

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

In the Matter of)
)
X M) OAH No. 17-0765-SNA
) Agency No.
_____)

DECISION

I. Introduction

X M applied for food stamps. Based on the information provided on his application and an interview, the division approved his application. Mr. M then applied for Temporary Assistance benefits. In processing the application for temporary assistance, the division concluded that it should not have approved the food stamp application because Mr. M had an ATV that should have been counted as a resource for purposes of determining his eligibility. The division then notified Mr. M that he was not eligible for food stamps, and that he would need to repay the \$645 in benefits that he had received. Mr. M appealed.

Because Mr. M' ATV should not have been counted as a resource in calculating his food stamp benefits, his benefits were not overpaid. The division's decision is reversed.

II. Facts

Mr. M was employed for 27 years on the North Slope. However, after his employment ended in April 2016, he experienced a series of setbacks. He was unemployed for a year. His house was foreclosed, he experienced a death in the family, he became the conservator for his mother, and he broke his hand, all of which left his resources largely depleted.¹ His unemployment insurance ran out.²

On May 17, 2017, Mr. M applied for food stamp benefits.³ He obtained assistance from the No Name tribe in filling out the application because he had a cast on his left hand and could not fill the paperwork out on his own. He disclosed his remaining assets to the division, including the RV he and his son live in, a truck that does not run, a minivan, and two ATVs. One of the ATVs was valued by Mr. M at \$2,000. Mr. M told the division he used the other ATV not for recreational purposes but for trapping and hunting, primarily

¹ Testimony of M.
² Exhibit 3.
³ Exhibit 2.

hunting moose to feed his family. Mr. M valued the second ATV at \$8,500, with \$1,400 still owed.⁴ Mr. M had a total of \$16.09 in his checking account.⁵ The division reviewed Mr. M' application, and concluded that the second ATV was exempt. It approved the application, and issued a benefits card.⁶ The division issued \$210 in benefits for May 2017 and \$435 for June 2017.⁷

On May 20, 2017, Mr. M applied for the temporary assistance program, which provides cash assistance.⁸ Although he ultimately withdrew the temporary assistance application, the technician who took that application reexamined his eligibility for food stamps. The division concluded that it had erred in finding the second ATV exempt for purposes of the food stamp program because "No Name City is not a subsistence area." Counting that ATV as a resource, the division concluded that Mr. M' resources exceeded the program limit and that his food stamp benefits had been overpaid.⁹ On June 29, 2017, the division informed Mr. M by letter that he had been overpaid and would be required to repay the \$645 in food stamp benefits that he had received.¹⁰ Mr. M requested a fair hearing.

A telephonic hearing was held on August 4, 2017. Mr. M represented himself. Jeff Miller, a Public Assistance Analyst with the division, represented the division. The record was held open following the hearing for additional information from the division regarding exemption of vehicles from the resource limit.

III. Discussion

At the hearing, Mr. M argued that he should not have to repay the benefits, because by the division's own account the division erred in not including the second ATV in his countable resources for purposes of the food stamp program. Mr. M argued that he should not be held accountable for the division's error. However, contrary to the division's argument, Mr. M' food stamp benefits were not paid in error.¹¹

⁴ Testimony of M; Exhibit 3.

⁵ Exhibit 2.8.

⁶ Exhibit 3.

⁷ Exhibit 6.

⁸ Exhibit 4.

⁹ Exhibit 6.

¹⁰ Exhibit 7.

¹¹ 7 U.S.C. 2022(b)(1); 7 C.F.R. §273.18(a)(2); *Allen v. State, Dep't of Health and Social Services*, 203 P.3d 1155, 1164 (Alaska 2009).

The division erred when it concluded that Mr. M' ATV put him over the resource limit for the program. Based on the provisions of the food stamp manual submitted by the division following the hearing, the division was correct when it concluded that the ATV was exempt. Specifically, the manual provides that most vehicles are exempt based on their use by the household, and that vehicles intended to be used for family transportation to meet the household's basic needs, including vehicles used for subsistence hunting and fishing, are not counted toward the resource limit.¹² The eligibility technician who interviewed Mr. M about his food stamp application specifically noted that the ATV was used "for hunting & trapping, mainly moose hunting to feed his family. He does not use it recreationally."¹³ The food stamp manual section on verification of exempt vehicles provides: "[a]cept client statement regarding use unless questionable."¹⁴ The manual goes on to define a household as engaged in subsistence hunting and fishing "when it customarily and traditionally depends on hunting and/or fishing for a substantial portion of its food needs."¹⁵

The division appears to have based its conclusion about the ATV's exclusion on where Mr. M lives, rather than whether his household relies on hunting and fishing for a substantial portion of its food needs. The eligibility technician who concluded that Mr. M' second ATV should be counted toward the resource limit wrote that "No Name City is not a subsistence area."¹⁶ Following the hearing, when the division submitted the food stamp manual sections relating to vehicles and subsistence, it reiterated that Mr. M lived in an urban area, and argued that he does not depend on hunting and fishing "for a *substantial portion* of his food."¹⁷ However, the fact that Mr. M lives in the No Name City area is irrelevant, and the division failed to prove that Mr. M' household does not rely on hunting and fishing for a substantial portion of the household's food.

Because this case involves a termination or reduction of benefits, the division has the burden of proof.¹⁸ The division did not present any evidence at the hearing about whether Mr. M' household customarily and traditionally depends on hunting or fishing for a

¹² Ex. 14 (Food Stamp Manual 602-2 C.1.a.)

¹³ Exhibit 3.

¹⁴ Exhibit 14.1.

¹⁵ Exhibit 15 (Food Stamp Manual 600-2).

¹⁶ Exhibit 6.

¹⁷ Cover letter dated 8/4/17.

¹⁸ 7 AAC 49.135.

substantial portion of its food needs. To the contrary, Mr. M' comments to the eligibility worker during his food stamp interview about the use of the ATV for moose hunting "to feed his family" tends to show that the household does indeed rely on hunting and fishing for a substantial portion of its food. Mr. M' testimony that he sought help from the No Name tribe in filling out the application form supports an inference that the household's reliance on hunting and fishing is customary and traditional. Therefore, the division did not prove that the household does not depend on hunting and fishing for a substantial portion of its food, and that the ATV should have been included as a resource in calculating Mr. M' eligibility for benefits.

The division did not err in initially excluding the ATV from Mr. M' countable resources. The division erred in reversing course after the APA application, including the ATV as a resource, and issuing the overpayment notice. The division's initial conclusion that Mr. M was eligible for the food stamp benefits was correct, since his countable resources, including the \$2,000 ATV and the money in his checking account, but not including the ATV he used for subsistence hunting, were below the \$2,250 resource limit.¹⁹ Mr. M is not obligated to repay the division for the food stamp benefits he received.

IV. Conclusion

The division's decision to require Mr. M to repay the \$645 in food stamp benefits he received is reversed.

Dated: August 10, 2017.

Signed

Kathryn L. Kurtz
Administrative Law Judge

¹⁹ Exhibit 7.4.

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 28th day of August, 2017.

By: *Signed* _____

Name: Kathryn L. Kurtz

Title: Administrative Law Judge

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