

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

In the Matter of: )  
 )  
 C M ) OAH No. 12-0998-CMB  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

The issue in this case is whether C M's household income exceeds the applicable monthly gross income limits for the Food Stamp<sup>1</sup> and Family Medicaid programs. This decision concludes that Ms. M's household's monthly gross income exceeds the Food Stamp and Family Medicaid programs' applicable monthly gross income limits. Accordingly, the Division of Public Assistance's (Division) decision of December 6, 2012 denying Ms. M's recertification application for Food Stamp benefits, and terminating the Family Medicaid benefits of the M household's adult members after December 31, 2012, is affirmed.

**II. Facts**

The relevant facts are not in dispute. Ms. M's household consists of herself, her domestic partner L F, their minor son, daughter, niece, and two additional minor children who are not related to the couple.<sup>2</sup> Ms. M and Mr. F are both employed part time.<sup>3</sup> Mr. F works 25 hours per week at a rate of \$32.00 per hour.<sup>4</sup> Ms. M has two different part-time jobs with the same employer; she works 17.5 hours per week as a teaching assistant for \$15.66 per hour, and she works an additional 12.5 hours per week performing noon duty for \$10.00 per hour.<sup>5</sup> Ms. M also receives child support, although the payments are not consistent.<sup>6</sup> Over the 16 month period from July 22, 2011 through November 29, 2012 Ms. M received of \$1,301.91 in child support for an average of \$81.37 per month.<sup>7</sup>

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246, Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutritional Assistance Program ("SNAP"). However, the program is still commonly known and referred to as the Food Stamp program. Accordingly, this decision follows current usage and refers to the program as the Food Stamp program.

<sup>2</sup> Ex. 2.0.

<sup>3</sup> Ex. 2.1.

<sup>4</sup> Exs. 2.1, 2.6.

<sup>5</sup> Exs. 2.1, 2.6.

<sup>6</sup> Ex. 2.2; C M hearing testimony.

<sup>7</sup> Ex. 41.

Wage records indicate that Mr. F received gross pay of \$1,400.40 for October 2012, \$3,728.00 for November 2012, and \$2,656.00 for December 2012.<sup>8</sup> Wage records indicate that Ms. M received gross pay of \$609.77 for the pay period 10-22-12 through 11-04-12; \$785.60 for the pay period 11-05-12 through 11-18-12; \$740.60 for the pay period 11-19-12 through 12-02-12; \$848.10 for the pay period 12-03-12 through 12-16-12; and \$513.67 for the pay period 12-17-12 through 12/30/12.<sup>9</sup>

Ms. M's son suffers from ulcerative colitis and anemia.<sup>10</sup> As a result of this, Ms. M's son was hospitalized for eight days in October 2012 and at least four days in January 2013.<sup>11</sup> This has impacted the number of hours that Ms. M has been able to work because she often needs to stay home to care for her son and/or take him to medical appointments.<sup>12</sup>

On November 30, 2012 Ms. M completed, signed, and submitted a recertification or renewal application for Food Stamp and Family Medicaid benefits.<sup>13</sup> On December 5, 2012 Ms. M participated in an eligibility interview with a DPA Eligibility Technician.<sup>14</sup> On December 6, 2012 the Division mailed two notices to Ms. M.<sup>15</sup> The first notice advised Ms. M that her recertification application for Food Stamp benefits had been denied, on the basis that her household's income exceeded the Food Stamp program's applicable maximum income limit.<sup>16</sup> The second notice advised Ms. M that her Family Medicaid benefits would terminate on December 31, 2012 because her household's gross monthly income exceeded the Family Medicaid program's applicable maximum gross income limit.<sup>17</sup>

Ms. M requested a hearing with regard to the Division's actions on December 17, 2012.<sup>18</sup> Ms. M's hearing was held on January 10, 2013. Ms. M attended the hearing in person, represented her household, and testified on its behalf. Public Assistance Analyst Jeff Miller

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<sup>8</sup> Ex. 2.12.

<sup>9</sup> Exs. D, E, F, G.

<sup>10</sup> Ex. H.

<sup>11</sup> Ex. A.

<sup>12</sup> Ex. A; C M hearing testimony.

<sup>13</sup> Exs. 2.0 - 2.5.

<sup>14</sup> Ex. 2.6.

<sup>15</sup> Exs. 2.7, 2.8.

<sup>16</sup> Ex. 2.7.

<sup>17</sup> Ex. 2.8. A supplemental notice was mailed on December 20, 2012 which clarified that Mr. F and Ms. M's Family Medicaid benefits would terminate on December 31, 2012, but that their son and daughter had continuing Medicaid eligibility through July 31, 2013 (Ex. 2.9).

<sup>18</sup> Ex. 2.11.

participated in the hearing by telephone, represented the Division, and testified on its behalf. The record was held open for post-hearing filings through January 17, 2013.

### **III. Discussion**

The issue in this case is whether Ms. M's household was eligible for Food Stamps and Family Medicaid benefits during December 2012 and subsequent months. All evidence is considered that bears on the circumstances that existed at the time of the decision under review. Stated differently, the administrative law judge and the final decisionmaker must consider new evidence that tends to establish eligibility at the time of the original determination, regardless of whether the original caseworker had access to that evidence.<sup>19</sup>

The income eligibility criteria for the Food Stamp and Family Medicaid programs are different. Accordingly, Ms. M's household's eligibility for the two programs must be analyzed separately.

#### **A. Overview of Relevant Food Stamp Program Regulations**

The Food Stamp program is a federal program administered by the states.

Households which (as here) do not contain an elderly or disabled member are required to satisfy both gross income eligibility standards and net income eligibility standards in order to qualify for Food Stamp benefits.<sup>20</sup> These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. 9902(2) and are adjusted periodically for inflation. During the period October 2012 through September 2013, the income limits for a seven person household are \$4,731.00 (gross) and \$3,640.00 (net).<sup>21</sup>

#### **B. The Division Correctly Applied the Relevant Food Stamp Regulations**

##### **1. The Regulations Generally Require the Prospective Estimation of Income**

Ms. M's primary argument regarding the Division's eligibility determination is that it was not fair for the Division to deny her benefits due to excess income, based on a *prospective estimate* of her household's income, when her household's income actually decreased in December 2012.

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<sup>19</sup> See *Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M. App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); see also 42 C.F.R. § 431.242(c), (e); cf. *Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

<sup>20</sup> 7. C.F.R. § 273.9.

<sup>21</sup> *Alaska Food Stamp Manual* Addendum 4 (Ex. 39).

The need for prospective anticipation of an applicant's income is due to the fact that it is not possible to know, at the beginning of a month, the exact income that will be received by the applicant during the remainder of that month. The Food Stamp regulations generally require that income for an upcoming month be estimated, at least initially, based on income received during the preceding 30 days.<sup>22</sup> Ms. M's Eligibility Review Form was received by the Division on November 30, 2012.<sup>23</sup> The Division would therefore estimate the M household's income for December 2012 based on income received by the household during November 2012 (i.e. during the past 30 days).

Mr. F received gross pay of \$3,728.00 in November 2012.<sup>24</sup> Ms. M received gross pay of \$609.77 on November 9, 2012 and gross pay of \$785.60 on November 21, 2012<sup>25</sup> for a total of \$1,395.37. Finally, Ms. M received \$148.76 in child support during November 2012.<sup>26</sup> Thus, the M household's actual gross income for November 2012 was \$5,272.13. Based on this, the Division could have prospectively estimated Ms. M's household's gross income for December 2012 at \$5,272.13.

When a household's income fluctuates, the Division may also prospectively estimate future income by averaging several prior months' income.<sup>27</sup> At the time of its original determination the only complete, representative month for which the Division had wage information was November 2012. However, at hearing Ms. M provided wage information for December 2012. Averaging Mr. F's wages for November and December 2012 results in average wages of \$3,192.00. Averaging Ms. M's wages for November and December 2012 results in average wages of \$1,552.29.<sup>28</sup> The amount of Ms. M's child support for December 2012 is not in the record, but the average monthly child support received by Ms. M over the 16 month period ending November 30, 2012 is \$81.37. Thus, averaging the household's actual gross income for November and December 2012 and adding in the average monthly child support payment results in monthly gross income of \$4,825.66.

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<sup>22</sup> 7 CFR § 273.10(c)(1)(i)-(ii).

<sup>23</sup> Ex. 2.0.

<sup>24</sup> Ex. 2.12.

<sup>25</sup> Exs. D, E.

<sup>26</sup> Ex. 41.

<sup>27</sup> 7 CFR § 273.10(c)(3).

<sup>28</sup> Because Ms. M is paid biweekly, her biweekly wages are multiplied by 2.15, pursuant to 7 CFR § 273.10(c)(2), in order to account for the fact that there are an average of 2.15 biweekly pay periods per month.

## 2. The M Household's Income Exceeded the Gross Income Limit

The procedures for determining gross income are as follows:<sup>29</sup>

1. The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned. In this case, the M household had average gross income of at least \$4,825.66 (see above).

2. Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household's size (set forth in Food Stamp Manual at Addendum 4). The current gross monthly income limit for a household of seven<sup>30</sup> is \$4,731.00.<sup>31</sup> Ms. M's household's monthly gross income of \$4,825.66 is \$94.66 greater than the applicable maximum gross income limit of \$4,731.00. Because the household failed the gross income test, the Division was not required to proceed to the determination of the household's net income.

In summary, the Division properly found that Ms. M's household's gross income exceeded the Food Stamp program's applicable gross income limit. Accordingly, the Division correctly concluded that Ms. M's household was no longer financially eligible to receive Food Stamp benefits.<sup>32</sup>

### C. **Overview of Relevant Family Medicaid Program Regulations**

The Medicaid Program has a large number of eligibility groups because it covers needy individuals in a variety of circumstances.<sup>33</sup> One of the Medicaid program's eligibility groups provides medical coverage for financially eligible households that include minor children.<sup>34</sup> This type of Medicaid coverage is known as Family Medicaid.

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<sup>29</sup> See 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the *Alaska Food Stamp Manual* at § 603-2.

<sup>30</sup> It should be noted that the Food Stamp and Family Medicaid programs define "household" differently; a group of people living together can, for example, constitute a household of seven for purposes of the Food Stamp program, but a household of only four for Family Medicaid purposes. See 7 C.F.R. § 273.1 (defining household for purposes of the Food Stamp program); 7 AAC 100.102(b), 7 AAC 100.104(a), 7 AAC 100.114, 7 AAC 100.116, and 7 AAC 100.199(4),(5) (defining household for purposes of the Family Medicaid program). Ms. M did not challenge the Division's treatment of her household as a seven person household for Food Stamp purposes.

<sup>31</sup> Ex. 39.

<sup>32</sup> This result may seem harsh given the small amount by which Ms. M's household's gross income exceeds the applicable gross income limit. However, there are no provisions in the state or federal Food Stamp regulations for the granting of exceptions to these eligibility rules, and agencies are bound to follow their regulations just as the public is bound by them. See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>33</sup> See 7 AAC 100.002.

<sup>34</sup> See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100.

The procedure for determining income eligibility under the Family Medicaid Program has two steps. First, the applicant must meet the gross income test.<sup>35</sup> If the applicant meets the gross income test, he or she must then satisfy the net income test.<sup>36</sup> Thus, an applicant is only eligible for Family Medicaid if he or she satisfies *both* the gross income test and the net income test. If the applicant fails the gross income test, the applicant is denied at that point without determining whether the applicant satisfies the net income test.<sup>37</sup>

**D. The Division Correctly Applied the Relevant Family Medicaid Regulations**

**1. The Regulations Generally Require the Prospective Estimation of Income**

As with her Food Stamp case, Ms. M's argument was that it was not fair for the Division to deny her benefits due to excess income, based on a *prospective estimate* of her household's income, when her household's income actually decreased in December 2012.

As with Food Stamps, eligibility for Family Medicaid is initially determined by examining the income actually received, or expected to be received, in a particular, discrete month.<sup>38</sup> In this situation, the regulations instruct the Division to make its best estimate of the applicant's future income.<sup>39</sup> In estimating an applicant's future income, the Division looks at three things. First, the Division examines the income which the applicant actually received in the previous month, and the income actually received in the current month, up to the date of the eligibility determination.<sup>40</sup> Second, the Division considers what the applicant's income is most likely to be for the entire month, based on the actual income from the prior month and the month-to-date.<sup>41</sup> Finally, the Division considers the applicant's estimate of what is likely to change during the month for which eligibility is being determined.<sup>42</sup> In this case, the Division applied the correct methodology for estimating Ms. M's household's prospective income.<sup>43</sup> Averaging the household's actual gross income for November and December 2012 results in monthly gross income of \$4,825.66.

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<sup>35</sup> See 7 AAC 100.102(c) and 7 AAC 100.180.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See 7 AAC 100.152.

<sup>39</sup> See 7 AAC 100.150; 7 AAC 100.154; 7 AAC 100.168.

<sup>40</sup> See 7 AAC 100.150; 7 AAC 100.152; 7 AAC 100.154; 7 AAC 100.168. If the applicant's income has fluctuated, the Division may average the income received during previous months in order to make a fair determination of the applicant's usual or typical income level. See 7 AAC 100.168(c).

<sup>41</sup> See 7 AAC 100.154; 7 AAC 100.168.

<sup>42</sup> See 7 AAC 100.154.

<sup>43</sup> See discussion concerning the prospective estimation of income with regard to Food Stamp benefits, above.

2. The M Household's Income Exceeded the Gross Income Limit

The procedures for determining gross income, specified by federal Medicaid regulations, are as follows:

1. The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned.<sup>44</sup> In this case, the M household had average gross income of at least \$4,825.66.<sup>45</sup>
2. Next, the Division compares the household's gross monthly income to the gross monthly income standard for the household's size. For 2012, the gross monthly income limit for a household of four<sup>46</sup> was \$3,117.00.<sup>47</sup> Ms. M's household's monthly gross income of \$4,825.66 is \$1,708.66 greater than the applicable maximum gross income limit of \$3,117.00. Because the household failed the gross income test, the Division was not required to proceed to the determination of the household's net income.

In summary, the Division properly found that Ms. M's household's gross income exceeded the Family Medicaid program's applicable gross income limit. Accordingly, the Division correctly concluded that Ms. M's household was no longer financially eligible to receive Family Medicaid benefits.<sup>48</sup>

#### IV. Conclusion

Ms. M's household's gross income, as calculated under the applicable Food Stamp and Family Medicaid regulations, is greater than the Food Stamp and Family Medicaid programs' applicable monthly gross income limits. Ms. M's household is therefore no longer financially eligible for Food Stamp or Family Medicaid benefits. Accordingly, the Division's decision of December 6, 2012 denying Ms. M's recertification application for Food Stamp benefits, and

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<sup>44</sup> See 7 AAC 100.102(c) and 7 AAC 100.180.

<sup>45</sup> See discussion in Section III(B)(2), above.

<sup>46</sup> As noted in footnote 30, above, the Food Stamp and Family Medicaid programs define "household" differently; a group of people living together can, for example, constitute a household of seven for purposes of the Food Stamp program, but a household of only four for Family Medicaid purposes. See 7 C.F.R. § 273.1 (defining household for purposes of the Food Stamp program); 7 AAC 100.102(b), 7 AAC 100.104(a), 7 AAC 100.114, 7 AAC 100.116, and 7 AAC 100.199(4),(5) (defining household for purposes of the Family Medicaid program). Ms. M did not challenge the Division's treatment of her household as a four person household for Family Medicaid purposes. However, even if Ms. M's household was treated as a seven person household for Family Medicaid purposes, her household's average gross monthly income of \$4,825.66 would exceed the Family Medicaid gross income limit for a family of seven (\$4,055.00).

<sup>47</sup> *Family Medicaid Manual Addendum 2* (Ex. 14).

<sup>48</sup> As with the Food Stamp program (discussed above), there are no provisions in the state or federal Medicaid regulations for the granting of exceptions to these financial eligibility rules, and agencies are bound to follow their regulations just as the public is bound by them. See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

terminating the Family Medicaid benefits of the M household's adult members after December 31, 2012, is affirmed.

Dated this 24th day of January, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
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 7<sup>th</sup> day of February, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

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