

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

In the Matter of)
)
 T M) OAH No. 14-1346-SNA
) Agency No.
_____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) was correct in denying T M’s application for Food Stamp benefits in August 2014.¹ The Division’s denial was based on its determination that the father of Ms. M’s children, B V, resided with her, and therefore he was counted as part of her household and his income was attributed to her household for Food Stamp eligibility purposes.

The hearing was held on September 2, 2014.² Prior to the hearing, the Division filed a motion to dismiss, arguing that Ms. M’s request for hearing was not timely filed.³ The motion was denied on the record at the start of the hearing, under the exception set out in 7 AAC 49.030(a), which allows a late request for hearing to be accepted if the ALJ “finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.” The motion was denied based on a series of miscommunications and misunderstandings between the Division and Ms. M during the relevant timeframe, which effectively prevented her from filing a timely request.⁴

Based upon all of the evidence presented at the hearing, Ms. M did not establish that Mr. V did not reside with her. Therefore, the Division’s denial of benefits is affirmed.

II. Facts

The only issue in this case concerns whether the father of Ms. M’s children, B V, should properly have been considered part of Ms. M’s “household” as of June 2014, for purposes of

¹ The case originally related to two issues: (1) the Division’s request for repayment of an alleged overpayment of July 2014 Food Stamp benefits, and (2) the denial of August 2014 Food Stamp benefits. The Division withdrew its request for repayment, however, making a hearing unnecessary as to the first issue.

² The record was kept open for a short period after the hearing so that the Division could submit documents referenced in the testimony of its investigator. The Division submitted the documents later in the day on September 2, 2014.

³ See 7 AAC 49.030, which provides that a request for hearing must be made to the Division in writing no later than 30 days after the date of the notice.

⁴ These miscommunications and misunderstandings were discussed in detail on the record.

determining her Food Stamp eligibility. As part of her household, his income would be considered in determining eligibility. The Division's denial was based on the household's income being over the limit for a five-person household, primarily due to Mr. V's income being included.

Division investigator Michelle Rogovin visited Ms. M's home twice in June 2014. On the first visit on June 6, 2014, Mr. V was not present, but Ms. Rogovin was able to question Ms. M, asking if Mr. V kept his clothes and other belongings there. Ms. Rogovin recalled that Ms. M told her that Mr. V keeps "all of his things there" and that she indicated that he slept there.⁵ Ms. M also told her that Mr. V pays some of her rent, her car payments, utility bills, and insurance bills.⁶ Ms. Rogovin then returned to the home early in the morning of June 9, 2014, and at about 7:00 a.m. she observed Mr. V leaving the residence in work clothes and driving Ms. M's car.⁷ During her investigation, Ms. Rogovin looked up Mr. V's PFD and DMV records, and they listed Ms. M's home address of No Name 1 as Mr. V's residence address; the most recent date on the DMV records, which pertain to Mr. V's solely-owned vehicle and two vehicles he owns jointly with Ms. M, is from 2013.⁸ Ms. Rogovin noted that the PFD application (dated January 2014) is a sworn document, submitted under penalty of perjury, and that Ms. M signed the application as a "verifier" for Mr. V.⁹

The Division also subsequently learned that Mr. V listed the No Name 1 address as his residence on his pay records with his employer.¹⁰ Also, in addition to paying the utility bills and part of the rent, Mr. V is listed as a tenant on both the lease and the electric bill for the No Name 1 residence.¹¹ On June 6, 2014 Ms. Rogovin gave Ms. M her business card and invited her to submit information that might contradict the Division's position regarding Mr. V's residency, but the only documents Ms. M provided were Mr. V's paystubs showing No Name 1 as his address.¹²

Ms. M testified and provided explanations for many of the facts relied upon by the Division. She said that she listed him on the lease for her residence because without him as a co-

⁵ M. Rogovin testimony.

⁶ *Id.*

⁷ M. Rogovin testimony.

⁸ *Id.*; see DMV records and PFD application, submitted by the Division post-hearing.

⁹ M. Rogovin testimony; see PFD application.

¹⁰ See Exhibits 3.1 – 3.6.

¹¹ These documents, however, were not submitted by the Division as exhibits.

¹² M. Rogovin testimony.

tenant the landlord wouldn't have rented to her.¹³ She said the electric bill is listed in his name because she owes money to the electric company and she would have had to pay off that debt in order to have the service be under her name.¹⁴ She explained that at his home in No Name 2 there is no mail delivery, so he uses her home address instead (although he also has a post office box in No Name 3). Regarding the DMV records, she said that when they purchased her vehicle they were required by the lender to list the physical address where the car would be located.¹⁵ Ms. M also testified that Mr. V's roommate in No Name 2 is her brother, K G, and she said she identified him to the Division as Mr. V's landlord.¹⁶

Ms. M acknowledged that Mr. V does spend some nights at her home, estimating that this occurs "at least ten nights a month," "up to fifteen" nights per month, and she added that he "is there almost every day, because we do have three kids and he usually hangs out after work."¹⁷

Ms. M's father, F G, also testified. Mr. G lived with Ms. M "off and on" over the summer of 2014, starting in late May. He testified that Mr. V "doesn't stay there all the time," but he is there on weekends and "sometimes during the week."¹⁸ He estimated that Mr. V stays there "three days a week, four days a week maybe, it varies."¹⁹ Mr. G stated that Mr. V also "stays with my son" in No Name 2, but he didn't know if Mr. V pays rent there or not.²⁰

Mr. V testified that he stays with Ms. M two to three nights per week, depending on his work schedule.²¹ He confirmed that he pays part of her rent, as well as her electric bill, and that he keeps personal belongings at the No Name 1 residence.²²

III. Discussion

A. The Food Stamp Program - Overview

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

¹³ T. M testimony.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; the Division's records, however, do not show any indication of Ms. M providing this information.

¹⁷ *Id.*

¹⁸ F. G testimony.

¹⁹ *Id.*

²⁰ *Id.*

²¹ B. V testimony.

²² *Id.*

administers the Food Stamp program in Alaska and has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

Eligibility for the Food Stamp program, and the amount of Food Stamp benefits awarded, depend primarily on household size, household income, and applicable income exclusions and deductions.²³ In general, the greater a household's income, the smaller the amount of Food Stamp benefits the household will receive each month.²⁴ If a household exceeds the income limit established by regulation, the Division will determine that the household is ineligible for Food Stamps.

B. Did The Division Correctly Deny The June 2014 Application?

As stated above, the issue to be decided here is whether the Division properly included Mr. V in Ms. M's household in June 2014, when it determined that she was not eligible for Food Stamps. In this case, because Ms. M is challenging the Division's denial of her Food Stamp application, she has the burden of proving that the denial was incorrect, or, more specifically, that the Division's determination that Mr. V was part of her household was incorrect.²⁵ Under the Food Stamp program, a "household" consists of one or more individuals who **live together and who customarily purchase food and prepare meals together** for home consumption.²⁶

Ms. M presented no evidence that she and Mr. V did not customarily purchase food and prepare meals together in her home. Therefore, in order to prevail in this case, she needed to prove that she and Mr. V did not "live together" in June 2014. This terminology is not defined in the Food Stamp regulations or the Alaska Food Stamp Manual. The manual, however, does provide guidance on the question of when a person is merely a visitor versus being part of a household. It discusses "non-household members" whose income is "not considered when determining the eligibility ... for the food stamp household."²⁷ The manual defines such "non-household members," in pertinent part, as follows:

²³ See 7 U.S.C. §2012(o); 7 U.S.C. §2017(a); 7 C.F.R. §273.10(e)(2)(ii)(A), Alaska Food Stamp Manual, Addendum 4, *Ruhe v. Block*, 507 F.Supp. 1290 (D.C.Va. 1981); and *Murray v. Lyng*, 854 F.2d 303, 304 (8th Cir. 1988).

²⁴ See Alaska Food Stamp Manual, Addendum 4.

²⁵ See *ABC Board v. Decker*, 700 P.2d 483 (Alaska 1985)(the party seeking a change in the status quo has the burden of proof).

²⁶ See federal Food Stamp statute 7 U.S.C. § 2012(m)(1)(B) (defining "household" in relevant part as "a group of individuals who live together and customarily purchase food and prepare meals together for home consumption"); federal Food Stamp regulation 7 C.F.R. § 273.1(a)(2) (same definition of "household"); Alaska Food Stamp Manual § 602-1A(1)(c) (same definition of "household").

²⁷ Alaska Food Stamp Manual § 602-1A(4)(a).

Visitors, including ... spouses, staying temporarily with the food stamp household even though they may purchase food and prepare meals with the household during the visit. However, when the visit is anticipated to last more than half the days in the calendar month, the visitor is treated as a household member for that month when determining eligibility.²⁸

This definition provides helpful context for this case. Ms. M's presentation on the key issue in this case focused on her assertion that, because Mr. V "lives" with her brother in No Name 2, he does not live with her. The evidence that she presented, however, really established only that Mr. V sometimes sleeps at her brother's home in No Name 2. No evidence was presented that he had a lease agreement with her brother or paid rent to him. In contrast to Ms. M's contentions, the evidence showed that Mr. V was present in her home nearly every day, he spent the night there about half of the time, he paid part of the rent, he paid the utility bills, the lease was in his name, he listed her home as his residence on his sworn PFD application (only three months before the June 2014 Food Stamp application), he listed her home as his residence with the DMV, and he listed her home as his residence with his employer. Although Ms. M and Mr. V had alternate explanations for each of these facts, those explanations are insufficient to overcome the sheer weight of the evidence that tended to show that Mr. V lived with Ms. M in June 2014.

Most importantly, Ms. M had the burden of proof on this issue. She did not submit sufficient evidence to demonstrate that Mr. V was merely a "visitor" to her home, "staying temporarily" with Ms. M and their children. Therefore, Ms. M failed to carry her burden of proof.

IV. Conclusion

Ms. M did not establish that the Division improperly included B V in her household for purposes of determining her eligibility for food stamps in June 2014. The Division's denial of benefits is affirmed.

Dated this 4th day of February, 2015.

Signed _____
Andrew M. Lebo
Administrative Law Judge

²⁸ Alaska Food Stamp Manual § 602-1A(4)(g).

Adoption

The undersigned, under the authority of AS 44.64.060(e)(1), adopts the foregoing 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 25th day of February, 2015.

By: Signed

Name: Andrew M. Lebo

Title: Administrative Law Judge

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