

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

In the Matter of)

E J)
_____)

) OAH No. 15-0815-SNA
) Agency No.

FINAL DECISION

I. Introduction

The Division of Public Assistance (Division) calculated the E J household's Food Stamp benefits issued under the Supplemental Nutrition Assistance Program¹ using a six-month average of the household's medical expenses. The most accurate representation of the J household's prospective medical expenses is a one-month period that includes B E's medical expenses. A proposed decision was issued December 15, 2015. Both parties submitted proposals for action. As a result the matter was returned to the Division for a revised calculation supported by the record and an explanation of its rationale. Mr. J was provided an opportunity to respond. The Division submitted its revised calculation with support. The record closed without further participation by Mr. J. For the reasons set forth below and the rationale regarding inclusion and exclusion of expenses set out by the Division in its Hearing Brief dated January 19, 2016, the Division's revised calculations are correct in this instance.

II. Facts

The relevant facts of this case are not in dispute. Mr. J has a household of three persons, consisting of himself, his son D J and B E. As of April 2015, the entire household was recognized as disabled by the Social Security Administration.²

In March 2015, when Mr. J submitted his application for recertification he was informed that he need only submit three months of medical receipts.³ Over the next several months the Division approved varying amounts of Food Stamp Benefits due to continual recalculation.

¹ Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, almost eight years later, the use of the program's former name still predominates. Accordingly, this decision will refer to the program as "the Food Stamp program."

² Exh. 2 – 2.7

³ J Testimony.

On April 3, 2015, the Division approved \$219 per month in Food Stamp benefits.⁴ The recertification was for a five-month period, until August 2015. This calculation included a monthly medical expense deduction in the amount of \$800.

On May 7, 2015, the Division reviewed Mr. J's case and determined the household was only eligible for a medical deduction in the amount of \$105 per month resulting in zero Food Stamps being approved, effective June 2015.⁵

Mr. J appealed and submitted additional prescription and Medical receipts. Using the updated submission, the Division recalculated Mr. J's medical expense by averaging the amount of receipts submitted over a six-month period.⁶ The average monthly medical expense was \$191.20, resulting in a monthly Food Stamp benefit in the amount of \$10.⁷ Mr. J appealed.

On June 4, 2015, the Division performed another calculation, again averaging medical expenses over a six-month period. This calculation included two months of Ms. E's medical expenses, but averaged the total amount over a six-month period, resulting in a monthly medical expense deduction in the amount of \$105.⁸ This time the Division concluded that the household was only eligible for \$9 per month of Food Stamp benefits.⁹

Mr. J questioned the Division's decision to determine a monthly deductible amount by totaling all medical expenses it deemed eligible and dividing the amount by six for a six-month average.¹⁰ He also sought to have unpaid physical therapy for Ms. E included as an allowable medical deduction.

III. Discussion

At the formal hearing, Mr. J testified regarding the family's extensive medical problems, the expenses that remained unreimbursed or otherwise paid for, and the difficulty his family has had without an increased Food Stamp benefit. Mr. J's testimony is credible and his frustration understandable.

Allowable deductible medical expenses are based upon what the household expects to be billed for during the certification period. The governing regulations and the Division's internal

⁴ Exh. 3.4.

⁵ Exh. 6.

⁶ Exh. 12.

⁷ Exh. 10 – 11.1.

⁸ Exh. 13 – 13.1 (the Division included only two months of Ms. E's medical expenses because she was found eligible for Social Security Disability only two months prior.)

⁹ *Id.*

¹⁰ Exh. 7 – 7.1.

policy manual do not require medical expenses be averaged except where the household elects to do so. While the Food Stamp regulations indicate that a 12-month period may be employed in averaging the income of a recipient applying for recertification, it does not require a 12 month average.¹¹ Here, the Division had actual medical expenses for the first month of the recertification period (April) but chose to disregard the information. Moreover, even though the household was only recertified for a five-month period and Ms. E was eligible to have her medical expenses deducted effective April 2015, the Division inexplicably used a six month average for all expenses, based on three months of Mr. J's expenses and two months of Ms. E's expenses. The Division's action had the effect of seriously understating both of their actual expenses.

Ms. E was found eligible for disability in April 2015. That is the first month in which her eligible medical expenses may be deducted. The Division is correct that before a medical expense may be deducted for a household member, that household member must have a disability.¹²

The Division's Hearing Brief and Revised Calculation of Household Deductions dated January 19, 2016 were computed according to the guidance set out above. As requested, the Division provided a spreadsheet identifying the dates selected for use in its calculation with citations to the exhibit numbers, the reasons for allowance or disallowance of an expense, and a revised Food Stamp Calculation Worksheet using the expenses it concluded were allowable. The Division's January 19, 2016 Hearing Brief and Revised Calculation is incorporated by reference. The calculations are supported by the record and are hereby adopted.

IV. Conclusion

The Division elected a five-month recertification period.¹³ A household is not required to average expenses but may elect to have fluctuating expenses averaged.¹⁴ Because averaging is not required and because there was a five-month recertification period, the Division's original methodology (six month averaging of three months and two months) was not supported by the record or regulations. The Revised Calculation of Household Deductions dated January 19, 2016 is adopted. The Division shall make the proper adjustment to Mr. J's benefit.

¹¹ See 7 CFR § 273.10(c)(3)(i-ii).

¹² 7 CFR § 273.9(d)(3).

¹³ Exh. 1.

¹⁴ 7 CFR § 273.10(d)(3).

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 8th day of February, 2016.

Signed

Jared Kosin
Executive Director, Office of Rate Review
Department of Health and Social Services

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

STATE OF ALASKA

BILL WALKER, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

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BEFORE THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES STATE OF ALASKA

Re: Claimant: E J
DPA No:
OAH No: 15-0815- SNA

Date: January 19, 2016
To: Office of Administrative Hearings

HEARING BRIEF

Revised calculation of Mr. J's household medical deductions

The Division is using Mr. J's March 2015 medical expenses to anticipate his expenses during his new recertification period starting April 2015. This represents the 30 day calendar month prior to Mr. J's new certification period.¹⁵

The Division did not provide copies of Mr. J household's medical expenses in the position statement that it originally used to anticipate April 2015 Food Stamp (FS) benefits.¹⁶ If the ALJ and Commissioner will allow, the Division will use Mr. J's May 29, 2015, submission of his household's March medical expenses to anticipate Mr. J's April FS benefits.

When the Division originally processed April 2015, it also issued May 2015 FS benefit by using the same medical expenses. Since the Division did not attach copies of Mr. J's medical expenses that it used in the calculation, the Division will also use Mr. J's May 29, 2015, medical expense submission by using the April 2015 medical expenses to anticipate his May 2015 medical expenses even though it originally processed April and May 2015 using the months prior information to calculate benefits. It gives Mr. J the benefit out doubt and uses all the deductions he had.

¹⁵ 7 CFR 273.10(d)(4) exhibit 28.3 of the Division position statement.

¹⁶ Exhibit 3 of the Divisions position statement

The following spreadsheet shows Mr. J's March 2015 medical deductions the Division allowed for April 2015. The deductions were allowed as they all were prescriptions and medically necessary for the household. Mileage is an allowable deduction.

The Division will use the printout from Geneva Woods that Mr. J provided.

Note: Exhibit# refers to the exhibit in the Division's position statement packet.

Pharmacy	RX #	Date	Exhibit #	Patient portion
Geneva Woods	00000000	3/9/15	19.5	\$3.50
Geneva Woods	00000000	3/9/15	19.5	\$.50
Geneva Woods	00000000	3/9/15	19.5	\$3.50
Geneva Woods	00000000	3/9/15	19.5	\$.50
Geneva Woods	00000000	3/9/15	19.5	\$.50
Geneva Woods	00000000	3/9/15	19.5	\$.50
Geneva Woods	00000000	3/9/15	19.5	\$3.50
Geneva Woods	00000000	3/9/15	19.5	\$3.50

Pharmacy	RX #	Date	Exhibit #	Patient portion
Geneva Woods	00000000	3/13/15	19.5	\$.50
“	00000000	3/16/15	19.6	\$.50
”	00000000	3/27/15	19.6	\$.50
“	00000000	3/27/15	19.6	\$3.50
“	00000000	3/27/15	19.6	\$3.50
“	00000000	3/27/15	19.6	\$.50
“	00000000	3/27/15	19.6	\$.50
Total				\$25.50

Note: The Division did not use the Geneva Woods Pharmacy history file listed for Mr. J's March 2015 prescriptions listed on exhibit 19.7 as they were duplicates of the prescription items listed on exhibits 19.5 & 19.6. The Division did not give Mr. J a deduction for his payments as these covered the above expenses and were for previous months deductions already given to Mr. J.

Mr. J provided a printout from Walmart showing his pharmacy order from January 1, 2015 to May 19, 2015.

Pharmacy	RX #	Date	Exhibit #	Patient paid
Walmart	00000000	3/9/15	20	\$53.41
“	00000000	3/10/15	20	\$3.50
“	00000000	3/23/15	20	\$.50
“	00000000	3/23/15	20	\$.50
“	00000000	3/23/15	20	\$.50

Total				\$58.41
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Mr. J did not provide any mileage verification with his March 16, 2015 recertification application, so the Division used the previous calculation from October 22, 2015.¹⁷

Mr. J

Monthly mileage expense	\$27.50	Exhibit 9
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Dr. F M wrote a letter dated March 23, 2015, that Mr. J spends approximately **\$130** a month in medical necessary health supplements.¹⁸

Mr. J March 2015 Medical expenses

Geneva Woods	\$25.50
Walmart	\$58.41
Mileage	\$27.50
Monthly supplements	\$130
Total monthly medical expenses	\$241.41

D J

Monthly mileage expense	\$9.40	Exhibit 9
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As the ALJ stated in the Proposed Decision, Ms. E was found eligible for disability in April 2015. The Division will use Ms. E March 2015 medical expenses to anticipate her expenses during the new recertification period starting April 2015.

Pharmacy	RX #	Date	Exhibit #	Patient paid
Fred Meyer	0000000	3/11/15	21.1	\$42.99
	0000000	3/13/15		\$.50
	0000000	3/14/15		\$3.50
	0000000	3/14/15		\$.50
	0000000	3/14/15		\$3.50
	0000000	3/17/15		\$36.02
	0000000	3/17/15		\$3.50
	0000000	3/17/15		\$.50
Fred Meyer	0000000	3/16/15	21.1	\$.50
	0000000	3/25/15	“	\$54.09
Total				\$145.60

Mr. J	\$241.41
D J	\$9.40

¹⁷ Exhibit 9 of the Division position statement

¹⁸ Exhibit 18 of the Division position statement

Ms. E	\$145.60
Total March 2015 medical expenses	\$396.41

Total anticipating household medical deductions for April 2015 = \$396.41

This gives the household \$77 in FS benefits for the month of April 2015.

Deductions not allowed for the household in March 2015:

The Division did not use the March 25, 2015, Facility A receipt, exhibit 21.2, as a deduction for March 2015 as it did not list a name or state if it was a prescription/medical deduction.¹⁹

Exhibit 22.1 is a copy of a bill from Facility B showing the date of services for Ms. E as March 25, 2014. Ms. E's was not eligible for a medical deductions until April 2015 as that is when she was found eligible for disability.²⁰

Exhibit 22.2 is a copy of a bill from Facility C for Ms. E. The service date is November 19, 2014, this is before Ms. E was eligible to deduct medical expenses.

Exhibit 22.3 is a copy of a bill from Facility D for Mr. J. It has a date of service of June 13, 2013. There is a hand written note stating this deduction was used on September 30, 2013. I myself verified Mr. J was given a medical deduction for this exact bill in a previous certification period in 2013 & 2014.

Exhibit 22.4 is a copy of a bill from Facility E for Ms. E. The date of service was October 8, 2013. This is before Ms. E was eligible to deduct medical expenses.

Exhibit 22.5 & 22.6 is a copy of an insurance pending bill from Facility F (PT). The Division agrees with the ALJ that Ms. E PT expenses are not included due to this is an expense Medicaid would normally cover.²¹

Exhibit 22.7 is a copy of a no show bill for D J for Facility G. Medicaid would have paid for PT expenses. This is not considered a medical expense as the expense was caused by missing an appointment, not having a medical service/expense provided.

On May 13, 2015, Mr. J requested a fair hearing after receiving his notice informing him of the April 2015 FS benefit amount.²² He provided additional medical expense verification.

¹⁹ 7 CFR 273.10 (d)(1)(i) Disallowed expenses.

²⁰ Page 3 of the Proposed Decision: "Ms. E was found eligible for disability in April 2015. This is the first month which her eligible expenses may be deducted."

²¹ Page 3 of the Proposed Decision. Sentence right above **IV. Conclusion**

²² Exhibit 8-8.1 of the Division position statement

The following spreadsheet shows Mr. J's April 2015 medical deductions the Division allowed. Since Mr. J provided new monthly medical expenses, the Division used Mr. J's household's April medical expenses to anticipate Mr. J's May 2015 benefits and forward months.

Per the printout from Walmart:

Mr. J

Pharmacy	RX #	Date	Exhibit #	Patient paid
Walmart	0000000	4/6/15	20	\$17.17
"	0000000	4/7/15	20	\$93.78
"	0000000	4/7/15	20	\$3.50
"	0000000	4/16/15	20.1	\$22.20
"	0000000	4/21/15	20.1	\$3.50
"	0000000	4/21/15	20.1	\$.50
"	0000000	4/22/15	20.1	\$3.5
Total				\$140.65

Mr. J

Monthly supplements	\$130²³
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Mr. J

Monthly mileage expense	\$27.50	Exhibit 9
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Ms. E April 2015 medical expenses used to anticipate May 2015 medical deductions.

Pharmacy	RX #	Date	Exhibit #	Patient paid
Fred Meyer	0000000	4/12/15	21.1	\$.50
"	0000000	4/12/15	21.1	\$.50
"	0000000	4/12/15	21.1	\$3.5
"	0000000	4/12/15	21.1	\$3.5
"	0000000	4/27/15	21.1	\$.50
Total				\$8.50

D J

Pharmacy	RX #	Date	Exhibit #	Patient paid
Walgreens ²⁴	0000000	4/5/15	16.1	\$37.63

Note; this receipt does not have a name listed. The Division will allow this deduction for D as it states the charge has medication flavoring. The Division assumes this is a child's medication.

²³ Exhibit 18 of the Division position statement

²⁴ Exhibit 16.1

D J	Date	Account #	Paid	Exhibit
First Care	4/5/15	000000	\$175	17-17.1

Note: this is a **onetime payment**.²⁵ The Division will allow this for May 2015 only, as it is not a recurring payment.

D April 2015 expenses

Walgreens	\$37.63
First Care	\$175
Mileage	\$9.40
Total	\$222.03

Mr. J April 2015 Medical expenses

Walmart	\$140.65
Mileage	\$27.50
Monthly supplements	\$130
Total monthly medical expenses	\$ 298.15

Mr. J	\$298.15
D J	\$222.03
Ms. E	\$8.50
Total April 2015 medical expenses	\$528.68

Total anticipating household medical deductions for May 2015 = \$528.68

This gives the household \$117 in FS benefits for the month of May 2015.²⁶

For the month of June 2015, the agency would deduction the onetime medical payment of \$175 for D J, which would give the household \$528.68 - \$175 = \$358.68 in deductions.

This would give the household \$65 in monthly FS benefits.²⁷

Deductions not allowed for the household in April 2015:

Exhibit 19.7 dated April 6, 2015, a printout for Mr. J showing he made a \$25 payment. The Division did not allow this payment as a deduction as these covered previous month's deductions already given to Mr. J.

The Division is not allowing Mr. J's \$42 for D's command transportation as the only time it was brought up was on December 28, 2015, in Mr. J's email. No verification was provided. If Mr. J

²⁵ 7 CFR 273.10 (d)(3) Exhibit 28.3 of the Divisions position statement

²⁶ Exhibit 34-34.1

²⁷ Exhibit 35-35.1

would provide verification showing it is a medically necessary item and if it was a covered Medicaid expense, the Division would add the deduction in the month after it receives the verification.²⁸

I have attached Food Stamp work sheets as exhibits 33-35.1

Thank you for the opportunity to submit this brief.

Sincerely,

Signed

Jeff Miller

Fair Hearing Representative

Health and Social Services

3601 C Street

Suite 460

Phone: 907-269-7876

Fax: 907-269-3099

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

²⁸ 7 CFR 273.10 (d)(1)(i)exhibit 28.2 of the Division position statement

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

In the Matter of)
)
 E J) OAH No. 15-0815-SNA
) Agency No.
_____)

[REJECTED PROPOSED] DECISION (Corrected)²⁹

I. Introduction

The Division of Public Assistance (Division) calculated the E J household's Food Stamp benefits issued under the Supplemental Nutrition Assistance Program³⁰ using a six-month average of the household's medical expenses. The most accurate representation of the J household's prospective medical expenses is a one-month period that includes B E's medical expenses. Accordingly, Mr. J is eligible to deduct \$702.91 for medical costs. This results in a monthly Food Stamp benefit in the amount of \$170 per month for Mr. J's household.³¹

II. Facts

The relevant facts of this case are not in dispute. Mr. J has a household of three persons, consisting of himself, his son D J and B E. As of April 2015, the entire household was recognized as disabled by the Social Security Administration.³²

In March 2015, when Mr. J submitted his application for recertification he was informed that he need only submit three months of medical receipts.³³ Over the next several months the Division approved varying amounts of Food Stamp Benefits due to continual recalculation.

On April 3, 2015, the Division approved \$219 per month in Food Stamp benefits.³⁴ The recertification was for a five-month period, until August 2015. This calculation included a monthly medical expense deduction in the amount of \$800.

²⁹ The correction is made at footnote 14. Prior to the correction, footnote 14 referenced Addendum A. For purposes of consistency, it should have read Attachment A.

³⁰ Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, almost eight years later, the use of the program's former name still predominates. Accordingly, this decision will refer to the program as "the Food Stamp program."

³¹ Appendix A.

³² Exh. 2 – 2.7

³³ J Testimony.

³⁴ Exh. 3.4.

On May 7, 2015, the Division reviewed Mr. J's case and determined the household was only eligible for a medical deduction in the amount of \$105 per month resulting in no Food Stamps effective June 2015.³⁵

Mr. J appealed and submitted additional prescription and Medical receipts. Using the updated submission, the Division recalculated Mr. J's medical expense by averaging the amount of receipts submitted over a six-month period.³⁶ The average monthly medical expense was \$191.20, resulting in a monthly Food Stamp benefit in the amount of \$10.³⁷ Mr. J appealed.

On June 4, 2015, the Division performed another calculation, again averaging medical expenses over a six-month period. This calculation included two months of Ms. E's medical expenses, but averaged the total amount over a six-month period, resulting in a monthly medical expense deduction in the amount of \$105.³⁸ This time the Division concluded that the household was only eligible for \$9 monthly Food Stamp benefits.³⁹

Mr. J questioned the Division's decision to determine a monthly deductible amount by totaling all medical expenses it deemed eligible and dividing the amount by 6 for a six-month average.⁴⁰ He also sought to have unpaid physical therapy for Ms. E included as an allowable medical deduction.

III. Discussion

At the formal hearing, Mr. J testified regarding the family's extensive medical problems, the expenses that remained unreimbursed or otherwise paid for, and the difficulty his family has had without an increased Food Stamp benefit. Mr. J's testimony is credible and his frustration understandable.

Allowable deductible medical expenses are based upon what the household expects to be billed for during the certification period. A review of the governing regulations and the Division's internal policy manual do not require medical expenses be averaged except where the household elects to do so. While the Food Stamp regulations indicate that a 12-month period may be employed in averaging the income of a recipient applying for recertification, it does not

³⁵ Exh. 6.

³⁶ Exh. 12.

³⁷ Exh. 10 – 11.1.

³⁸ Exh. 13 – 13.1 (the Division included only two months of Ms. E's medical expenses because she was found eligible for Social Security Disability two months prior.)

³⁹ *Id.*

⁴⁰ Exh. 7 – 7.1.

require a 12 month average.⁴¹ Here, the Division had actual medical expenses for the first month of the recertification period (April) but chose to disregard the information. Moreover, even though the household was only recertified for a five-month period and Ms. E was eligible to have her medical expenses deducted effective April 2015, the Division inexplicably used a six month average for all expenses for three months of Mr. J's expenses and for two months of Ms. E's expenses. The Division's action had the effect of seriously understating both of their actual expenses.

Ms. E was found eligible for disability in April 2015. That is the first month in which her eligible medical expenses may be deducted. The Division is correct that before a medical expense may be deducted for a household member, that household member must have a disability.⁴² Therefore, the best predictor of the household's monthly medical expenses is to select a representative month. A representative month for Mr. J is from April 6, 2015 through May 6, 2015 and for Ms. E from April 12, 2015 through May 12, 2015. Mr. J's medical expenses (including mileage) total \$459.92 and Ms. E's medical expenses, exclusive of physical therapy, total \$242.99 during those representative months. The total monthly deductible expense is \$702.91.⁴³ Ms. E's physical therapy expenses are not included in this total, because this is an expense which would normally be covered through Medicaid.

IV. Conclusion

The Division elected a five-month recertification period.⁴⁴ A household is not required to average expenses but may elect to have fluctuating expenses averaged.⁴⁵ Because averaging is not required and because there was a five-month recertification period, the Division's methodology (six month averaging of three months and two months) is not supported by the record or regulations. The household should receive Food Stamp benefits in the amount of \$170. The Division shall make the proper adjustment to Mr. J's benefit.

Dated this 28th day of December, 2015 *nuc pro tunc* December 15, 2015.

Signed

Rebecca Pauli
Administrative Law Judge

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

⁴¹ See 7 CFR § 273.10(c)(3)(i-ii).

⁴² 7 CFR § 273.9(d)(3).

⁴³ See Appendix A (Food Stamp benefit calculation worksheet).

⁴⁴ Exh. 1.

⁴⁵ 7 CFR § 273.10(d)(3).