. Simply because DPA may have misplaced something in the past does not mean that DPA misplaced the November 19, 2013 application.

¹⁷ See *United States v. De Georgia*, 420 F.2d 889, 892-93 (9th Cir.1969); Fed.R.Evid. 803(7)

¹⁸ Ms. Gagne confirmed that a four day late filing, if it occurred, would not have precluded Ms. W from receiving continued SNAP benefits.

corresponding documentation. This decision assumes that DPA efficiently processes the vast majority of its applications and that the loss of an application is a rare event. However, the evidence indicates that it is more likely than not that Ms. W filed her recertification application in the Muldoon drop box on November 19, 2013, and that her application was misplaced.

IV. Conclusion

Ms. W had the burden of proving, by a preponderance of the evidence, that she filed her SNAP recertification application prior to the end of November, when her SNAP certification was set to end. Based on careful consideration of the evidence, she met this burden. Accordingly, Ms. W's SNAP benefits should not have lapsed and the Division's decision closing Ms. W's SNAP case effective December 1, 2013 is REVERSED.¹⁹

Dated this 30th day of January, 2014.

Signed
Bride Seifert
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:

Without possession of a valid/timely application, the agency acted in accord with Food Stamp Regulations

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 March, 2014.

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

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

¹⁹ Ms. Gagne reported that Ms. W's benefits would have continued through December, provided Ms. W still qualified for SNAP, if the DPA had received the November 19, 2013 recertification application. Nothing in the record suggests that Ms. W would have become income ineligible during the month of December. However, if DPA policy requires verification of such, Ms. W may have to fill out additional documentation.