

On January 14, 2014, the Division conducted a review of Mr. T's case file.⁴ The Division contacted assisted living home licensing.⁵ A licensing specialist notified the Division that assisted living homes provide residents with three meals per day and a snack.⁶ The Division determined that Mr. T was ineligible to receive Food Stamps because a licensed assisted living home was required to provide meals.⁷ The Division also determined that, under Food Stamp regulations, Mr. T lived in an institution and was thus ineligible for Food Stamps.⁸ On January 21, 2014, the Division notified Mr. T of the overpayment and repayment requirements.⁹

On January 27, 2014, Mr. T requested a fair hearing.¹⁰ At hearing, Ms. Gagne testified that she confirmed with licensing staff that Mr. T resides in a licensed assisted living home and that assisted living homes are required to provide meals for residents.¹¹

Ms. X and Ms. D both testified credibly that the home does not provide Mr. T with meals.¹² Ms. D testified that Mr. T living situation is more akin to a group home than an assisted living home.¹³ She further testified that state does not distinguish between group and assisted living homes and does not offer group home licenses, only assisted living home licenses.¹⁴ The state did not rebut that group home licenses are not available.¹⁵ Mr. B provides the home with funds each month to cover housing costs, including grocery money.¹⁶

III. Discussion

The issue in this case is whether Mr. T is living in an institution that makes him ineligible to receive Food Stamps.

⁴ Ex. 4.

⁵ Ex. 4.

⁶ 7 AAC 75.265; Ex. 4; Ex. 4.1.

⁷ Ex. 6; 6.9.

⁸ Ex. 6.9.

⁹ Ex. 6.

¹⁰ Position statement.

¹¹ Gagne testimony; Ex. 4.1.

¹² D, X testimony.

¹³ D testimony (Ms. D had attempted to contact HOPE, another, larger group home provider, to determine how it dealt with the apparent conflict between group home operations and assisted living regulation requirements. Ms. Gagne testified that she had not dealt with this specific issue in prior hearings.)

¹⁴ D testimony.

¹⁵ "Group home" is not listed in AS 47.32.010(b), which lists the entities covered by AS 47.32, Centralized Licensing and Related Administrative Procedures. References to "group home" in the Alaska Administrative Code appear to refer primarily to foster or child care group homes.

¹⁶ D testimony.

The Food Stamp program is a federal program administered by the State.¹⁷ The Code of Federal Regulations (C.F.R.) establishes the rules for determining Food Stamp eligibility.¹⁸ The federal regulations are clear that the Division “must establish and collect any claim” for overpaid Food Stamp benefits issued.¹⁹ This is true even when the overpayment is caused by the Division’s error.²⁰ Residents of institutions, with some exceptions, are not eligible for Food Stamps.²¹ Individuals are considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution’s normal services.²² Group homes are institutions excepted from the ineligibility rule.²³

Alaska regulations require assisted living homes to offer residents three meals a day.²⁴ Accordingly, assisted living homes, though not specifically mentioned in Food Stamp regulations, appear to meet the definition of an excluded institution. It is undisputed that Mr. T’s residence is licensed as an assisted living home. Under these circumstances, it is logical for the Division to conclude Mr. T is ineligible for Food Stamps.

In this case, however, the evidence shows that Mr. T’s housing does not provide him with over 50 percent of his daily meals, even though it is a licensed assisted living home. Here, there is a discrepancy between licensing regulation requirements and what the No Name assisted living home is providing Mr. T. Assisted living regulations require the home to provide Mr. T with three meals a day. The home is not doing so.

The issue here is whether Mr. T is a resident of an institution that makes him ineligible to receive Food Stamps, not whether the home where he resides is in compliance with state licensing regulations. Applicants that get most of their meals provided by an institution do not qualify for Food Stamp benefits. Mr. T is not receiving the majority of his meals from his housing providers. Therefore, he is not a resident of an institution for Food Stamp eligibility purposes.

¹⁷ 7 AAC 46.010; 7 C.F.R. § 271.4(a).

¹⁸ 7 AAC 46.010; 7 C.F.R. § 271 – 274.

¹⁹ 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

²⁰ 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

²¹ 7 C.F.R. § 273.1(b)(7)(vi).

²² 7 C.F.R. § 273.1(b)(7)(vi).

²³ Alaska Food Stamp Manual §605-1 D(1)(c).

²⁴ 7 AAC 75.265.

IV. Conclusion

The Division's decision to recover \$161 in Food Stamp benefits from Mr. T is reversed.

DATED this 25th day of February, 2014.

Signed _____
Bride Seifert
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 15th day of April, 2014.

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

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