

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

In the Matter of)
)
K C) OAH No. 16-1219-SNA
) Agency No.
_____)

DECISION

I. Introduction

K C was receiving temporary assistance and food stamp benefits for herself and her two children. The Division of Public Assistance learned that the children were living with their father. The division notified Ms. C that she was no longer eligible for temporary assistance, and reduced the amount of her food stamp benefit. Ms. C appealed.

Because benefits under the temporary assistance program are only available to households with children, and benefits under the food stamp program are determined based on household size, the division's decisions are upheld.

II. Facts

K C has two children. She and the children's father do not live together. Ms. C was receiving food stamp and temporary assistance benefits based on the presence of both children in her household.

This fall, Ms. C and the father of Ms. C's two children have been engaged in a custody case in the superior court. In September, the division received a copy of a motion Ms. C signed on August 22, 2016, stating that the last time Ms. C had contact with her children was on July 11, 2016.¹ At the end of September, the division responded to that information by closing Ms. C's temporary assistance case and reducing the amount of her food stamp benefits.² The division notified Ms. C that her temporary assistance case was being closed as of October 31, 2016, because there was no longer an eligible child living in her home.³ It also notified her that her monthly food stamp benefit would be reduced to \$179 a month starting in November because her two children were no longer in the home.⁴

¹ Exhibit 2.1.
² Exhibit 2.
³ Exhibit 3 and 4.
⁴ Exhibit 3.2 and 4.2.

Ms. C requested a fair hearing. With her request for a hearing Ms. C provided a copy of a custody modification order issued by the superior court at the beginning of October.⁵

The court's October order provided for shared custody.⁶ However, the court's custody schedule gave the children's father primary physical custody during the school year. Ms. C is scheduled to have custody of the children three weekends each month. The schedule will be reversed in the summer, when Ms. C will have primary physical custody, and the children's father will have the children for three weekends each month.⁷ The children's father has applied for benefits for the children.⁸

A telephonic hearing was held on November 15, 2016. Ms. C represented herself. Jeff Miller, a Public Assistance Analyst with the division, represented the division.

III. Discussion

Ms. C's appeal concerns two separate benefit programs, food stamps and Temporary Assistance. The two programs are both administered by the Division of Public Assistance, but they are governed by separate regulations, so they will be addressed separately below.

A. Eligibility for Temporary Assistance

The division closed Ms. C's temporary assistance case because she no longer had an eligible child living in her household.⁹ The Alaska Temporary Assistance Program is limited to families with parents or caretakers who have physical custody of one or more children, and pregnant women.¹⁰ To be eligible for benefits, Ms. C must have a child living in her home more than half the time in a month.¹¹

Ms. C argued that her children are still part of her household. Ms. C and her children spend time together. The children live with her on weekends, and she and the children meet up during the week at basketball games.¹² Ms. C testified about how much time the children spent with her in October. In addition to the scheduled weekends, there were some additional overnights the children spent with Ms. C beyond what was scheduled in the

⁵ Exhibit 4.4 - 4.16.
⁶ Exhibit 4.8.
⁷ Exhibit 4.13 - 4.15.
⁸ Testimony of Miller.
⁹ Exhibit 4.
¹⁰ AS 47.27.010.
¹¹ 7 AAC 45.225(b).
¹² Testimony of C.

custody order. However, even taking this into account, the children were in Ms. C's home less than half of the time in the month of October.

Because the custody order gives the children's father primary physical custody during the school year and the children are in fact spending a majority of the time with their father, the division was correct to remove the children from Ms. C's household for purposes of the temporary assistance program as of October 31, 2016.¹³ With no dependent children currently in her household, Ms. C is not currently eligible for temporary assistance benefits. Nothing in this decision prevents Ms. C from applying for temporary assistance benefits again when she does have physical custody of the children more than half of the time.

B. Food Stamp Benefit Amount

Benefit levels under the food stamp program are determined according to household size and income.¹⁴ Ms. C's household size changed when primary physical custody of her two children shifted from her to the children's father. Again, the issue is not whether the children spend time with Ms. C, but rather whether they are technically members of her household according to the federal regulations that govern the food stamp program. A person may be a member of only one household at a time under the food stamp regulations.¹⁵ Because the children's father now has primary custody of the children, they are part of his household. Therefore, they are no longer part of Ms. C's household for purposes of the food stamp program. The division was correct to recalculate Ms. C's benefits based on a household size of one.

IV. Conclusion

The division's decision that Ms. C is not currently eligible for temporary assistance is upheld. The division's decision that Ms. C's food stamp benefits should be calculated based on a household size of one is also upheld.

Dated: November 23, 2016.

Signed

Kathryn L. Kurtz
Administrative Law Judge

¹³ 7 AAC 45.555(b). Since the custody order was signed in October, November is the first full month the children are not included in the household.

¹⁴ 7 C.F.R. 273.10(e)(2)(ii)(A).

¹⁵ 7 C.F.R. 273.3(a).

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 7th day of December, 2016.

By: Signed
Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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