

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

In the Matter of: )  
 )  
 D B ) OAH No. 15-0660-SNA  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Public Assistance (DPA or Division) correctly calculated the amount of D B's monthly Food Stamp<sup>1</sup> benefits for the recertification period beginning January 1, 2015. The Division calculated Ms. B's benefit amount as \$18.00 per month.<sup>2</sup> Ms. B asserts, however, that her monthly Food Stamp benefit amount should be significantly more than \$18.00 per month.

This decision concludes that the Division's calculation of Ms. B's monthly Food Stamp benefit amount was correct. The undersigned does not doubt Ms. B's assertion that \$18.00 per month in Food Stamp benefits is insufficient for a person in Ms. B's circumstances. However, a Food Stamp program recipient's monthly benefit amount is the product of federal and state regulations, which both the Division and the Office of Administrative Hearings are bound to follow. Regrettably, those regulations do not give the Division or this Office the discretion to increase the monthly benefit amount in hardship cases. Accordingly, the Division's calculation of Ms. B's monthly Food Stamp benefit amount as \$18.00, beginning in January 2015, is affirmed.

**II. Facts**

Ms. B is 70 years old.<sup>3</sup> Her kidneys have failed, and she must undergo dialysis three days per week.<sup>4</sup> She is currently on a waiting list for a kidney transplant. She is near the top of the list. However, in order to be selected for a kidney transplant, the transplant candidate must be completely compliant with a restricted, pre-kidney transplant diet specified by the hospital. Ms. B undergoes regular blood tests to confirm that she is complying with the special pre-transplant diet and that her blood chemistry remains good.

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program ("SNAP"). However, the program is still commonly known as the "Food Stamp program" and will be referred to as such in this decision.

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

<sup>3</sup> Ex. 1.

<sup>4</sup> All factual findings in this paragraph are based on Ms. B's hearing testimony unless otherwise stated.

Ms. B receives "meals on wheels" through the Medicaid Home and Community-Based Waiver Services Program.<sup>5</sup> However, because of her restricted diet, she cannot eat much of the food provided through the "meals on wheels" program. Thus, she is in a difficult position: she must keep to her restricted diet in order to be selected to receive a kidney transplant, but she does not have enough money, or enough Food Stamp benefits, to continue her special diet.

Ms. B lives alone in her own home.<sup>6</sup> Her monthly household expenses consist of her mortgage payment (\$916.48), heating / natural gas bill (\$171.00), her electric bill (\$96.00), her water and wastewater service bill (\$92.35), her refuse / trash collection bill (\$57.30), and her telephone bill (\$14.47).<sup>7</sup> She must pay for food with whatever remaining funds she has available.<sup>8</sup>

Ms. B's current monthly income consists of a Social Security payment of \$1,449.00 and an Alaska Senior Benefits Program payment of \$125.00.<sup>9</sup> Prior to December 2014 Ms. B's gross monthly Social Security payment was \$1,425.00.<sup>10</sup> However, in December 2014 the Social Security Administration (SSA) increased the payment to \$1,449.00.<sup>11</sup>

Prior to the December 2014 increase in her monthly Social Security payment, Ms. B's monthly Food Stamp benefit amount was \$63.00.<sup>12</sup> However, in December 2014, when SSA increased Ms. B's monthly Social Security payment by \$24.00, the Division decreased Ms. B's monthly Food Stamp benefit amount by \$45.00 (from \$63.00 to \$18.00). This resulted in a net decrease of \$21.00 in the total cash and benefits available to Ms. B for purchasing food.

On November 21, 2014 Ms. B submitted an Eligibility Review Form to continue her Food Stamp benefits.<sup>13</sup> On December 23, 2014 Ms. B participated in an eligibility interview with a DPA eligibility technician (ET).<sup>14</sup> During this interview the ET confirmed that Ms. B's income and expenses were as stated above.<sup>15</sup> The Division counted Ms. B's monthly Social Security and Senior Benefits Program payments, excluded the annual Alaska Permanent Fund dividend (PFD), and determined that Ms. B has gross income of \$1,574.00 per month.<sup>16</sup> The Division then subtracted from Ms. B's gross income a standard deduction of \$266.00, and determined that Ms. B has monthly

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<sup>5</sup> All factual findings in this paragraph are based on Ms. B's hearing testimony unless otherwise stated.

<sup>6</sup> Ex. 2.3.

<sup>7</sup> Ex. 5.4.

<sup>8</sup> D B's hearing testimony.

<sup>9</sup> Exs. 2.0, 2.3, 3.0, and 3.1.

<sup>10</sup> Ex. 3.

<sup>11</sup> Ex. 3.0.

<sup>12</sup> All factual findings in this paragraph are based on Ex. 3.2 unless otherwise stated.

<sup>13</sup> Exs. 2.1 - 2.6.

<sup>14</sup> Ex. 2.0.

<sup>15</sup> Ex. 2.0.

<sup>16</sup> Ex. 6.0; Jeff Miller's hearing testimony.

adjusted income of \$1,308.00.<sup>17</sup> The Division then applied the remainder of the Food Stamp benefit calculation (discussed in Section III, below) and concluded Ms. B's new monthly Food Stamp benefit amount to be \$18.00.<sup>18</sup>

On December 24, 2014 the Division issued a notice to Ms. B stating that her Food Stamp recertification / renewal application had been approved.<sup>19</sup> The notice further stated that, beginning in January 2015, Ms. B would receive \$18.00 per month in Food Stamp benefits based on countable income of \$723.52.<sup>20</sup> Finally, the notice indicated that Ms. B's Food Stamp benefit amount had decreased because her monthly Social Security benefit amount had increased.<sup>21</sup>

On March 17, 2014 Ms. B requested a hearing concerning the amount of her Food Stamp benefits.<sup>22</sup> In her hearing request, Ms. B indicated that her Food Stamp benefit amount was insufficient, due in part to her restricted, pre-kidney transplant diet.

Ms. B's hearing was held on June 25, 2015. Ms. B attended the hearing by phone, represented herself, and testified on her own behalf. She was accompanied and assisted by her personal care assistant, C Q. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf.

At hearing, Ms. B did not dispute any of the income or expense figures used by the Division in its calculations. Neither did she dispute the accuracy of the calculations themselves. Rather, she convincingly asserted that her new Food Stamp benefit amount of \$18.00 per month is simply not enough for anyone to live on. She further asserted that her current Food Stamp benefit amount is even more inadequate given her restricted, pre-kidney transplant diet. In response, the Division asserted that it had correctly calculated the amount of Ms. B's monthly Food Stamp benefits, and that Ms. B's monthly benefit amount is the result of federal statutes and regulations which the Division is required to follow. The record closed at the end of the hearing.

### **III. Discussion**

#### ***A. Overview of the Food Stamp Program***

The Food Stamp program is a federal program administered by the states.<sup>23</sup> Its primary statutes are codified at 7 USC Sections 2011 – 2029. The United States Department of

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<sup>17</sup> Ex. 6.0; Jeff Miller's hearing testimony.

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

<sup>19</sup> Ex. 4.

<sup>20</sup> Ex. 4.

<sup>21</sup> Ex. 4.

<sup>22</sup> All factual findings in this paragraph are based on Ex. 5 unless otherwise indicated.

<sup>23</sup> 7 CFR § 271.4(a).

Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp program; those regulations are located primarily at 7 CFR Sections 271-274.

The State of Alaska Department of Health and Social Services (DHSS) administers the Food Stamp program in Alaska. DHSS has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

The Food Stamp program provides nutritional assistance to all financially needy households.<sup>24</sup> In the 2010 fiscal year, the program provided \$64.7 billion in benefits to more than 40 million individuals (19 million households). However, only eight percent of program recipients were age 60 or over, despite this population composing more than 18 percent of the U.S. population. Moreover, at least 2.3 million households (7.9 percent) with an elderly member were considered "food insecure" in 2010, and even more likely experienced at least some difficulty obtaining adequate resources for food.<sup>25</sup>

As of the 2014 fiscal year, the average monthly per-person Food Stamp benefit amount, in the state of Alaska, was \$165.97.<sup>26</sup> Food Stamp benefit amounts are based primarily on the number of people living in the household, and on the monthly income (after applicable deductions) received by those household members.<sup>27</sup> In general, the greater a household's income, the smaller the amount of Food Stamp benefits the household will receive.<sup>28</sup> Further, because the amount of a household's deductions affects its countable income, the lesser the amount of a household's deductions, the greater its countable income will be, and the lower its benefit amount will be.<sup>29</sup>

***B. Ms. B, as the Party Seeking Additional Benefits, Bears the Burden of Proof***

Ms. B asserts that the Division should provide her with more Food Stamp benefits than are being paid to her, beginning with the month of January 2015. Under applicable law, Ms. B has the burden of proving, by a preponderance of the evidence, that the Division's calculation of her current benefit amount is not correct and/or should be increased.<sup>30</sup>

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<sup>24</sup> All references in this paragraph are based on Greenhalgh-Stanley, Nadia and Fitzpatrick, Katie, "Food Stamps, Food Sufficiency, and Diet-Related Disease among the Elderly" (Institute for Research on Poverty, Discussion Paper No. 1407-13, February 2013) unless otherwise stated.

<sup>25</sup> Coleman-Jensen, Alisha, Mark Nord, Margaret Andrews, and Steven Carlson, "Household Food Security in the United States in 2010," ERR-125 (U.S. Department of Agriculture, Economic Research Service, September 2011); see also Ziliak, James, and Craig Gundersen, "Senior Hunger in the United States: Differences across States and Rural and Urban Areas" (University of Kentucky, Center for Poverty Research Special Reports, 2009).

<sup>26</sup> See the federal Food and Nutrition Service website at [http://www.fns.usda.gov/sites/default/files/pd/18SNAPavg\\$PP.pdf](http://www.fns.usda.gov/sites/default/files/pd/18SNAPavg$PP.pdf) (accessed July 8, 2015).

<sup>27</sup> 7 CFR § 273.10(e)(2)(ii)(A).

<sup>28</sup> See Alaska Food Stamp Manual, Addendum 4.

<sup>29</sup> *Id.*

<sup>30</sup> 2 AAC 64.290(e); 7 AAC 49.135.

**C. Calculation of Income and Benefit Amounts under the Food Stamp Program**

In order to calculate a Food Stamp recipient's benefit amount, it is first necessary to calculate the income on which the benefit amount is based. The Division determined that Ms. B currently receives \$1,449.00 per month in Social Security and \$125.00 per month in Senior Benefits Program payments. Ms. B did not dispute these figures. Accordingly, Ms. B's gross income for Food Stamp purposes is \$1,574.00.<sup>31</sup>

Once a recipient's gross income has been established, the next step is to apply any available deductions.<sup>32</sup> The first deduction available in this case is the so-called "standard deduction."<sup>33</sup> The standard deduction for a one-person household in Alaska, during the period from October 1, 2014 through September 30, 2015, is \$266.00.<sup>34</sup>

The next step is to subtract the standard deduction from the recipient's gross income to determine the "total adjusted income."<sup>35</sup> This results in the following calculations in this case:

Gross Income:	\$1,574.00
(Minus) Standard Deduction	<u>-\$266.00</u>
(Equals) Total Adjusted Income	\$1,308.00

Next, the Division considered Ms. B's shelter costs, consisting of her monthly mortgage payment of \$916.00, and her monthly heating costs of \$322.00.<sup>36</sup> These two items were added together, resulting in total monthly shelter costs of \$1,238.00 for January 2015.<sup>37</sup>

The next step is to subtract the monthly shelter costs from the recipient's total adjusted income to determine the recipient's monthly net income.<sup>38</sup> At this step, however, the Food Stamp calculation attempts to equalize benefits between persons with lower shelter costs and those with higher shelter costs, and in the process becomes somewhat complicated and confusing. The equation begins with the recipient's total shelter costs. From that, the equation deducts one-half of the recipient's total adjusted income. The resulting number is referred to as "excess shelter costs." Then, the excess shelter costs are subtracted from the total adjusted income. The result of this calculation is referred to as the recipient's monthly net income. The steps described in this paragraph result in the following calculations in this case:

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<sup>31</sup> Ex. 6.0.

<sup>32</sup> 7 CFR 273.9(d).

<sup>33</sup> 7 CFR 273.9(d)(1)(i).

<sup>34</sup> See Alaska Food Stamp Manual, Addendum 4, (Ex. 7.0), also available online at <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm> (date accessed July 9, 2015).

<sup>35</sup> Ex. 6.0.

<sup>36</sup> Ex. 6.0.

<sup>37</sup> Ex. 6.0.

<sup>38</sup> Alaska Food Stamp Manual Section 603-2; see also Exs. 6.0 - 7.1 (source for entire paragraph).

Total Monthly Shelter Costs	\$1,238.00
(Minus) 1/2 of Adjusted Gross Income	<u>-\$654.00</u>
(Equals) Excess Shelter Costs	\$584.00
Total Adjusted Income	\$1,308.00
(Minus) Excess Shelter Costs	<u>\$584.00</u>
(Equals) Monthly Net Income	\$724.00

Once a recipient's net income has been calculated, the final step is to determine the recipient's monthly benefit amount. To do this, the recipient's monthly net income is first multiplied by 0.3.<sup>39</sup> The resulting number is then subtracted from the maximum monthly benefit amount for the size of the household in question.<sup>40</sup> In Alaska, the maximum monthly Food Stamp benefit for a household located in an urban area, consisting of one person, during the period from October 1, 2014 through September 30, 2015, is \$227.00.<sup>41</sup>

For January 2015, Ms. B's monthly net income of \$724.00 was multiplied by 0.3, resulting in a figure of \$217.20.<sup>42</sup> This figure is then subtracted from the applicable maximum benefit amount (\$227.00), resulting in \$9.80. This amount is then rounded-down to the next whole number, resulting in a benefit amount of \$9.00. However, when the result of this calculation results in a benefit amount of less than \$18.00, the recipient is paid what is known as the minimum benefit amount. For the period in question, the minimum benefit amount for urban areas is \$18.00.<sup>43</sup> Accordingly, the Division correctly calculated the amount of Ms. B's current monthly Food Stamp benefit as \$18.00.

***D. Does the Division Have the Authority to Disregard the Applicable Federal Regulations and Increase a Recipient's Food Stamp Benefit Amount?***

Ms. B testified that the amount of Food Stamp benefits currently provided to her household is grossly insufficient. This testimony was credible and undisputed. However, increasing the amount of a household's Food Stamp benefits is a matter within the exclusive domain of the United States Congress. Absent new federal legislation, the Division is not at liberty to ignore the current regulations governing the Food Stamp program.<sup>44</sup> Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to federal Food Stamp statutes or regulations.<sup>45</sup>

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<sup>39</sup> Ex. 6.1.

<sup>40</sup> Ex. 6.1.

<sup>41</sup> Ex. 7.0; Alaska Food Stamp Manual, Addendum 4.

<sup>42</sup> Ex. 3.7.

<sup>43</sup> Ex. 7.0.

<sup>44</sup> "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>45</sup> See 7 AAC 49.170 (limits of the hearing authority).

Accordingly, Ms. B's testimony regarding the insufficiency of her household's monthly Food Stamp allotment is noted for the record, but it cannot be addressed on its merits in this decision.

#### **IV. Conclusion**

The Division correctly applied the Food Stamp statutes, regulations, and policies to the relevant facts in determining Ms. B's Food Stamp benefit amount for the recertification period beginning in January 2015. The Division's calculation of Ms. B's Food Stamp benefits for the current recertification period is therefore affirmed.

Dated this 10th day of July, 2015.

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

### **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 21st day of July, 2015.

By: *Signed* \_\_\_\_\_  
Signature  
Jay D. Durych  
Name  
Administrative Law Judge  
Title

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