

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

In the Matter of)		
)	OAH No.	14-2001-SNA
U L)	Agency No.	
_____)		

DECISION

I. Introduction

U L applied in August of this year for recertification to the Supplemental Nutrition Assistance Program, commonly known as the Food Stamp program. The Division of Public Assistance (DPA) found her ineligible on the basis that she had failed to provide all requested information by the due date. Ms. L has appealed.

Ms. L's hearing occurred on December 4, 2014. She attended in person. The division was represented by Michelle Cranford, who appeared by telephone. Testimony was taken from Ms. L and from Eligibility Technician (ET) Ryan Murphy.

The Administrative Law Judge (ALJ) has concluded, based on the testimony, that it is more likely than not that Ms. L did submit the requested materials on time, and that they were misplaced when the ET who was apparently working on them went on unexpected leave. The denial must be reversed. Although the ALJ disagrees with DPA, he commends DPA for its cooperative approach in finding the ET and arranging for him to testify.¹

II. Background Facts

On August 13, 2014, U L applied for recertification to the Food Stamp program.² DPA pended her application on September 2, seeking additional information on a variety of matters, to be brought in by September 15.³ Ms. L apparently provided all of the requested information.⁴ She called to follow up on September 19, and when the ET could not confirm that the documents had been received, the ET made a note that Ms. L would bring them again on September 21.

¹ The ALJ wanted Mr. Murphy to testify, but could not escape from an endless loop of circular voice mails in DPA's Gambell office. Ms. Cranford took the initiative to e-mail Mr. Murphy and get him to make himself available.

² Ex. 2.

³ Ex. 3, 4.

⁴ Ex. 5, 6. The date(s) on which she provided it were not established at the hearing.

It is clear that the requested items were received, because all of the issues the agency had identified were cleared up. However, an ET reviewing Ms. L's application on October 8 decided that yet another item of information, not previously requested, was still needed.⁵ On October 9, 2014, the ET sent Ms. L a notice that her August application had been pended again. The notice asked her to provide information, no later than October 20, about whether she was receiving support from her son E, and if so, how much.⁶

Ms. L contends that she provided this information, in the form of a written statement from E, by delivering it to the Gambell office on October 16, 2014. The agency contends that it has no record of receiving the information, and therefore it must not have been delivered. On November 3, it sent Ms. L a notice that her application had been denied for failure to provide the information requested on October 9.⁷

The undisputed evidence in this case shows that Ms. L has not received any support from E since May of 2014,⁸ and thus she is eligible for recertification. The sole issue is whether she provided the requested information on time.

III. Resolution of Factual Issue

Ms. L presents herself credibly. She admits receiving the October 9 notice, and says that she dropped off a letter from E in response to the notice on October 16.

In her testimony early in the hearing, Ms. L went on to recall that she had called to follow up on her application twice, once on about October 22 and once on about October 28, both times to see if the agency had acted on her supplemental information. She recalled that each phone call would have been made between 3:30 and 4:30 p.m., on account of her work schedule. At the time she gave this testimony, Ms. L could have had no way of knowing that anything in the agency's records would corroborate her recollection. Indeed, the records the agency had sent her in the hearing packet contained no trace of these followup calls.

Ms. L recounted that the first call, at the end of the day on the 22nd, was with a male she thought was named "Lou." She says the person she talked to said the letter had been received, and that he would e-mail her caseworkers to encourage them to give priority to working the case.

⁵ Ex. 6.
⁶ Ex. 8.
⁷ Ex. 9.
⁸ Testimony of Ms. L.

Later in the hearing, a search of computer records showed that an ET named Joshua Wood made an inquiry into the file on the morning of October 23, and a supervisor named Harry Kuhn accessed the file in late afternoon on October 27. Neither of these individuals was assigned to work the case. These inquiries do not match up perfectly to Ms. L's account, although the morning inquiry on October 23 could well be a followup to a late afternoon call by Ms. L on the previous day.

Ms. L's second call, however, is extremely well corroborated. She described a call between 3:30 and 4:30 on October 28. She thought she was speaking to the same ET. She recalled being told that he would work the case himself to get it taken care of.

It turned out, later in the hearing, that ET Ryan Murphy—who again was not assigned to her file—had accessed Ms. L's electronic record during precisely that hour on October 28. Mr. Murphy was working the phones at that time, and he would not have accessed the file at random. The coincidence of times is too close to be mere chance; it seems virtually certain that Mr. Murphy had had a phone call from Ms. L.

Mr. Murphy, of course, does not recall the conversation specifically. However, he confirms that if someone's file had a simple issue, like a single missing document that needed to be processed in, he would have "worked the case myself." This is exactly what Ms. L remembers being told he would do.

Unfortunately, Mr. Murphy left on unplanned, extended leave at the end of the day on October 29, not returning until December. He left his pending matters on a supervisor's desk. The supervisor also went on leave, and so whatever Mr. Murphy left would have had to be picked up by a third person.

It seems likely that Mr. Murphy spoke to Ms. L, accessed her record, found the letter from E, told Ms. L that he would work on the file himself (as she remembers him doing and he confirms he would have done), and then was not able to complete the task before his unexpected leave. No other scenario provides as satisfactory an explanation for the known facts. For example, if Ms. L did not call in late on October 28, it is difficult or impossible to explain why Mr. Murphy accessed her electronic record at that time. If Ms. L did call in and Mr. Murphy discovered that the letter from E was still missing, it is difficult to understand why Mr. Murphy would not have made a note in the electronic record similar to the one made on September 19 (when the ET recorded asking Ms. L to bring the item in again, and noted a date by which she

must do so). Although perfect certainty is impossible, the facts point to an explanation consistent with Ms. L's recollection: she had provided the document; the ET she spoke to on the 28th found it and promised to work the file himself; and then the unusual and unexpected circumstances surrounding his leave prevented him from completing the task. Regrettably, his supervisor was also on leave, and the matter seems to have fallen through the cracks.

IV. Conclusion

It is more likely than not that Ms. L provided all requested information to DPA on time. Accordingly, DPA's November 3, 2014 decision to deny her application for failure to provide is reversed.

Dated this 8th day of December, 2014.

Signed _____

Christopher Kennedy
Administrative Law Judge

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 23rd day of December, 2014.

By: *Signed* _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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