

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

In the Matter of:)
)
 N D) OAH No. 15-1327-SNA
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (Division) was correct to deny N D's application for Food Stamp benefits issued under the Supplemental Nutrition Assistance Program.¹ The Division denied Ms. D's application based on the assertion that her household's gross monthly income exceeds the Food Stamp program's gross monthly income limit for a three-person household.²

Independent review confirms that, during the period in question, Ms. D's monthly gross income exceeded the Food Stamp program's gross income limit for a three-person household. Accordingly, the Division's decision denying Ms. D's Food Stamp application is affirmed.

II. Facts

The relevant facts of this case are not in dispute. Ms. D has a household of three persons, consisting of herself and her two minor children.³ She works full time for, and receives a salary from, the United States Senate.⁴ She also receives child support.⁵ Her salary from her job with the U.S. Senate pays total gross wages of \$2,500.00 per month.⁶ The amount of child support received by Ms. D, during the one-year period from August 1, 2014 through July 31, 2015, totaled \$10,135.13.⁷ This averages out to \$844.59 per month in child support.

On July 27, 2015, Ms. D submitted an application for Food Stamp benefits.⁸ On August 7, 2015, Ms. D participated in an eligibility interview with one of the Division's eligibility technicians

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 Ex. 4.

³ Exs. 1, 2.0.

⁴ Ex. 3.0.

⁵ Exs. 3.0, 17.2.

⁶ Exs. 3.1 - 3.4.

⁷ Ex. 17 p. 2.

⁸ Exs. 2.0 - 2.7.

(ETs).⁹ She truthfully stated that her income consisted of her salary from the U.S. Senate, and child support payments.¹⁰ She provided the Division with her pay statements for June 2015 and July 2015 showing her salary as \$2,500.00 per month.¹¹ Ms. D apparently did not provide records of her child support payments, but the Division was able to access that information through the Child Support Services Division (CSSD).¹² Based on CSSD's records, the Division found that Ms. D received child support payments totaling \$3,502.28 during the four-month period from April 2015 through July 2015.¹³ Based on these payments, the Division calculated that Ms. D received an average of \$700.56 per month in child support during that four-month period.¹⁴ The Division then added Ms. D's monthly salary of \$2,500.00 to her average monthly child support receipts of \$700.56 and concluded that her total monthly income was \$3,200.56.¹⁵ Using this figure, the Division then concluded that Ms. D's gross monthly income of \$3,200.56 exceeded the Food Stamp program's gross income limit for a household of three (\$2,681.00) by \$519.56.¹⁶

On August 10, 2015, the Division notified Ms. D that her Food Stamp application had been denied because her monthly gross income exceeded the Food Stamp program's applicable monthly income limit.¹⁷ Ms. D requested a hearing to contest the Division's determination.¹⁸ Ms. D's hearing was held on October 27, 2015. Ms. D participated in the hearing by phone, represented herself, and testified on her own behalf. Public Assistance Analyst Sally Dial participated in the hearing by phone and represented the Division. At the end of the hearing, the record was left open for ten days for post-hearing filings. The record closed on November 6, 2015.

III. Discussion

The Food Stamp program is a federal program administered by the states; its statutes are codified at 7 U.S.C. §§ 2011 – 2029. The United States Department of Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp program, which are codified primarily at 7 C.F.R. §§ 271-274. The Department of Health and Social Services (DHHS)

⁹ Ex. 3.0.

¹⁰ Ex. 3.0.

¹¹ Exs. 3.1 - 3.4.

¹² Exs. 3.0, 3.5.

¹³ Ex. 3.0.

¹⁴ Ex. 3.0. It appears that the ET mistakenly divided the total child support, received during these *four* months, by *five*, instead of by four. However, this mistake worked in Ms. D's favor. The *actual monthly average* for this four month period is \$875.57, about \$175.00 more than the figure used by the Division in its calculations.

¹⁵ Exs. 4, 6.0.

¹⁶ Ex. 4.

¹⁷ Ex. 4.

¹⁸ Ex. 5.

administers the Food Stamp program in Alaska and has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

A household, which (as here) does not contain an elderly or disabled member, is required to satisfy both a gross income eligibility standard and a net income eligibility standard in order to qualify for Food Stamp benefits.¹⁹ These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. § 9902(2) and are adjusted periodically for inflation.²⁰ The current income limits are published in the Division's Food Stamp Program Manual at Addendum 4.²¹ For the period from October 2014 through September 2015, the income limits for a three-person household were \$2,681.00 (gross) and \$2,062.00 (net).²²

The process for determining gross income, specified by the Food Stamp regulations, has two steps.²³ The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned.²⁴ Here, Ms. D had gross monthly earned income from employment of \$2,500.00, and (according to the Division) average gross monthly unearned income from child support of \$700.56,²⁵ for total gross monthly income of \$3,200.56.

Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household's size (set forth in Food Stamp Manual at Addendum 4). The gross monthly income limit for a household of three, during the period in question, was \$2,681.00.²⁶ Using the Division's figures, Ms. D's monthly gross income of \$3,200.56 is \$519.56 greater than the applicable gross income limit of \$2,681.00. Ms. D's household thus failed the gross income test,

¹⁹ 7 C.F.R. § 273.9(a). Congress originally restricted eligibility for food stamps to families of limited means, but made no attempt to define income, leaving that to the individual states. *See Strickland v. Commissioner*, 48 F.3d 12 (1st Cir. 1995). However, in 1971, Congress directed the Secretary of Health and Human Services to establish uniform standards of eligibility. *Id.*

²⁰ 7 C.F.R. § 273.9(a).

²¹ The Division's Food Stamp Manual and addendums are available online at <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>.

²² Ex. 13.

²³ *See* 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska's Food Stamp Manual at § 603-2.

²⁴ Congress intended to cast the broadest possible net, and include all forms of income, in defining "income" for purposes of food stamp eligibility. *See Meyer v. Lyng*, 859 F.2d 62 (8th Cir. 1988).

²⁵ At hearing, Ms. D stated that she only had two issues. One of these issues concerned the period over which the Division averaged her child support payments. Because CSSD's records show a significant fluctuation in the amount of child support received over the past several months, Ms. D asserts that her child support payments should be averaged over a longer period of time. It is true that where (as here) income fluctuates to the extent that a 30 day period alone cannot provide an accurate indication of anticipated income, income should be averaged over a longer period of time, to provide a more accurate indication of future income, pursuant to 7 C.F.R. § 273.10(c). However, as discussed below, even when Ms. D's child support payments are averaged over a period of one year, her gross income still exceeds the monthly gross income limit for a three-person household.

²⁶ Ex. 13.

so the Division denied her application without applying any deductions for expenses (*i.e.* without determining her *net* income).

The first of Ms. D's two complaints concerning the Division's determination is that it does not seem fair to her to utilize a *gross income test* for Food Stamp benefits given that *only net income* is actually *available* to a household to live on. Ms. D's argument is logical. However, it is clear that, in determining income eligibility for the Food Stamp program, an applicant's expenses are only considered if the applicant *first* passes the gross income test.²⁷ In this case, had Ms. D's gross income been \$2,681.00 or less, the Division would *then* have deducted various expense items from Ms. D's gross income and proceeded to determine her *net* income. However, pursuant to the regulations, because Ms. D did not pass the gross income test, the Division's analysis ended there, without proceeding to the net income test.

Ms. D's other complaint concerning the Division's determination is that the Division averaged her income from child support over a period of time that was not representative of her "true" average income from child support. As discussed in Section II, above, the Division averaged Ms. D's income from child support over the four month period from April 2015 through July 2015 and determined that Ms. D received an average of \$700.56 per month in child support during that period.

The Food Stamp regulation allowing income averaging does not specify a particular "income averaging period" in making financial eligibility determinations for *applicants* like Ms. D.²⁸ However, the regulation *does* indicate that a 12-month period may be employed in averaging the income of a *recipient* applying for recertification.²⁹ Accordingly, while it was not wrong for the Division to average Ms. D's child support income over a four month period, it would likewise not be wrong to average Ms. D's child support income over a longer period as Ms. D requests.

In this case, averaging Ms. D's child support income over a 12-month period results in an average of \$844.59 per month in income from child support. Thus, in this case, using the longer averaging period suggested by Ms. D actually *raises* her average monthly income by over \$140.00.

IV. Conclusion

The Division and the Office of Administrative Hearings are required to follow the Food Stamp program's income eligibility regulations as currently written. To provide Food Stamp

²⁷ See State of Alaska Food Stamp Manual at § 603-2.

²⁸ See 7 CFR § 273.9 and 7 CFR § 273.10(c)(3).

²⁹ See 7 CFR § 273.10(c)(3)(i-ii).

eligibility for someone with Ms. D's current income level would require amendments to existing law at the federal level. Those changes cannot be made through this hearing process.

Only those households with gross monthly income that does not exceed the maximum limit, and which meet the other eligibility requirements, are eligible to participate in the Food Stamp program. The Division correctly found Ms. D's gross monthly income exceeds the Food Stamp program's gross monthly income limit for her household's size. Accordingly, the Division correctly concluded that Ms. D is not currently eligible to receive Food Stamp benefits. The Division's decision denying Ms. D's Food Stamp application is therefore affirmed.

Dated this 23rd day of November, 2015.

Signed _____
Jay Durych
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 2nd day of December, 2015.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge,

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