

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

In the Matter of)	
)	
P K)	OAH No. 17-0155-SNA
)	Agency No.

DECISION

I. Introduction

P and Q K applied for recertification of their eligibility for food stamp benefits. The Division of Public Assistance calculated their anticipated gross income based on the available evidence of their check stubs. Because their anticipated gross income was above the maximum allowed, the Division denied the recertification. The Ks appealed.

A fair hearing was held. The evidence at the hearing showed that the monthly income calculation was correct. Because the estimate was not based on an unusual fluctuation in earnings, there is no reason to recalculate the K's gross income. Therefore, the decision is affirmed.

II. Facts

In November 2016, Q and P K were living in No Name with their four children. They were receiving food stamp benefits, but it was time for them to apply for reauthorization beginning January 1, 2017.¹

Both Q and P were working when they applied for reauthorization on November 23rd.² P was working forty hours per week at No Name Corporation for \$15.75 per hour. K was working 36 hours per week at No Name for \$10.00 per hour.³ Each was paid every other week.⁴

To determine whether they were still eligible for food stamp benefits, the Division of Public Assistance obtained records of their combined income. Based on their average monthly gross earnings for three pay periods beginning with the last check in November, and including the two checks received in December, the Division determined that their combined gross income was \$4,417.61 per month. The gross monthly maximum income for a household of six, however, is

¹ The food stamp program is a federal program administered by the State of Alaska. 7 C.F.R. 271.4(a). The division administers the program and calculates food stamp benefits according to federal law. 7 AAC 46.010.

² Division Exhibit 2.3; Q, K and P, K testimony.

³ *Id.*

⁴ Q, K testimony.

\$4,414.⁵ The Division determined that the Ks were not eligible for food stamp benefits because their income exceeded the maximum allowable income.

The Ks appealed the denial. They asserted that their income was actually about \$3,200 per month and that Q's hours had been cut. They described how their expenses exceeded their income. They said that their children were hungry. They also explained that they were moving back to No Name, and that they would be unemployed after March 1st.⁶ A fair hearing was held on March 23, 2017. The issues raised in the fair hearing are discussed below.

III. Discussion

The first issue discussed at the hearing was whether the K's estimate of their earning capacity at \$3,600 per month was based on gross or net income. Q said it was based on net—after deductions. The Division, however, bases the initial determination of eligibility on gross income.⁷ Because gross income is always more than net, the Division's determination, based on actual pay stubs, was higher than the K's. Here, we must use the gross income number.

To estimate anticipated gross income, the Division generally uses income received during the preceding 30 days as an indicator of the income that is and will be available to the household.⁸ The primary issue in this case is whether the three pay periods used for calculating Q's expected monthly income were representative of his actual income.

At the hearing, Q explained that the November 25, 2016, gross pay of \$710 was abnormally high because he had been covering for a fellow employee.⁹ He said the gross pay for the two December pay periods, \$642.50 and \$575.5, was more representative of his actual pay.¹⁰ If true, we could discard the November pay stub, and rely solely on the December pay stubs.¹¹ Under this calculation, the Ks would be eligible for food stamp benefits because the combined anticipated income would be less than the maximum. The Division, however, argued that Q had said in his application that he worked 36 hours per week. At \$10 per hour, we would expect gross pay to be about \$720 for every two weeks. If so, the Ks income would always be above the limit for food stamp eligibility.

⁵ Division Exhibit 6. The division has interpreted the federal regulations and set out specific instructions for its employees to use in calculating a person's monthly income and benefits in the Alaska Food Stamp Manual. Alaska Food Stamp Manual 603, Determining Eligibility and Benefit Levels, *available at* <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>.

⁶ Division Exhibit 5.

⁷ 7 C.F.R. § 273.9(a)(1); *see, e.g. In re BD*, OAH No. 14-0141-SNA at 2 (Dep't Health Soc. Servs. 2014).

⁸ 7 C.F.R. § 273.10(c)(ii).

⁹ Q. K testimony; Division Exhibit 3.3.

¹⁰ Q. K testimony; Division Exhibits 3-3.1.

¹¹ 7 C.F.R. § 273.10(c)(ii).

The evidence on Q's actual hours was not clear. Each of the three paychecks in the record were based on less than 36 hours of work per week. When questioned, Q still estimated that he generally worked 7.5 hours per day, 36 hours per week. If Q's testimony was accurate, then the November paycheck was representative, and not a fluctuation in earnings. Given this discrepancy, Q was asked about his January pay. If the pay for January was in the same range as the December pay, it would confirm that the November check was an unusual fluctuation. If so, the November check could be disregarded. If, however, his January checks were in the same range as the November check, it would indicate that the Division appropriately relied on the November check.

Q was able to access his January bank information on line. His net pay for January 5 was \$715.61, and for January 19, \$692.65.¹² The gross pay would have been higher, probably by about 10 percent.

Because the January net pay was more than the December gross pay, and because Q said he worked 36 hours per week, we can conclude that the three checks relied upon by the Division were not unreasonable estimates of Q's future income. Therefore, the Division's estimate of earnings is affirmed. Its determination that the K were not eligible in December is also affirmed.

Now that the Ks have moved back to No Name and are no longer working, however, this determination does not control their current eligibility. They are encouraged to apply again based on their current situation.

IV. Conclusion

The Division correctly calculated the K's gross income. It correctly determined that the K's were not eligible for food stamp benefits beginning January 1, 2017. Therefore, the Division's denial of P K's November 2016 application for reauthorization of food stamp benefits is affirmed.

DATED this 29th of March, 2017.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

¹² Q. K testimony.

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 19th day of April, 2017.

By: *Signed* _____
Name: Stephen C. Slotnick
Title: Administrative Law Judge

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