

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

In the Matter of)
)
 W J) OAH No. 15-0994-SNA
) Agency No.
_____)

DECISION

I. Introduction

W J was notified by the Division of Public Assistance (Division) that she had received an overpayment of Food Stamp benefits. Ms. J appealed that decision. A hearing was held on August 19, 2015. Ms. J represented herself. The Division was represented by a lay advocate, Sally Dial. Because Ms. J was previously convicted of a drug related felony, she is not eligible to participate in the Food Stamp program and the benefits she did receive constitute an overpayment.

II. Facts

Ms. J plead guilty to misconduct involving a controlled substance in violation of AS 11.71.040(a)(3)(F).¹ This offense is a class C felony.² She received a suspended imposition of sentence on August 16, 2002.³ At the time, Ms. J was told that if she successfully completed her probation, her conviction would be set aside. She was told by both her lawyer and the judge that this would mean that legally she had never been convicted of the charge.⁴ Ms. J’s testimony about what she was told about a conviction that has been set aside is credible. The term “set aside” is a legal term of art which a reasonable person would interpret as meaning that the conviction no longer existed.⁵

On October 11, 2005, Ms. J’s conviction was set aside by the court.⁶

¹ Exhibit 3.

² AS 11.71.040(d).

³ Exhibit 3 through 3.4.

⁴ J testimony.

⁵ In *Journey v. State*, 895 P.2d 955 (Alaska 1995), the Supreme Court discussed a trial court’s assertion that defendants were routinely informed that once a conviction is set aside, “you can honestly say you don’t have a conviction.” The Supreme Court stated that advice of this nature would be improper. However, at least one trial court judge was under the impression that experienced lawyers and judges misunderstood the consequences of setting aside a conviction and were routinely giving inaccurate advice to criminal defendants.

⁶ Order Re Set-Aside submitted by Ms. J.

On August 11, 2015, the Division compromised the overpayment amount and reduced its claim from \$2557 to \$720.⁷ Given Ms. J’s financial circumstances, repaying even this reduced amount will be difficult.⁸

III. Discussion

The Code of Federal Regulations says, in part

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 (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) 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.^[9]

The sole issue in this case is whether Ms. J’s prior conviction bars her from receiving Food Stamp benefits. Specifically, the question is whether the phrase an “individual convicted” means someone who has previously been convicted or someone who remains a convicted person at the time Food Stamp benefits are received.

Prior OAH decisions relied on the Supreme Court’s decision in *State v. Platt*,¹⁰ and held that a person whose conviction is set aside after receiving a suspended imposition of sentence is not eligible for benefits.¹¹ These prior decisions must be followed unless the final decision-maker provides an analysis that explains the reason for departing from that precedent.¹² While a different interpretation of the federal regulation is reasonable, this decision finds that the prior cases were decided correctly, and the same result should occur here.

Under Alaska law, a set aside conviction may still be used for some purposes. For example, such a conviction may be used to justify imposing the maximum sentence for a particular offense.¹³ In *State v. Platt* the Nursing Board had considered a set-aside conviction in deciding whether to grant a nursing license.¹⁴ The Nursing Board had discretion to deny Platt’s

⁷ Exhibit 7.

⁸ Exhibit 6.2; J testimony.

⁹ 7 CFR § 273.11(m).

¹⁰ 169 P.3d 595 (Alaska 2007).

¹¹ See *In re L B*, OAH No. 14-0160-SNA (Commissioner of Health and Social Services 2014); *In re M T*, OAH No. 13-1653-SNA (Commissioner of Health and Social Services 2013). Prior OAH decisions are available at <http://aws.state.ak.us/officeofadminhearings/Category.aspx?CatName=SNA>.

¹² *In re Culp*, OAH No. 11-0174-MEC (Commissioner of Commerce, Community and Economic Development 2011), pages 6 – 7.

¹³ *Journey*, 855 P.2d at 959.

¹⁴ *Platt*, 169 P.3d at 596.

license if she was a person who “has been convicted” of a crime related to nursing functions.¹⁵ The Supreme Court held that while setting aside a conviction limits the consequences of that conviction, it “does not change the fact that an individual was previously found guilty of committing a crime.”¹⁶ The Nursing Board was not required to treat Ms. Platt as someone who had never been convicted; she “remained a person who ‘has been convicted’ of a criminal offense.”¹⁷

The applicable federal regulation is interpreted to exclude from the Food Stamp program any individual who is convicted of a drug related felony, and this exclusion takes effect at the moment of their conviction. Once that lifetime bar is in place, only the state legislature can limit its effect. The court’s act of setting aside the conviction does not change the historical fact that a conviction had occurred, and does not limit the consequences that flow from the conviction.

IV. Conclusion

Even though her conviction has been set aside, Ms. J is a person who has been convicted of a drug related felony. Accordingly, the Division’s finding of an overpayment is affirmed.

Dated this 31st day of August, 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of September, 2015.

By: *Signed*

Signature
Jared C. Kosin, J.D., M.B.A.

Name
Executive Director, ORR, DHSS

Title

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

¹⁵ *Platt*, 169 P.3d at 599.

¹⁶ *Id.*

¹⁷ *Platt*, 169 P.3d at 600.