

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

In the Matter of	)	
	)	
E T	)	OAH No. 15-1549-SNA
_____	)	Agency No.

**DECISION**

**I. Introduction**

E T receives food stamps. The Department of Health and Social Services, Division of Public Assistance (division) did not receive the required recertification application from Ms. T, and closed her file on September 30, 2015. Ms. T reapplied. The division approved her application, with benefits starting on October 30, 2015, the date the division received the application. Ms. T appeals.

A telephonic hearing was held on December 28, 2015. Ms. T represented herself, and called C M, Eligibility Technician II, of the division's No Name 1 office, and L S, Eligibility Office Manager, also of the division's No Name 1 office. Sally Dial represented the division, and called O C of the division's No Name 2 field office.

Because the division received Ms. T's application for food stamps on October 30, 2015, the division's calculation of Ms. T's food stamp benefits for the month of October is upheld.

**II. Facts**

On August 17, 2015, the division sent Ms. T a food stamp recertification notice and application review form. The notice said that Ms. T's food stamp case would close at the end of September if she did not return the review form.<sup>1</sup> The division did not receive the form back, and closed Ms. T's file. Ms. T contacted the division on October 13, 2015, and said she would fax a late application with a request for expedited service.<sup>2</sup> The division received an application from Ms. T on October 30, 2015.<sup>3</sup> On November 4, 2015, the division notified Ms. T that her application had been approved for \$19 in food stamp benefits for the month of October, and \$237 in benefits for the following month.<sup>4</sup>

It was Ms. T's understanding that she would receive a full month's worth of food stamp benefits for the month of October 2015. She was surprised and embarrassed when she went to the

---

<sup>1</sup> Division Exhibit 2.  
<sup>2</sup> Division Exhibit 3.  
<sup>3</sup> Division Exhibit 4.1.  
<sup>4</sup> Division Exhibit 5.

grocery store and discovered that she had only received \$19 in food stamp benefits for October 2015.<sup>5</sup>

### III. Discussion

#### A. Proration of Food Stamp Benefits.

The food stamp program is a federal program administered by the states.<sup>6</sup> The Department of Health and Social Services administers the program in Alaska through the division.<sup>7</sup> Benefits under the program are calculated from the date the division receives an application for benefits. Under the federal regulations, a food stamp application is considered filed on the date it was received by the food stamp office.<sup>8</sup> An application filed "within 30 days after the end of a certification period will be considered a recertification application, however, the benefits must be prorated in accordance with 7 C.F.R. 273.10(a).<sup>9</sup> That regulation provides:

A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month . . . As used in this section, the term "initial month" means the first month for which the household is certified for participation in the food stamp program following any period during which the household was not certified for participation . . .<sup>10</sup>

So, for the first month of certification after a period in which the household did not participate in the food stamp program, a household is entitled to benefits from the date of application to the end of the month.

Ms. T's application was received by the division's No Name 2 office on October 30, 2015.<sup>11</sup> The benefit amount of \$19 for October 2015 is the prorated benefit amount calculated from the date her application was received.

Ms. T argues that she is entitled to the full monthly benefit amount (\$237) for the month of October on the basis of a statement by Mr. M that she would receive benefits for the entire month. She referred specifically to a comment Mr. M made about how "that was going to be a lot of money." Ms. T argued that division employees have the authority to make independent decisions about benefits, and that since Mr. M had told her she would receive a full month's worth

---

<sup>5</sup> Testimony of T; Division Exhibit 7.

<sup>6</sup> 7 CFR 271.4(a). The federal statutes governing the program include the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011 - 2029, and the federal regulations adopted under that act, codified primarily at 7 CFR 271 - 274.

<sup>7</sup> 7 AAC 46.010.

<sup>8</sup> 7 C.F.R. 273.2(c)(1). See also Alaska Food Stamp Manual sec. 601-5 B.

<sup>9</sup> 7 CFR 273.14(e)(3).

<sup>10</sup> 7 C.F.R. 273.10(a)(1)(ii).

<sup>11</sup> Division Exhibit 4, 4.1, 5.

of benefits for October, the division should be equitably estopped from providing anything less. However, when asked, Mr. M testified that he did not recall the statement reported by Ms. T. He testified that the original benefit amount was \$19 based on two days of eligibility, October 30 and 31, and that this amount did not change. He testified that the benefit amount is calculated based on the date the application is received, and that the software they use would only allow that amount to be issued.

The food stamp program does not give individual division employees leeway in the calculation of benefits. The division does not have discretion under the federal food stamp program to disregard the regulations requiring proration of benefits based on the date of application.<sup>12</sup>

Even if Ms. T was told that she would receive benefits for the full month of October, it would lead to an absurd result to apply equitable estoppel in this case as Ms. T requests. There is no dispute as to the date Ms. T's application was received, and the regulations requiring proration are clear. If the division had issued a full monthly benefit amount of \$237 to Ms. T for October 2015 it would have been an agency error, given the date Ms. T's application was received. The division then would have no choice but to attempt to recover the overpayment. It is well established that the equitable estoppel argument does not apply in the context of food stamp overpayments, even in cases of agency error.<sup>13</sup> If a division employee indicated to Ms. T that she was entitled to a full month's worth of benefits for October 2015 (which is possible but not supported by a preponderance of the evidence in this case), to require the division to pay those benefits and then attempt to recover them would only compound that error.

For Ms. T to receive a full month's worth of benefits for October, the division would have had to receive Ms. T's recertification application during the month of September, before her food stamp case was closed. It is undisputed that Ms. T did not submit a recertification application

---

<sup>12</sup> There are certain elements of the food stamp program in which states may exercise discretion, but this is not one of them. The state options applied by the Department of Health and Social Services in Alaska are specified in 7 AAC 46.021(a), and there is no state option in that subsection regarding 7 C.F.R. 273.10(a)(1)(ii) or 7 CFR 273.14(e)(3). See also OAH Case No. 13-1692-SNA at 2: "Contrary to Ms. Q's request, the regulations make no provisions for starting benefits prior to the date a recipient files an application. Neither the division nor the administrative law judge has the discretion to change the regulations or to consider her application to have been filed on a day different than the date on which it was actually received."

<sup>13</sup> *Allen v. State*, 203 P.3d 1155, 1163- 1164 and 1170 (Alaska 2009) ("We are sympathetic to the argument that it is unfair to require indigent food stamp recipients to repay benefits that were overissued to them through no fault of their own, but Congress has already made the policy decision that a ten dollar or ten percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness. Alaska's doctrine of equitable estoppel cannot be used to effectively override this policy decision.")

September 2015. Because she submitted an application within 30 days of the date her food stamp case was closed, the division correctly treated the application as a late recertification application. Because her benefits ended at the end of September 2015, and her recertification application was not received until October 30, 2015, proration of Ms. T's October, 2015 benefit amount is required under federal law. Consequently, the division's decision to prorate Ms. T's food stamp benefits for the month of October is upheld.

### *B. Scope of Referral*

Under the applicable federal food stamp regulation, a household has 90 days after an action by the state agency or loss of benefits to request a hearing.<sup>14</sup> When the department receives a hearing request, it is required to either grant the request and refer the case to the Office of Administrative Hearings (OAH), or deny the request in writing and forward notice of that denial to the party who requested the hearing and to OAH.<sup>15</sup>

The request for hearing in this case was dated November 27, 2015. It was a telephonic request documented by division staff in a case note.<sup>16</sup> The request was referred to the Office of Administrative Hearings on December 7, 2015. In that hearing request, and in her hearing testimony, Ms. T alluded to another request for fair hearing: "I was not told that my fair hearing request regarding the theft of my food stamps from last year would not be looked at."<sup>17</sup> The division presented a case note from a pre-hearing conference with Ms. T held on November 27, 2015: "Client asked about her request to have FS replaced due to theft. Told her that her request was not forwarded to the hearing office, and that she was sent a letter about that. Sz she got the letter."<sup>18</sup> Finally, Sally Dial stated at the hearing that a determination had been made not to refer that issue for hearing: "Jeff Miller did a nonreferral on that due to the date of when the event occurred and when the hearing request was submitted."

The division's fair hearing position statement frames the issue in dispute in this case as follows: "Was the agency correct in determining Ms. T's Food Stamp benefits start date of October 30, 2015 based on when the household turned in their Food Stamp application?" Based on this, the issue being referred for hearing by the division was the proration of Ms. T's benefits for October 2015. The division did not refer the replacement claim, or the issue of the timeliness

---

<sup>14</sup> 7 CFR 273.15(g). *See also* 7 AAC 49.030 (a hearing request must be made within 30 days of notice unless otherwise provided by federal law; 7 CFR 273.15(g) provides otherwise).

<sup>15</sup> 7 AAC 49.080.

<sup>16</sup> Division Exhibit 7.

<sup>17</sup> Division Exhibit 7.

<sup>18</sup> Division Exhibit 8.

of the request for hearing in the replacement claim.<sup>19</sup> Timely referral to this office of the issue of the agency's proration of benefits for October 2015 does not open the door for OAH to hear other claims that have been held to be time barred.

#### **IV. Conclusion**

The agency's decision that Ms. T is entitled to \$19 in prorated food stamp benefits for October 2015 based on the date her application for benefits was received is upheld.

DATED: January 11, 2016.

*Signed*

\_\_\_\_\_  
Kathryn L. Kurtz

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 26<sup>th</sup> day of January, 2016.

By: *Signed*

\_\_\_\_\_  
Name: Kathryn L. Kurtz

Title: Administrative Law Judge  
\_\_\_\_\_

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

---

<sup>19</sup> The agency's position statement did not include a copy of the decision declining to refer the replacement claim.