

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

In the Matter of:

T N

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OAH No. 14-1469-SNA

DPA Case No.

**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Public Assistance (DPA or Division) is entitled recover \$484.00 in Food Stamp benefits which the Division asserts were overpaid to Ms. T N's household during the month of August 2014.<sup>1</sup> The Division's overpayment claim is based on the Division's assertion that Ms. N's oldest son, V N (hereafter "Mr. N" or "V") is considered part of Ms. N's household under the applicable Food Stamp regulations, and that his income is therefore attributable to Ms. N's household for purposes of calculating her household's Food Stamp eligibility and benefit amount.<sup>2</sup>

This decision concludes that the Division's determination that Ms. N's son should be included in her Food Stamp household was reasonably based on the information that the Division possessed at the time it made its decision. At hearing, however, Ms. N and her son both credibly testified that, while Mr. N *occasionally* consumes small amounts of his mother's food, and while Ms. N and her other children *occasionally* consume small amounts of Mr. N's food, Ms. N and her son do not *customarily* purchase their food or prepare their meals together. Accordingly, the preponderance of the evidence, as developed through the hearing process, indicates that Mr. N is not part of Ms. N's household for Food Stamp purposes. Mr. N's income should therefore not have been attributed to Ms. N's household for purposes of determining its financial eligibility for Food Stamp benefits.

As stated above, the Division's overpayment claim is based on Mr. N's inclusion in, and the attribution of his income to, Ms. N's household. However, Ms. N has proven that her son should not have been included as part of her household for Food Stamp purposes. Accordingly, the Division failed to prove, by a preponderance of the evidence, that Ms. N's household was overpaid

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<sup>1</sup> Ex. 8.0.

<sup>2</sup> See the Division's Fair Hearing Position Statement dated September 10, 2014; see also DPA Hearing Representative Jeff Miller's hearing testimony.

Food Stamp benefits during the period at issue. The Division's decision establishing a claim against Ms. N for \$484.00 in Food Stamp benefits is therefore reversed.<sup>3</sup>

## II. Facts

### A. *Facts Relevant to the Overpayment / Repayment Issue*

At all times relevant hereto, Ms. N has resided with her son V (age 22), daughter B (age 21), and son C (age 11).<sup>4</sup> Ms. N was gainfully employed and able to support her children until February 2013, when she lost her job.<sup>5</sup> Since then Ms. N has applied for at least two positions, but she has not yet obtained new employment.<sup>6</sup>

As a result of the loss of her job, Ms. N was forced to apply for Food Stamp benefits to help feed her family.<sup>7</sup> Ms. N submitted her application to the Division on May 21, 2014.<sup>8</sup> At page nine of the application, Ms. N listed her oldest son V as a "person in [her] household."<sup>9</sup> However, the application did not define what it meant by household member (*i.e.* whether it intended the technical Food Stamp program definition or the normal dictionary definition).<sup>10</sup> As to income, Ms. N indicated that, at that time, her "household's" only income consisted of monthly child support payments of \$243.73.<sup>11</sup>

On May 30, 2014 Ms. N participated in an eligibility interview with DPA Eligibility Technician (ET) Myra Naneng.<sup>12</sup> Ms. Naneng's notes in the Division's Electronic Information System (EIS) describe Ms. N's household as consisting of four persons, including her oldest son V.<sup>13</sup> However, there is no indication in Ms. Naneng's notes that she asked Ms. N which of her children customarily purchased and prepared meals together with her.<sup>14</sup>

On June 2, 2014 the Division mailed Ms. N a notice requesting additional information.<sup>15</sup> On June 9, 2014 the Division notified Ms. N that her household was over-income for May 2014, but

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<sup>3</sup> The overpayment claim at issue in this case is based on the Division's inclusion of Mr. N and his income in Ms. N's Food Stamp household. Should the Division determine that Ms. N's household, even absent Mr. N's income, was overpaid benefits during the period in question, then the Division will be free to seek recovery of any overpaid Food Stamp benefits on that basis.

<sup>4</sup> Ex. 1.

<sup>5</sup> Ex. A1; T N's hearing testimony.

<sup>6</sup> Exs. F1 and F2; T N's hearing testimony.

<sup>7</sup> T N's hearing testimony.

<sup>8</sup> Exs. 1, 2.6 - 2.15.

<sup>9</sup> Ex. 2.8.

<sup>10</sup> Exs. 2.8, 2.9, 2.10.

<sup>11</sup> Exs. 2.11, 2.12, 2.13. Ms. N was also receiving unemployment insurance benefits (UIB) in the gross amount of \$394.00 per week during this period (Ex. 6).

<sup>12</sup> Ex. 22.

<sup>13</sup> Ex. 22. It should be noted that Ms. N was applying for both Alaska Temporary Assistance and Food Stamp benefits, and that household composition is determined differently between the two programs.

<sup>14</sup> Ex. 22.

<sup>15</sup> Ex. 7.

that her application had been approved beginning with June 2014, and that, if she remained eligible, she would receive Food Stamp benefits through October 2014.<sup>16</sup>

On June 10, 2014 Ms. N notified the Division that her son V had just been hired as a groundskeeper by No Name, and that he would be receiving his first paycheck in about two weeks.<sup>17</sup> On June 11, 2014 the Division mailed a letter to Ms. N requesting specific information concerning V N's new employment and income.<sup>18</sup>

On June 26, 2014 the Division received the information it had requested concerning V N's wages and hours.<sup>19</sup> The Division counted Mr. N's income as income to Ms. N. The Division then determined that, when Mr. N's new income was added to Ms. N's UIB income and child support income, the total income exceeded the Food Stamp program's maximum income limit for a household of four. Because applicable regulations require ten days' notice prior to termination of benefits, and there were only four days left in the month, the Division was unable to terminate Ms. N's Food Stamp benefits for the month of July 2014. The Division did, however, close Ms. N's Food Stamp case, and terminate her benefits, as of August 31, 2014.<sup>20</sup> On August 4, 2014 the Division determined that \$484.00 in Food Stamp benefits had been overpaid to Ms. N's household for the month of August 2014, and commenced recovery efforts.<sup>21</sup>

***B. Relevant Procedural History***

On August 14, 2014 the Division mailed a notice to Ms. N stating that, during the month of August 2014, she had been paid \$484.00 more in Food Stamp benefits than she should have received, and that the Division was requiring repayment of that amount.<sup>22</sup> On August 21, 2014 Ms. N requested a hearing on the overpayment collection issue.<sup>23</sup>

Ms. N's hearing was held on October 9, 2014. Ms. N participated in the hearing by phone, represented herself, and testified on her own behalf. Ms. N's son V (Mr. N) testified by phone on behalf of his mother. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf. DPA Eligibility Technician Myra Naneng also testified by phone on behalf of the Division. The record closed at the end of the hearing.

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<sup>16</sup> Ex. 23.

<sup>17</sup> Exs. 3.0, 3.1, T N's hearing testimony.

<sup>18</sup> Ex. 4.

<sup>19</sup> All factual findings in this paragraph are based on Ex. 5 and Jeff Miller and Myra Naneng's hearing testimony.

<sup>20</sup> Although there is no copy of the termination notice in the record, the fact that benefits were terminated effective August 31, 2014 is not in dispute.

<sup>21</sup> Ex. 8.10.

<sup>22</sup> Exs. 8.0 – 8.9.

<sup>23</sup> Exs. 9.0 - 9.14.

### III. Discussion

#### A. *Applicable Standard of Review*

The standard of review in an administrative proceeding concerning Food Stamp benefits is *de novo review*. See 7 CFR 273.15(p)(6); *Barnett v. North Dakota Department of Human Services*, 551 N.W.2d 559 (N.D. 1996) (case confirming the *de novo* nature of administrative review of Food Stamp cases). Accordingly, the administrative law judge may receive and consider evidence not available to the Division at the time it made its original decision, may independently weigh and evaluate that evidence, and may reach a different conclusion than did the Division's staff.

#### B. *The Food Stamp Program - Overview and Provisions Regarding Overpayments*

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. Alaska's Department of Health and Social Services (DHSS) 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, depends primarily on household size, household income, and applicable income exclusions and deductions.<sup>24</sup> In general, the greater a household's net income, the smaller the amount of Food Stamp benefits the household will receive each month.<sup>25</sup>

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C. § 2022. Subsection (b)(1) of that statute provides in relevant part that the “state agency *shall* collect any overissuance of benefits issued to a household . . .” [Emphasis added]. This statute requires, on its face, that the Division attempt to recover any overpaid Food Stamp benefits.

The federal implementing regulation pertaining to the recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. Subsection (a)(2) of that regulation provides in relevant part that “the State agency *must* establish and collect any claim . . . .” Subsection (e)(1) of that regulation also provides in relevant part that “state agencies *must* begin collection action *on all claims* unless [inapplicable].” Under subsection (b)(3), collection action is required even where the “overpayment [is] caused by an action or failure to take action by the State agency.”

In summary, it is clear that 7 C.F.R. § 273.18 requires that the Division attempt to recover any overpaid Food Stamp benefits, even when the overpayment is the result of the Division's own

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<sup>24</sup> 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).

<sup>25</sup> See Alaska Food Stamp Manual, Addendum 4.

error.<sup>26</sup> The remaining question is whether there was, in fact, any overpayment. This, in turn, depends on whether V N's income can be attributed to Ms. N (or, stated differently, whether V N can properly be included in Ms. N's household).

**C. *Is V N Part of Ms. N's Household for Food Stamp Purposes?***

As discussed above, if Ms. N's household received an overpayment, the Division is required by federal law to attempt to recover it. The primary question in this case, however, is whether Ms. N's household was overpaid any Food Stamp benefits to begin with.

The Division's overpayment claim is based on the premise that Ms. N's household was overpaid benefits because V N's income was not counted.<sup>27</sup> Had Mr. N's income been counted, as the Division asserts it should have, this would have caused Ms. N's household's gross income to exceed the Food Stamp program's maximum gross income limit for a four-person household. This is a perfectly logical argument. However, it proceeds from the premise that V N is part of Ms. N's household for Food Stamp purposes.

The Food Stamp program awards benefits by the household rather than by the individual.<sup>28</sup> For purposes of 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.<sup>29</sup> Thus, where two or more persons share common living quarters, *but purchase and prepare their food separately*, there can be more than one Food Stamp "household" living under the same roof.<sup>30</sup> Household composition is generally a factual issue,<sup>31</sup> and the persons claiming separate household status bear the burden of proving that they purchase and prepare their food separately.<sup>32</sup>

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<sup>26</sup> This was recently confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009). The federal regulations, and the *Allen* decision, are binding on the Department of Health and Social Services and on the Office of Administrative Hearings.

<sup>27</sup> Ex. 8.0; Division Position Statement at p. 2; Jeff Miller hearing testimony.

<sup>28</sup> 7 CFR § 273.1.

<sup>29</sup> 7 CFR § 273.1(a)(1); 7 CFR § 273.1(a)(3).

<sup>30</sup> See Federal Food Stamp statute 7 U.S.C. § 2012(n)(1)(A) (defining "household" in relevant part as "an individual who . . . while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others . . ."); Federal Food Stamp regulation 7 C.F.R. § 273.1(a) (defining "household" in relevant part as "[a]n individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others . . ."); Alaska Food Stamp Manual § 602-1A(b) (defining a household as including "[a]n individual or group of individuals living with others, but that customarily purchase food and prepare meals for home consumption separate and apart from the others"); and Alaska Food Stamp Manual § 600-2.

<sup>31</sup> There are certain situations in which household members must, by regulation, be considered as part of the same household, even if they purchase and prepare their food separately. For example, under 7 CFR § 273.1(b)(1)(ii), a person *under* 22 years of age who is living with his or her parent(s) *must* be included in the parent's household for Food Stamp purposes. Accordingly, Ms. N's daughter B (age 21) *must* be included in Ms. N's household for Food Stamp purposes, even if she purchases and prepares her food separately. V N, on the other hand, is 22 years old, so the automatic presumption provided by 7 CFR § 273.1(b)(1)(ii) does not apply to him.

<sup>32</sup> 7 CFR § 273.2(f)(x) requires that state agencies "verify factors affecting the composition of a household," and states in relevant part that "[i]ndividuals who claim to be a separate household from those with whom they reside shall

The testimony in this case was conflicting as to whether Mr. N purchases and prepares his food separately, or (on the other hand) together with his mother, brother, and sister. Myra Naneng, the DPA ET who conducted Ms. N's eligibility interview, testified that she asked Ms. N "how many people are living in the household," and whether they purchased and prepared their food together. Ms. Naneng testified that Ms. N told her that everyone in the household purchased and prepared their food together.

Ms. N, on the other hand, testified that she never made the statement attributed to her by Ms. Naneng. She testified that her son V was paying her \$200.00 per month as rent, but that he was buying his own groceries, and that, because of his school and work schedule, he generally ate his meals on his own, and that she rarely saw him.<sup>33</sup>

V N's testimony was consistent with that of Ms. N. He testified that he was reluctantly paying \$200.00 per month in rent, but that he generally buys his own food, generally does not eat his mother's and siblings' food, and generally does not eat with his family. He did acknowledge occasionally drinking milk purchased by Ms. N, but that was all.

In some prior Food Stamp cases, the undersigned has observed notes, taken by the DPA eligibility technician, indicating that the ET asked the applicant, during the eligibility interview, whether the various household residents purchase and prepare food together. The ET's notes in this case, however, contain no mention that this question was asked.<sup>34</sup>

If Ms. Naneng's notes corroborated her hearing testimony (that Ms. N reported that her family customarily purchased and prepared its food together), the Division's evidence would be convincing. However, without corroborating notes, it is quite possible, given the high volume of interviews conducted by the Division's ETs, that Ms. Naneng confused Ms. N with another applicant. On the other hand, the hearing testimony of Ms. N and V N was credible, and was also consistent with the written statements they submitted prior to hearing. Those written statements (marked as Exhibits A and B) also appear to have been made before Ms. N was aware of the tests for determining household composition under 7 CFR § 273.1, which tests were not included in the Division's Position Statement and were not discussed until the hearing. Accordingly, the preponderance of the evidence indicates that V N does not customarily<sup>35</sup> purchase or prepare his

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be responsible for proving that they are a separate household to the satisfaction of the State agency." Similarly, Alaska Food Stamp Manual § 602-3 states in relevant part that "[i]ndividuals claiming separate household status from others living in the same residence are responsible for verifying their separate status . . .".

<sup>33</sup> T N hearing testimony; Ex. A-1.

<sup>34</sup> Ex. 22.

<sup>35</sup> The argument could be made that V N fails the "separate household" test because he occasionally drank milk from his mother's refrigerator, occasionally took food items from her kitchen, and/or occasionally gave food that he

food with the rest of Ms. N's household. V N is therefore not a member of Ms. N's household for Food Stamp purposes.

In summary, the Division's overpayment claim is based on the inclusion of V N's income as part of Ms. N's household's total income. However, because V customarily purchases and prepares his food separately, he is not a member of Ms. N's household for Food Stamp purposes. His income therefore cannot be attributed to Ms. N's household for purposes of determining Ms. N's program eligibility and benefit amount. In turn, because Mr. N's income should not have been included as part of Ms. N's household's total income, the Division's overpayment calculations are incorrect.<sup>36</sup> The Division has therefore failed to prove, by a preponderance of the evidence, that there has been any overpayment to be recovered in this case.

#### **IV. Conclusion**

The Division failed to prove, by a preponderance of the evidence, that Ms. N was overpaid Food Stamp benefits during the period in question. The Division's decision establishing a claim against Ms. N for \$484.00 in Food Stamp benefits is therefore reversed.<sup>37</sup>

DATED this 24th day of October, 2014.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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purchased to his mother and siblings. However, the test under 7 CFR 273.1 is whether the person claiming separate household status *customarily* purchases food and prepares meals for home consumption separate and apart from the others. "Customarily" does not mean "always." Rather, it means "usually, generally, commonly, regularly, normally, traditionally, ordinarily, habitually." *See Collins Thesaurus of the English Language* (2nd Edition, Harper-Collins Publishers, 2002); *see also* Merriam-Webster's online dictionary at <http://www.merriam-webster.com/dictionary/customary> ("usual or typical") (accessed online on October 23, 2014).

<sup>36</sup> The Division bears the burden of showing that its overpayment calculations are correct. *See* 7 AAC 49.135; *see also State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>37</sup> As previously noted, the overpayment claim at issue in this case is based on the Division's inclusion of Mr. N, and his income, in Ms. N's household. Should the Division subsequently determine that Ms. N's household, *when treated as a three-person household*, was overpaid benefits during the period in question, the Division is free to seek recovery of any overpaid Food Stamp benefits on that basis.

## 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 4<sup>th</sup> day of November, 2014.

By: Signed  
Name: Rebecca L. Pauli  
Title: Administrative Law Judge

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