

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

In the Matter of:)
)
 D T) OAH No. 14-0191-SNA
) Agency No.
_____)

REVISED DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) was correct to deny D T's application for Food Stamp benefits issued under the Supplemental Nutrition Assistance Program. The Division denied Ms. T's application based on its finding that the transitional living facility where Ms. T currently resides provides meals to its residents.

Residents of an institution are *generally* disqualified from participation in the Food Stamp program pursuant to federal Food Stamp regulation 7 C.F.R. § 273.1(b)(7)(vi). However, the regulation provides six exceptions to this general rule. Two of these exceptions are (1) where the recipient resides at the institution for treatment of alcohol or drug addiction; and (2) where the institution is a public or private nonprofit shelter for homeless persons. This decision concludes that the transitional living facility where Ms. T resides (1) provides its residents with treatment for alcohol and drug addiction; and (2) is a public or private nonprofit shelter for homeless persons. Accordingly, Ms. T is not disqualified from participation in the Food Stamp program because at least two of the six exceptions to disqualification contained in 7 C.F.R. § 273.1(b)(7)(vi)(A-E) apply in this case. The Division's January 23, 2014 decision denying Ms. T's application for Food Stamp benefits is therefore reversed.

II. Facts

A. Ms. T and the No Name Transitional Living and Treatment Facility

At all times relevant hereto, Ms. T has lived at the No Name transitional living and treatment facility.¹ On January 13, 2014 Ms. T submitted an application for Food Stamp benefits to the Division.² On January 22, 2014 Ms. T participated in a Food Stamp eligibility interview with a

¹ Exs. 1, 2.0; DPA Position Statement; D T's hearing testimony.

² Exs. 2.0 - 2.6.

DPA eligibility technician (ET).³ Based on the interview the ET entered the following notes into DPA's electronic information system (EIS):⁴

[Ms. T] is homeless staying at No Name / Rural Cap shelter / transition alcohol abuse institution The facility [Ms. T] lives at does provide meals.

The ET then placed a call to No Name and spoke with someone named X; the ET's notes state that X told him "the facility does provide meals for clients."⁵ The ET then checked the Division's Food Stamp Manual and found that No Name's facility was not listed as a "Food Stamp approved facility."⁶ On January 23, 2014 the Division notified Ms. T that her Food Stamp application had been denied because she was "currently staying at a facility that is not a Food Stamp approved institution."⁷

At hearing, the administrative law judge (ALJ) and the Division's hearing representative each initially asked Ms. T whether the facility where she was staying "provided" meals to its residents. Ms. T testified that it did. However, M R of No Name clarified in her hearing testimony that the facility does not actually purchase food for (or give food to) its residents. Rather, residents are required to apply for Food Stamp benefits as soon as they come to live at the facility. When the residents' Food Stamp applications are approved and the residents get their electronic benefit transfer (EBT) cards, the residents go shopping together, communally, and then prepare and eat their meals communally. Thus, the meals that the facility "provides" are prepared by the residents themselves using the residents' own Food Stamp benefits. No Name merely provides the kitchen and dining room where the meals are prepared and served.

B. Relevant Case Procedural History

Ms. T requested a hearing on January 28, 2014.⁸ The hearing was held on February 21, 2014. Ms. T participated in the hearing by phone, represented herself, and testified on her own behalf. M R of No Name participated by phone and testified on Ms. T's behalf. Public Assistance Analyst Terri Gagne participated in the hearing by telephone, represented the Division, and testified on its behalf. The record closed at the end of the hearing.

On February 27, 2014 the undersigned issued a proposed decision which reversed the Division's determination. The proposed decision was based solely on the finding that the

³ Ex. 3.

⁴ Ex. 3.

⁵ Ex. 3.

⁶ Ex. 3.

⁷ Exs. 4, 5.1.

⁸ Ex. 5.2.

transitional living facility where Ms. T resides does not provide its residents with over 50 percent of three meals daily as part of the facility's normal services. The proposed decision did not address whether the exemptions for treatment facilities for alcohol and drug addiction, and/or for homeless persons, apply to this case because those exemptions were not asserted by the parties.

On March 4, 2014 the Division filed a Proposal for Action (PFA). The Division's PFA basically challenged the undersigned's factual finding that the No Name facility does not provide meals to its residents. On March 21, 2014 the Deputy Commissioner remanded this case for a supplemental hearing concerning "the facility's practice and requirements per any licensing regulation and clarification around the provision of meals and whether residents are acting as a single household." Pursuant to the Deputy Commissioner's remand order, on April 3, 2014 the undersigned scheduled a hearing for April 11, 2014 and advised the parties that the following issues would be addressed:

1. The proper classification of the No Name transitional living and treatment facility under the regulations of the Department of Health and Social Services or other governmental entity (for example, whether the facility is a community behavioral health services provider or substance use treatment provider under A.S. 47.30.520 - A.S. 47.30.620 and 7 AAC 70.010, a Community Health Facility under 7 AAC 13.010 - 7 AAC 13.900, a grant-in-aid program under A.S. 47.30.475, a Rural Alaska Community Action Program funded by grants from Alaska Housing Finance Corporation, a tribally-run facility, etc.).
2. The No Name facility's policies and practices regarding the provision of meals to its residents.
3. Whether the residents of the No Name transitional living and treatment facility are acting as a single household when they shop for, purchase, prepare, and consume the food they obtain with Food Stamp benefits.

The post-remand hearing began as scheduled on April 11, 2014. Ms. T did not attend and could not be reached by phone. Accordingly, it was not possible to take evidence on the issues referenced in paragraphs two and three, above. The Division's hearing representative was able to confirm, however, that the No Name facility is a Rural Alaska Community Action Program funded by grants from Alaska Housing Finance Corporation (the issue raised in paragraph one).

III. Discussion

The Food Stamp program is a federal program administered by the states; its statutes are codified at 7 U.S.C. §§ 2011 – 2029. The United States Department of Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp program which are codified primarily at 7 C.F.R. §§ 271-274. The Department of Health and Social Services (DHHS) administers the Food Stamp program in Alaska and has promulgated its own Food Stamp regulations at 7 AAC § 46.010 - 7 AAC § 46.990.

Pursuant to federal Food Stamp regulation 7 C.F.R. § 273.1(b)(7)(vi), residents of an institution are only eligible to receive Food Stamp benefits under certain limited circumstances. These circumstances are (1) if the institution provides them with less than the majority of their meals, (less than "50 percent of three meals daily"), as "part of the institution's normal services;" (2) if the institution provides federally subsidized housing for the elderly; (3) if the institution provides treatment for persons suffering from alcohol or drug addiction; (4) if the institution provides group living arrangements for the blind or disabled; (5) if the institution is a shelter for battered women and children; and (6) if the institution is a public or private nonprofit shelter for homeless persons.⁹

The Division denied Ms. T's application because, when it contacted No Name during the application process, the ET was told (according to the notes on the EIS) that the "facility does provide meals for clients." The Division's original denial was correct based on this information. At hearing, however, Ms. R (who appeared to be knowledgeable regarding the facility) testified that this information was incorrect. Ms. R credibly and unequivocally testified at hearing that the facility *does not* provide food for its residents, but merely assists them in getting their own Food Stamp benefits and provides them with a place to cook and a place to eat.

The Division argued at hearing that Ms. T should be bound by her original statement to the ET that the facility provides meals to its residents. However, that is not how the Fair Hearing process is designed to work. A full evidentiary hearing is required, and that hearing is not limited in scope to a mere review of an agency decision based on the information that the agency had available at the time.¹⁰ The hearing authority considers all evidence available at the time of the hearing that bears on the circumstances that existed at the time of the decision under review. Stated differently, the administrative law judge and the final decisionmaker must consider new evidence that tends to establish eligibility at the time of the original denial, regardless of whether the original caseworker had access to that evidence.¹¹

Based on the information brought out through the hearing process, it is apparent that the No Name facility in which Ms. T resides does not "provide meals" to its residents within the meaning of 7 C.F.R. § 273.1(b)(7)(vi). Accordingly, the Division erred in denying Food Stamp benefits to

⁹ See 7 C.F.R. § 273.1(b)(7)(vi) at subsections (A) through (E), respectively.

¹⁰ See *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); *Barnett v. North Dakota Department of Human Services*, 551 N.W.2d 557 (N.D. 1996) (a Food Stamp program case).

¹¹ See *Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *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); cf. *Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

Ms. T on that basis. However, the Deputy Commissioner's remand order raised issues concerning the number of persons in Ms. T's Food Stamp "household," given the testimony at the first hearing that the residents of the No Name facility prepare and consume their meals communally. Ms. T failed to participate in the post-remand hearing to address this household composition issue. There is thus a failure of proof on the household composition issue. Because income eligibility for Food Stamps is determined by household income, the household composition issue in turn makes it unclear as to whether Ms. T's "household" is income-eligible. Ms. T bears the burden of proof on these issues.

Regardless of those issues, however, it is undisputed that the No Name facility is an institution which provides residential treatment for persons suffering from alcohol and drug addiction.¹² It is also undisputed that the No Name facility is a private nonprofit shelter for homeless persons.¹³ These two "safe harbor" provisions provide Food Stamp eligibility for No Name's residents irrespective of the general rule disqualifying residents of institutions from participating in the Food Stamp program.¹⁴

IV. Conclusion

The Division erred when it concluded that Ms. T is ineligible for Food Stamp benefits based on her residence at the No Name facility. The Division's decision denying Ms. T's Food Stamp application is therefore reversed.

Dated this 5th day of May, 2014.

Signed _____

Jay Durych

Administrative Law Judge

¹² Ex. 3.

¹³ Ex. 3.

¹⁴ In other words, there are two alternative and mutually exclusive bases for this decision: (1) that the No Name facility is an institution which provides residential treatment for persons suffering from alcohol and drug addiction; and (2) that the No Name facility is a private nonprofit shelter for the homeless.

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 5th day of May, 2014.

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

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