

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

In the Matter of )  
 )  
 D S )  
\_\_\_\_\_ )

OAH No. 14-0749-SNA  
Agency No.

**DECISION**

**I. Introduction**

D S was receiving Food Stamp benefits. The Division of Public Assistance (Division) notified Ms. S that she was not eligible for Food Stamps because it found that she was convicted of a felony involving a controlled substance on January 29, 2007. She appealed, asserting that her conviction was set aside by the court and is no longer considered a conviction for Food Stamp purposes. However, under the Alaska Supreme Court’s decision in *State of Alaska Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*,<sup>1</sup> Ms. S’s conviction is considered a felony drug conviction. The Division’s decision is therefore affirmed.

**II. Facts**

The facts are not in dispute. In 2006, Ms. S committed a felony drug offense: misconduct involving a controlled substance in the fourth degree.<sup>2</sup> The court imposed a suspended imposition of sentence (SIS), and her conviction was set aside on May 11, 2012.<sup>3</sup>

On May 6, 2014, a Division investigator discovered that Ms. S had a felony drug conviction and SIS.<sup>4</sup> The Division determined Ms. S was not eligible for Food Stamps and informed her of her ineligibility.<sup>5</sup> Ms. S requested a fair hearing, believing she should be eligible for Food Stamps because her conviction was set aside.<sup>6</sup>

A hearing was held on June 5, 2014. Ms. S appeared telephonically and represented herself. Jeff Miller, Public Assistance Analyst, also appeared telephonically and represented the Division.

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<sup>1</sup> 169 P.3d 595, 599 (Alaska 2007).  
<sup>2</sup> Ex. 3 – 3.2, AS 11.71.040(a)(3)(A).  
<sup>3</sup> Ex. 4.  
<sup>4</sup> Ex. 2.1.  
<sup>5</sup> Ex. 5.  
<sup>6</sup> Ex. 6.

Ms. S testified credibly that Division employees knew of her SIS and told her she was eligible after the SIS was set aside.<sup>7</sup> Ms. S did not apply for Food Stamps until her SIS was set aside, based on her understanding of the Food Stamp program requirements.<sup>8</sup> Ms. S also testified that it was her belief that the conviction would no longer be on her record after she successfully completed the terms of probation.<sup>9</sup>

Ms. S also stated the Division now seeks recoupment of more than \$4,000 in overpayments.<sup>10</sup> Ms. S stated her employer is shutting its doors and she is losing her job on June 28, 2014.<sup>11</sup> She is unable to afford repayment.<sup>12</sup>

### **III. Discussion**

The issue presented for hearing is whether Ms. S's felony drug conviction makes her ineligible to receive Food Stamps.

Food Stamps is a federal program administered by the state. Under federal regulations, unless a state opts out of the exclusion, individuals convicted of a drug-related felony conviction are ineligible to be counted as a household member for purposes of Food Stamps.<sup>13</sup> If Ms. S's SIS is considered a conviction under Alaska law, she cannot receive Food Stamps.

Ms. S was convicted of misconduct involving a controlled substance in the fourth degree.<sup>14</sup> That crime involved the possession, use, or distribution of a controlled substance, and is a felony in the State of Alaska.<sup>15</sup> Alaska has not passed legislation exempting individuals from the drug related felony conviction exclusion. Accordingly, Ms. S's crime constituted a

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<sup>7</sup> S testimony. There appears to be misunderstanding of the effects of an SIS among Division personnel. *See* Ex. 2.2.

<sup>8</sup> S testimony.

<sup>9</sup> S testimony.

<sup>10</sup> The Division's recoupment determination was not in the record. Mr. Miller was not aware that the Division was seeking recoupment. Ms. S did not appeal the recoupment notification because she thought it was the same as this case. Mr. Miller explained the fair hearing and compromise request processes.

<sup>11</sup> S testimony.

<sup>12</sup> S testimony.

<sup>13</sup> 7 C.F.R. § 273.11(m), Individuals convicted of drug-related felonies. An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996.

<sup>14</sup> Ex. 3 – 3.2.

<sup>15</sup> AS 11.71.040.

“drug-related felony conviction” within the meaning of the applicable regulation, presumptively disqualifying her from the Food Stamp program.

The Alaska Supreme Court addressed the effect of the set-aside of a criminal conviction (i.e. a Suspended Imposition of Sentence) in *State of Alaska Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*.<sup>16</sup> In *Platt*, the court explained that while an SIS limits the consequences of the conviction and indicates that the defendant has rehabilitated, an SIS does not “change the fact that an individual was previously found guilty of committing a crime.”<sup>17</sup> It further states that regardless of the SIS, the applicant is a “person who ‘has been convicted’ of a criminal offense.” Such is the case here.

Neither the Commissioner nor the Office of Administrative Hearings may disregard the court’s interpretation regarding the limitations of a set-aside conviction. Accordingly, the Division was correct to conclude that Ms. S’s conviction counts as a felony drug conviction for purposes of the Food Stamp program, even though she was granted a Suspended Imposition of Sentence.

#### **IV. Conclusion**

Ms. S’s felony drug conviction, even though set aside, is a barring condition for purposes of the Food Stamp program. The Division’s denial of Ms. S’s Food Stamp benefits is affirmed.

DATED June 23, 2014.

By: Signed  
Bride Seifert  
Administrative Law Judge

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<sup>16</sup> 169 P.3d 595, 599 (Alaska 2007).

<sup>17</sup> 169 P.3d 595, 600 (Alaska 2007).

**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 14<sup>th</sup> day of July, 2014.

By: Signed  
Signature  
Bride A. Seifert  
Name  
Administrative Law Judge  
Title

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