

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

In the Matter of:	)	
	)	OAH No. 16-0260-SNA
G N	)	DPA Case No.
_____	)	

**DECISION**

**I. Introduction**

The issue in this case is whether G N is disqualified from participation in the Food Stamp program<sup>1</sup> as a result of a 2006 felony conviction involving the delivery of a controlled substance and the possession of a controlled substance with the intent to deliver. The Division of Public Assistance (DPA or Division) determined that Mr. N is ineligible to receive Food Stamp benefits as a result of his felony drug conviction, and denied his application for benefits.<sup>2</sup> Mr. N asserts, however, that his conviction cannot be considered final because he has two court cases pending in which he seeks to overturn his 2006 conviction.

This decision concludes that, because Mr. N's 2006 conviction is still in effect following his exhaustion of all direct appeals, and because no collateral proceedings for post-conviction relief have undermined the 2006 conviction, Mr. N's 2006 conviction remains in full force and effect. Accordingly, the Division was correct to deny Mr. N's application for Food Stamp benefits based on federal Food Stamp program statutes and regulations. The Division's determination, denying Mr. N's application for Food Stamp benefits, is therefore affirmed.

**II. Facts**

**A. *The Conviction at Issue***<sup>3</sup>

On August 00, 2006 Mr. N was convicted in Anchorage Superior Court, Case No. 3AN-03-00000 CR, of Misconduct Involving a Controlled Substance in the Second Degree under A.S.

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<sup>1</sup> Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, the program is still known and referred to primarily by its former name. Accordingly, this decision will refer to the program as "the Food Stamp program."

<sup>2</sup> Ex. 6.

<sup>3</sup> Because Mr. N asserts that his appeals and other post-conviction proceedings have overturned his 2006 conviction, and/or that the judgment of conviction is not "final" because he still has proceedings for post-conviction relief pending, the procedural history of his case is set forth here in much greater detail than it would be normally.

§ 11.71.020(a)(1).<sup>4</sup> The conviction was based on conduct that occurred on November 00, 2003.<sup>5</sup> This was a Class A felony conviction under Alaska law.<sup>6</sup>

On August 00, 2006, Mr. N appealed his conviction to the Alaska Court of Appeals (Case No. S00000).<sup>7</sup> On December 00, 2008, the Court of Appeals affirmed the Superior Court's judgment of conviction.<sup>8</sup> Mr. N then appealed to the Alaska Supreme Court. On August 00, 2010, the Alaska Supreme Court reversed the Court of Appeals' decision and remanded the case to the Superior Court for an evidentiary hearing.<sup>9</sup>

On November 00, 2010, the Superior Court held the evidentiary hearing mandated by the Alaska Supreme Court's decision.<sup>10</sup> On June 00, 2011, the Superior Court issued an order in favor of the State and against Mr. N on the remand issue,<sup>11</sup> at which point the 2006 conviction was once again in effect.

On June 00, 2011, Mr. N appealed the Superior Court's post-remand decision to the Alaska Court of Appeals (Case No. A00000).<sup>12</sup> The Court of Appeals affirmed the Superior Court's decision in a Memorandum Decision and Judgment issued on November 00, 2013.<sup>13</sup> On December 00, 2013, Mr. N filed a Petition for Hearing with the Alaska Supreme Court (Case No. S00000). On January 00, 2014, the Alaska Supreme Court denied Mr. N's Petition for Hearing. This left the Court of Appeals' affirmance of the Superior Court's post-remand decision, which revived the 2006 judgment of conviction, in effect.

In addition to his *direct appeal* of the 2006 judgment of conviction (discussed above), Mr. N also filed two separate, independent proceedings seeking to collaterally attack his 2006

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<sup>4</sup> Ex. 15. A.S. § 11.71.020(a)(1) provides in relevant part that, [e]xcept as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person (1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver."

<sup>5</sup> Ex. 15.

<sup>6</sup> A.S. 11.71.020(d).

<sup>7</sup> Unless otherwise stated, all factual findings concerning the procedural history of Mr. N's case are based on information obtained from the Alaska Court System's online database ("Courtview"). On April 6, 2016, I issued a written notice to the parties advising that I intended to take official notice of this information. Neither party objected.

<sup>8</sup> [Removed]

<sup>9</sup> [Removed]

<sup>10</sup> Ex. 5.2.

<sup>11</sup> Ex. 5.14.

<sup>12</sup> Unless otherwise stated, all factual findings in this paragraph concerning the procedural history of Mr. N's case are based on information obtained from the Alaska Court System's online database ("Courtview").

<sup>13</sup> Court of Appeals Opinion No. 0000 (Exs. 16.0 - 16.6).

conviction.<sup>14</sup> First, on June 00, 2007, Mr. N filed a Petition for Post-Conviction Relief with the Anchorage Superior Court; this became Case No. 3AN-07-00000 CI. As of April 5, 2016, this case was still pending, almost nine years after it was originally filed. The State has filed a motion to dismiss the case, which now appears to be ripe for decision. However, no orders or judgments have yet been entered in the case that in any way affect the validity or finality of the 2006 conviction.

Finally, in 2014 Mr. N filed a petition with the United States District Court for the District of Alaska seeking to overturn his 2006 conviction (Case No. 3:14-cv-00000-RRB-DMS).<sup>15</sup> As of April 5, 2016, the federal case was still pending, but Mr. N has not provided any evidence that any order or judgment has been entered in the federal case that in any way affects the validity or finality of the 2006 state court conviction.

***B. Relevant Procedural History of the Present Administrative Proceedings***

On March 4, 2016, Mr. N completed, signed, and submitted an application for Food Stamp benefits, Adult Public Assistance, General Relief Assistance, and health insurance.<sup>16</sup> In response to question number 119 of the application, which asks in part whether anyone in the applicant's household has been convicted of a drug-related felony, Mr. N answered "no."<sup>17</sup>

On March 5, 2016, Mr. N participated in an eligibility interview with a DPA eligibility technician (ET).<sup>18</sup> The ET's notes from the eligibility interview state that Mr. N denied having any felony drug convictions during the interview, but that the ET's subsequent review of the Alaska Court System's "Courtview" database indicated that Mr. N had felony drug convictions in 1996 and in 2006.<sup>19</sup>

On March 9, 2016, Mr. N visited a DPA field office to check on the status of his application.<sup>20</sup> He was advised that his application for Food Stamp benefits had been denied because of his drug-related felony conviction. On March 10, 2016, the Division mailed a notice

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<sup>14</sup> Unless otherwise stated, all factual findings in this paragraph concerning the procedural history of Mr. N's case are based on information obtained from the Alaska Court System's online database ("Courtview").

<sup>15</sup> Ex. A.

<sup>16</sup> Exs. 2.0 - 2.11.

<sup>17</sup> Ex. 2.9.

<sup>18</sup> Ex. 3.

<sup>19</sup> Ex. 3.

<sup>20</sup> All factual findings in this paragraph are based on Exs. 4 and 5.0 unless otherwise stated.

to Mr. N formally denying his application for Food Stamp benefits, based on the assertion that he has one or more felony drug convictions.<sup>21</sup> Mr. N requested a hearing on the issue.<sup>22</sup>

Mr. N's hearing was held on April 5, 2016. Mr. N attended the hearing, represented himself, and testified on his own behalf. Public Assistance Analyst Jeff Miller participated in the hearing by phone, represented the Division, and testified on its behalf. Following the hearing, the record was left open through April 26, 2016 for post-hearing filings.

### III. Discussion

#### A. *Overview: Disqualification of Persons Convicted of Drug-Related Felonies*

The Food Stamp program is a federal program administered by the states.<sup>23</sup> In 1996 the Personal Responsibility and Work Opportunity Reconciliation Act, popularly known as the Welfare Reform Act, was enacted by Congress.<sup>24</sup> This act disqualified persons convicted of certain drug-related felonies from receiving benefits under the Food Stamp Program.<sup>25</sup>

Federal Food Stamp regulation 7 C.F.R. § 273.11(m) is the implementing regulation for the legislation referenced above (21 U.S.C. § 862a(a)(1)). Regulation 7 C.F.R. § 273.11(m) states the Food Stamp eligibility rules applicable to persons convicted of felony drug charges as follows:

(m) *Individuals convicted of drug-related felonies.* 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 . . . 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 . . . .

The states have the discretion to exempt recipients from the drug felony disqualification rule pursuant to 21 U.S.C.A. § 862a(d)(1) and 7 C.F.R. § 273.11(m) (quoted above). However,

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<sup>21</sup> Ex. 6.

<sup>22</sup> Ex. 4.

<sup>23</sup> 7 C.F.R. § 271.4(a).

<sup>24</sup> See Public Law No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); *In re Cervantes*, 219 F.3d 955, 958, fn. 5 (9th Cir. 2000).

<sup>25</sup> 21 U.S.C.A. § 862a (a)(1), (d)(2). 21 U.S.C.A. § 862a(a)(1) provides in relevant part that “[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.]” This includes the Food Stamp Program or SNAP.

the State of Alaska has not enacted legislation either exempting Alaska state residents from ineligibility under 7 C.F.R. § 273(1)(b)(7)(vii), or limiting the period of program ineligibility.<sup>26</sup>

**B. Is the Conviction at Issue Here "Final" for Food Stamp Program Purposes?**

The parties agreed at hearing that there are no disputed factual issues to be decided in this case. Thus, in this case it is not necessary to determine the credibility of any witnesses or to weigh competing evidence. Rather, the sole issue for determination in this case is whether Mr. N's 2006 conviction constitutes a drug-related felony conviction for purposes of the Food Stamp program disqualification provisions (21 U.S.C.A. § 862a(a)(1) and 7 C.F.R. § 273.11(m)), even though he is still seeking to overturn that conviction. This is a purely legal issue.

Research indicates that the established rule, apparently followed in all reported decisions from American jurisdictions which have addressed the issue over the last 60 years, is that a criminal conviction, once entered, constitutes a final adjudication unless and until it is reversed, modified, or set aside by an appellate court.<sup>27</sup> It is true that, in Mr. N's case, the Alaska Supreme Court reversed the Court of Appeals' decision in 2010 and remanded the case to the Superior Court for an evidentiary hearing.<sup>28</sup> Thus, there was a period of about ten months, beginning with the Alaska Supreme Court's reversal of the lower court decisions on August 00, 2010, in which Mr. N's 2006 conviction was *not* final. Mr. N was eligible for Food Stamp benefits during that ten-month period. However, the 2006 conviction became final again on June 00, 2011, when the Superior Court issued an order in favor of the State and against Mr. N on the remand issue. Because the Superior Court's June 2011 post-remand decision was never reversed on appeal or invalidated through collateral proceedings, Mr. N's 2006 conviction has been in effect continuously since June 2011. Accordingly, since June 2011, Mr. N has been ineligible for Food Stamp benefits based on his 2006 felony drug conviction.

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<sup>26</sup> See A.S. §§ 47.25.975 – 990; 7 A.A.C. § 46.010 *et. seq.*

<sup>27</sup> See *United States v. Empire Packing Company*, 174 F.2d 16 (7th Cir. 1949), *certiorari denied* 337 U.S. 959, 69 S.Ct. 1534, 93 L.Ed. 1758 (1950); *State v. Robbins*, 224 P.2d 1076 (Wash. 1951); *Gonzalez v. State*, 97 So.2d 127, 128 (Fla. Dist. Ct. 1957); *United States v. Owens*, 271 F.2d 425, 426 (2nd Cir. 1959); *United States v. Allen*, 457 F.2d 1361, 1363 (9th Cir.1972) (a judgment of conviction is considered final unless and until it is reversed on appeal); *Mitchell v. Association of the Bar of New York*, 351 N.E.2d 743, 746 (N.Y. 1976) (“[A] judgment of conviction is entitled [to] \* \* \* respect as a final judgment on the merits unless and until reversed upon appeal”); *Rowan v. State*, 431 N.E.2d 805, 817 (Ind. 1982); *Jackson v. State*, 418 So. 2d 827, 831-32 (Miss. 1982) (until a judgment of a trial court is reversed, a defendant found guilty and sentenced remains convicted); *Youren v. Tintic School District*, 86 P.3d 771, 773 (Utah App. 2004) (a criminal conviction is a final adjudication until reversed, modified, or set aside).

<sup>28</sup> [Removed]

#### **IV. Conclusion**

Mr. N's 2006 conviction, for "Misconduct Involving a Controlled Substance in the Second Degree" under A.S. § 11.71.020(a)(1), temporarily lost its status as a final judgment for a period of about ten months beginning on August 00, 2010. However, Mr. N's 2006 conviction regained its status as a final judgment on June 00, 2011, and has remained in full force and effect, without interruption, since that date. Accordingly, the Division was correct to deny Mr. N's March 4, 2016 application for Food Stamp benefits based on the Food Stamp program's felony drug conviction disqualification rule. The Division's determination, denying Mr. N's application for Food Stamp benefits, is therefore affirmed.

Dated this 28th day of April, 2016.

*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 9th day of May, 2016.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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