

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

In the Matter of)	
)	OAH No. 12-0626-CMB
C L)	Agency No.
_____)	

FAIR HEARING DECISION

I. Introduction

On May 16, 2012, the Division of Public Assistance (Agency) sent Ms. L written notice she would not receive Food Stamp¹ and Medicaid benefits after May 31, 2012.² Ms. L requested a hearing on May 22, 2012.³

Ms. L's hearing was held on July 17 and August 16, 2012. Ms. L represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Agency, represented the Agency and testified on its behalf. The hearing was recorded.

This decision concludes that the Agency was not justified in stopping Ms. L's Food Stamp and Medicaid benefits. As a result, the Agency's decision to stop her receipt of Food Stamp and Medicaid benefits after May 31, 2012 is REVERSED.

II. Facts

Ms. L receives Food Stamp and Medicaid benefits for a household that consists of herself and her children.⁴ Ms. L's No Name⁵ case manager notified the Agency, on April 18, 2012, that Ms. L had started a part-time job at a catering company.⁶ On April 19, 2012, the Agency sent Ms. L notice that she was required to provide it with verification of her employment from the employer by April 30, 2012.⁷ Ms. L provided the Agency with that verification.⁸

Ms. L subsequently informed the Agency that she never actually started working for the catering company.⁹ The Agency eligibility technician attempted to contact the employer. She tried several phone numbers, none of which were valid. She telephoned Ms. L who also did not

¹ In 2008, Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). This decision follows the common usage of continuing to refer to SNAP as the Food Stamp program.

² Ex. 9.

³ Ex. 10.

⁴ Ex. 1.

⁵ No Name Services provides employment and training services to public assistance recipients.

⁶ Ex. 2.

⁷ Ex. 3.

⁸ Exs. 6.0, 31.

⁹ Ex. 6.0.

have a number for the employer.¹⁰ The Agency then, on May 3, 2012, notified Ms. L that she was required to provide written verification, by May 14, 2012, from the catering company of her job ending, the date and amount of her last paycheck, and the reason her job ended.¹¹

The catering company was run out of the owner's home; it had a small food stand at the No Name Center.¹² Ms. L was unable to contact the owner; she tried unsuccessfully to call him four or five times. She also went to see him at the food stand twice and it was closed both times.¹³

The Agency received a report that K P, the father of Ms. L's children, was living with her. An Agency fraud investigator went to Ms. L's home on April 23, 2012 and found Mr. P there. He told the fraud investigator that Ms. L was not home. The fraud investigator observed that there was a car in Ms. L's assigned parking place. The fraud investigator's report does not identify which parking space was used. An unidentified neighbor told the fraud investigator that Mr. P had been living at Ms. L's home since April 1, 2012.¹⁴ The neighbor did not testify.

On April 30, 2012, the Agency notified Ms. L it was requiring that Mr. P be added to her public assistance case because he was "a mandatory household member" and that she was required to provide the Agency with information about his income, resources, and whether he was a convicted drug felon or a fleeing felon, no later than May 10, 2012.¹⁵

An Agency fraud investigator visited Mr. P's reported address on May 14, 2012, and was informed that he did not live there.¹⁶

On May 16, 2012, the Agency sent Ms. L notice that she would not receive Food Stamp and Medicaid benefits after May 31, 2012. The reason the Agency stopped her benefits was because she did not provide it with the requested information about her job with the catering company ending, and the information it requested regarding Mr. P.¹⁷

An Agency fraud investigator visited Ms. L's home on May 30, 2012 and May 31, 2012. Mr. P answered the door during the May 30 visit, told the investigator he was babysitting and

¹⁰ Ex. 6.0.

¹¹ Ex. 7.

¹² L testimony.

¹³ L testimony.

¹⁴ Ex. 4.1; Rogovin testimony.

¹⁵ Ex. 5.

¹⁶ Ex. 6.1; Rogovin testimony.

¹⁷ Ex. 9.

Ms. L was not home. No one answered the door on the May 31 visit, although a light was on in the kitchen. A black mercury was parked in the parking space for unit X during each visit.¹⁸

Ms. L testified that Mr. P had not been and was not living with her, and that her car, which is a silver mercury sable, not a black mercury, could not have been in her parking place when the investigators stopped by because it has been in the shop for almost three months as of her July 17, 2012 hearing. In addition, Ms. L testified that her parking place is not readily apparent – although she lives in apartment X, her assigned parking place is space Y. She also testified that she thought the issues regarding Mr. P were resolved at the end of April/beginning of May 2012, at the same time she filed General Relief applications, and took Mr. P to the Agency’s Gambell St. office to speak with Agency personnel about her case, and satisfied the Agency that Mr. P was not living with her.

The Agency has two General Relief applications filed by Ms. L on April 31 and May 1, 2012.¹⁹ However, there are no records in Ms. L’s case files showing that Mr. P came to the Agency’s office with her and that the issues regarding him were resolved.²⁰

It is undisputed that Ms. L did not supply the Agency with the requested job ending information regarding her part-time catering job, and that she did not supply the Agency with the information it requested regarding Mr. P.

III. Discussion

The issue in this case is whether Ms. L’s Food Stamps and Medicaid benefits should have been stopped because she undisputedly did not provide the Agency with the information it requested regarding her part-time job and Mr. P’s income, resources, and whether he had a felony drug conviction or was a fleeing felon.

Both the Food Stamp and Medicaid programs provide the Agency with the authority to request information when there is a change that may affect a recipient’s eligibility for program benefits.²¹ A household’s income and household composition (which has the potential to affect income and resource eligibility requirements and benefit amounts) are factors that affect eligibility for both the Food Stamp and Medicaid programs.²² In addition, the Food Stamp program has a work requirement that allows the Agency to penalize a recipient if he or she

¹⁸ Ex. 11.1; Neff testimony.

¹⁹ Exs. 32.0 – 32.9, 33.0 – 33.9.

²⁰ Gagne testimony.

²¹ 7 C.F.R. § 273.12(c)(3) (Food Stamp program); 7 AAC 100.016(a) and (b) (Medicaid program).

²² 7 C.F.R. § 273.1(a)(3), 7 C.F.R. 273.8(b), 7 C.F.R. § 273.9(a) and (b) (Food Stamp program); 7 AAC 100.102(c) (Medicaid program).

voluntarily quits a job or is fired for cause.²³ If a recipient refuses to provide the Agency with the requested information, then the Agency may terminate benefits.²⁴

A. Part-time Job Information

The first issue to be addressed is whether Ms. L refused to supply the Agency with the requested information about her part-time job. In order to provide that information, Ms. L was required to contact the employer. Both Ms. L and the Agency attempted to contact the employer. Neither was successful. No evidence was presented that Ms. L refused to provide the requested information, or that she could have contacted the employer and did not. It is therefore more likely true than not true that she did not refuse to provide the Agency with the requested information about her part-time job. As a result, the Agency was not justified in stopping her Food Stamp and Medicaid benefits.

B. P Information

The second issue is whether Ms. L refused to supply the Agency with the requested information regarding Mr. P's income, resources, and whether he had a felony drug conviction or was a fleeing felon. It is undisputed that Ms. L did not provide the Agency with this information. However, the Agency would only be entitled to this information if Mr. P was an actual member of Ms. L's household, because that information would be necessary to determine the household eligibility for benefits and the amount of those benefits, if any.

Ms. L argued that Mr. P was not a member of her household. The direct evidence on this point consists of Ms. L's sworn testimony that he did not and had not lived with her, and the fraud investigators' sworn testimony that Mr. P was at her home on April 23 and May 30, 2012, and that he told them that Ms. L was not home. There was no evidence of an admission on the part of Mr. P or Ms. L, nor was there any evidence presented that his belongings were located in Ms. L's home. The fraud investigators' testimony only established that Mr. P was at Ms. L's home on those two dates; it does not establish his residency at Ms. L's home.²⁵

The only evidence that would support a conclusion that Mr. P actually resided in Ms. L's home, other than just being there on the two occasions testified to by the fraud investigators, consists of a neighbor's unsworn statement made to a fraud investigator that Mr. P had been living with Ms. L since April 1, 2012. Ms. L's sworn testimony is more probative than the

²³ 7 C.F.R. § 273.7(a)(1), 7 C.F.R. § 273.7(j)(2).

²⁴ 7 C.F.R. § 273.12(c)(3) (Food Stamp program); 7 AAC 100.016(b) (Medicaid program).

²⁵ Mr. P is the Ms. L's children's father. It is not unbelievable that he would be in Ms. L's home taking care of the children in her absence.

neighbor's unsworn statement (hearsay) made to the fraud investigator. It is therefore more likely true than not true that Mr. P did not live with Ms. L. Because he was not a member of Ms. L's household, the Agency was not entitled to request his personal information from Ms. L, and could not stop her Food Stamp and Medicaid benefits when she did not furnish it.

IV. Conclusion

The Agency's decision to stop Ms. L's Food Stamp and Medicaid benefits after May 31, 2012 is REVERSED.

DATED this 28th day of August, 2012.

Signed

Lawrence A. Pederson
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 11th day of September, 2012.

By: *Signed*

Name: Lawrence A. Pederson
Title: Administrative Law Judge

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