

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

In the Matter of	)	
	)	OAH No. 15-0063-SNA
F J	)	Division No.
_____	)	

**DECISION**

**I. Introduction**

F J is a former Food Stamp<sup>1</sup> recipient. The Division of Public Assistance (Division) closed Mr. J’s Food Stamp case on November 12, 2014, due to a 2010 felony drug conviction. The Division terminated Mr. J’s Food Stamp benefits and notified him on November 13, 2014 that his household was no longer eligible for benefits after his son moved out.

On November 28, 2014, Mr. J requested a fair hearing to contest the termination of his Food Stamp benefits. Mr. J’s hearing was held on February 23, 2015. Mr. J said he did not receive the mailed notice for the hearing, but he was available to participate telephonically. He represented himself and testified on his own behalf. Michelle Cranford, with the Division of Public Assistance, represented the Division.

Based on the record and after careful consideration, this decision finds that Mr. J is not eligible for Food Stamp benefits due to his 2010 felony drug conviction. Consequently, the Division’s decision to terminate those benefits is upheld.

**II. Facts**

The following facts were established by a preponderance of the evidence.

In 2010, Mr. J pled guilty to, and was convicted of, Third Degree Misconduct Involving a Controlled Substance.<sup>2</sup> He received a Suspended Imposition of Sentence (SIS), and his conviction was set aside in 2013.<sup>3</sup> On August 12, 2014, Mr. J applied for Food Stamps.<sup>4</sup> At an interview the next day, Mr. J indicated that his household consisted of himself and his son, M. On August 15, the Division approved Mr. J’s application for the household.<sup>5</sup> On September 30, the Division became aware of Mr. J’s felony drug conviction and reassessed the household Food

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<sup>1</sup> Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). However, the program is still commonly referred to as the Food Stamp program.

<sup>2</sup> Ex.4.3.

<sup>3</sup> Ex.4.3 (suspended for a period of 36 months).

<sup>4</sup> Ex. 2.

<sup>5</sup> Ex. 3.

Stamp benefits in light of his ineligibility.<sup>6</sup> M remained eligible, so the household continued to receive reduced benefits from Food Stamps.

On November 12, the Division received a report of change from Mr. J that his son had moved out. On November 13, the Division notified Mr. J that his Food Stamp case had been closed because his household no longer had an eligible member. On November 28, Mr. J requested a fair hearing.<sup>7</sup>

Mr. J testified that he was aware of the law prohibiting convicted drug felons from receiving Food Stamps,<sup>8</sup> and since his conviction, he had been careful to follow the law. However, he reasoned that the SIS and subsequent setting aside of his conviction meant that he was no longer a felon in the eyes of the State. He believed that because he had followed the terms of his suspension and had received a document from the judge setting aside his conviction, he could now own guns legally.<sup>9</sup>

### III. Discussion

The issue in this appeal is whether the Division was correct to consider Mr. J's felony drug conviction for Food Stamp eligibility, regardless of his Suspended Imposition of Sentence and the fact that the conviction was ultimately set aside. The Food Stamps program is a federal program administered by the State.<sup>10</sup> The Code of Federal Regulations contains the rules for determining whether individuals qualify for Food Stamp benefits. The federal Food Stamp regulations state:

*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.<sup>[11]</sup>

“Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction” may not receive Food Stamp benefits.<sup>12</sup> For the present case, the operative phrase in §273.11(m) is “an individual convicted.” The Alaska Supreme Court recently held that

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<sup>6</sup> Ex. 4.

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

<sup>8</sup> Testimony of F J.

<sup>9</sup> *Id.*

<sup>10</sup> 7 C.F.R. § 271.4(a).

<sup>11</sup> 7 C.F.R. § 273.11(m) (emphasis in original).

<sup>12</sup> 7 C.F.R. § 273.1(b)(7)(vii).

“although the set aside [conviction] indicates that the defendant has made a substantial showing of rehabilitation, it does not erase the fact of conviction.”<sup>13</sup> In some ways, Mr. J’s past criminal conviction is no longer legally relevant.<sup>14</sup> However, he technically was still convicted:

Further, we have held that setting aside a conviction does not expunge the conviction from an offender's criminal record. Both the conviction and the judgment setting it aside consequently remain in the public record. Members of the public, such as potential employers inquiring into a job applicant's criminal record, can learn of the existence of a conviction that has been set aside. They can do this by researching court records or by requiring a person applying for employment or housing to divulge the fact of a prior conviction even if it has been set aside.<sup>[15]</sup>

Mr. J was not qualified to receive Food Stamp benefits due to his 2010 felony drug conviction, notwithstanding his SIS and the fact that the conviction was set aside. Any benefits he received after September 30 were given to the household due solely to his son’s eligibility. Once his son moved away, Mr. J became the sole member of his household. Since he has been convicted, at some point, for a drug-related felony, he is now ineligible for Food Stamps.

#### **IV. Conclusion**

Mr. J’s felony drug conviction, even though set aside, is a barring condition preventing him from being counted as a household member for purposes of Food Stamps. The Division's decision to terminate Mr. J’s Food Stamp benefits is affirmed.

DATED June 30, 2015.

*Signed*

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Kay L Howard

Administrative Law Judge

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<sup>13</sup> *State, Div. of Corporations, Bus. & Prof'l Licensing, Alaska Bd. of Nursing v. Platt*, 169 P.3d 595, 599 (Alaska 2007) (citations omitted).

<sup>14</sup> *E.g.* Mr. J’s testimony regarding gun ownership.

<sup>15</sup> *Doe v. State, Dept. of Public Safety*, 92 P.3d 398, 407 (Alaska 2004) (citations omitted). *Also see State, Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*, 169 P.3d 595, 599 – 600 (Alaska 2007) (regardless of the setting aside of the conviction, the applicant remained a “person who ‘has been convicted’ of a criminal offense.”).

## 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 14th day of July, 2015.

By: Signed  
Name: Jeffrey A. Friedman  
Title: Administrative Law Judge

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