



To avoid a delay in benefits, we must receive the application no later than the 15<sup>th</sup> of next month. Your Food Stamp case will close at the end of next month if you do not submit this application form.<sup>3</sup>

Ms. K lives in a rural area of the state. Her mailbox is located on the No Name Highway, and is subject to being blocked by snow. She received the notice and completed the renewal application. She put it in her mailbox for the postal service to pick up on December 12 or 13, 2017. She received a computer message from her postal carrier on December 13, 2017 that she couldn't access the mailbox. Ms. K made it to the mailbox and shoveled around it on December 20, 2017. She recalled that the application was still in the mailbox waiting to be picked up at that time. Ms. K had to leave the state right after December 20, 2017 due to a death in her immediate family. Her postal carrier sent her a message on December 28, 2017 that the mailbox was accessible. Ms. K estimated that the application would have been picked up by the postal carrier sometime between December 20 and 28, 2017.<sup>4</sup>

The Division closed Ms. K's Food Stamps benefits at the end of December 2017. It did not receive a Food Stamp benefit renewal application from Ms. K. A thorough search of its records, including its files and computer system, has not turned up a renewal application filed by Ms. K.<sup>5</sup>

Ms. K noticed that her Food Stamp electronic benefit card did not have benefits added to it at the beginning of January 2018. At first, she was not concerned because she thought there might have just been a delay in processing her renewal application. She made multiple attempts to contact the Division starting mid-January and ask about her application, but no one returned her calls.<sup>6</sup>

Ms. K, who returned to the state in mid-January 2018, was not able to leave her home and travel to the nearest Division office until February 5, 2018. At that time, she was able to determine that her Food Stamp benefits had been discontinued. She reapplied for Food Stamp benefits on February 5, 2018.<sup>7</sup>

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<sup>3</sup> Ex. 2.

<sup>4</sup> Ms. K's testimony; March 20, 2018 email from Ms. K.

<sup>5</sup> Ms. Dial's testimony.

<sup>6</sup> Ms. K credibly testified that she started telephoning the Division and leaving voicemails by January 13, 2018, if not before. In addition, she furnished screen shots from her cell phone showing multiple calls to the Division beginning on January 24, 2018. *See* April 2, 2018 email from Ms. K.

<sup>7</sup> Ms. K's testimony. Ms. K's February 5, 2018 application was apparently denied, and she has requested a separate hearing on that matter. *See* April 2, 2018 email from Ms. K. This decision only deals with the Food Stamp

### III. Discussion

There is a common-law doctrine known as the “mailbox rule,” which “raises a presumption that the postal service ‘delivered the document to the addressee in the usual time[,]’” if the document was properly mailed, but the presumption can be rebutted by evidence that the document was not received by the deadline.<sup>8</sup> Courts have also stated that the fact that the United States Postal Service fails to return a piece of first class mail to the sender creates a rebuttable presumption that the mail was received by the addressee.<sup>9</sup> The evidence demonstrates that it is more likely than not true that Ms. K placed her renewal application in her mailbox and that it was still there on December 20, 2017 and was picked up sometime thereafter by the postal carrier. This creates a rebuttable presumption that the Division was sent the renewal application and received it. However, Ms. Dial’s testimony was that she did an exhaustive review of Division records and was unable to locate the application. Nor, when she was asked, was she able to find a casenote in the records reflecting a late filed application. Accordingly, the Division rebutted the presumption of delivery. This means that it is more likely true than not true that the Division did not receive a renewal application for Food Stamp benefits from Ms. K.

Ms. K argued that she should be provided Food Stamp benefits beginning in mid-January because she made attempts to contact the Division regarding her application, and that the Division never responded to her contact attempts. The federal Food Stamp regulations allow renewal of benefits if a renewal application is received within thirty days after the end of the certification period, in this case the end of December 2017. However, the benefits are prorated effective the date the renewal application is received. There is an exception to the proration rule if the delay in filing the renewal application is due to the Division’s error.<sup>10</sup> In order for either of these exceptions (proration, or agency error) to occur, Ms. K would still have to have filed an application by the end of January 2018. However, the evidence in this case demonstrates that Ms. K did not file a renewal application until February 5, 2018. Ms. K’s phone calls to the

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benefit expiration issue. Any issue regarding the February 5, 2018 application is an entirely separate matter, which will need to be referred for hearing by the Division.

<sup>8</sup> *In the Matter of G. W. and M. E.*, OAH 07-0605-PFD, p. 10 (Commissioner of Revenue, 2008) citing *Philadelphia Marine Trade Ass’n v. Commissioner of Internal Revenue Service*, 523 F.3d 140, 147 (3rd Cir. 2008) (describing the development of the mailbox rule in the context of a tax refund dispute the resolution of which depended on when the IRS received a letter). *In the Matter of G. W. and M. E.* is available online at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD070605.pdf>.

<sup>9</sup> See *N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6th Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

<sup>10</sup> 7 CFR 273.14(e)(3).

Division, even if unresponded to, do not substitute for the filing of an application. Consequently, the Division's closing of Ms. K's Food Stamp benefit case at the end of December 2017 is upheld.

#### **IV. Conclusion**

Ms. K filed to renew her Food Stamp benefits by mail. However, her application never reached the Division. While this was not due to any fault on the part of Ms. K, the lack of receipt cannot be attributed to the Division. Accordingly, because Ms. K did not timely apply to renew her Food Stamp benefits, the closure of her benefits effective the end of December 2017 is upheld.

DATED this 10th day of April, 2018.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
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 18<sup>th</sup> day of April, 2018.

By: *Signed* \_\_\_\_\_  
Name: Andrew M. Lebo  
Title: Administrative Law Judge/OAH

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]