

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

In the Matter of:)
)
 E P-D) OAH No. 13-0184-CMB
) DPA Case No.
_____)

DECISION

I. Introduction

This case concerns the date on which E P-D's niece, L X, should be added to Mr. P-D's household for purposes of that household's eligibility for Alaska Temporary Assistance Program (ATAP), Family Medicaid, and Food Stamp¹ benefits. This decision concludes that the Division of Public Assistance (Division) was correct to add L to Ms. P-D's household as of January 28, 2013 for purposes of ATAP, and as of March 1, 2013 for purposes of Food Stamp benefits. This decision also concludes that, although L is not a part of Ms. P-D's household for purposes of Family Medicaid, the Division did issue Medicaid benefits to L through the Office of Children's Services (OCS), and the Division was correct to do so because L is a ward of OCS. Accordingly, the actions taken by the Division with regard to Ms. P-D's household's eligibility for ATAP, Family Medicaid, and Food Stamp benefits, as stated in the notices dated January 29, February 11, and February 13, 2013, are affirmed.

II. Facts

Ms. P-D has a three-person household consisting of herself, her 13-year-old son N, and her 11-year-old niece L X.² At some time in the past L was living with her mother S B, (previously known as S X).³ However, L was subsequently placed in Ms. P-D's home by OCS.⁴ Although L is residing in Ms. P-D's home, OCS still has legal custody of L.⁵

¹ Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp program to the Supplemental Nutritional Assistance Program ("SNAP"). However, the program is still commonly known as the Food Stamp program and will be referred to as the Food Stamp program in this decision.

² Exs. A, V, 1, 2.0, 2.2.

³ Exs. U, 2.0. Ms. P-D testified that J was being claimed as living in Ms. B's household while she was actually living in Ms. P-D's household, causing Ms. B to receive benefits which should have gone to Ms. P-D. No evidence was presented at hearing that the Division had initiated a fraud investigation on this issue.

⁴ Exs. U, 2.0.

⁵ Ex. K. Ms. P-D is in the process of taking the actions with OCS necessary to become J's foster parent (Ex. C).

L receives Supplemental Security Income (SSI), for which OCS is the payee; L also has SSI-related Medicaid coverage.⁶ L began receiving SSI effective January 2, 2013.⁷

L came to live with Ms. P-D on January 8, 2013.⁸ Ms. P-D testified at hearing that she notified the Division the next day (January 9, 2013) that her niece had come to live with her. However, the Division's records indicate that Ms. P-D did not telephone the Division to report that L had come to live in her household until January 28, 2013.⁹ The Division added L to Ms. P-D's ATAP case effective January 28, 2013, and added L to Ms. P-D's Food Stamp case effective March 1, 2013.¹⁰ The Division was unable to add L to Ms. P-D's Food Stamp case for January or February because L's Food Stamp benefits had been paid through Ms. B's household through February 2013.¹¹

On February 11, 2013 the Division notified Ms. P-D that her household's ATAP benefits would increase to \$923.00 as of March 2013, and that her household's Food Stamp benefits would increase to \$460.00 per month as of March 2013, because L had been added as a member of the household.¹² A separate notice bearing the same date notified Ms. P-D that the Division had authorized payment of an additional \$102.00 in ATAP benefits for February 2013 based on the ending of the work penalty which had previously reduced her ATAP benefits.¹³ Also on February 11, 2013 the Division separately notified Ms. P-D that Medicaid benefits had been renewed for her and her son N for the next year.¹⁴ This notice also reminded Ms. P-D that "L is on her own SSI child Medicaid case."¹⁵

On February 13, 2013 the Division issued a corrective notice regarding the P-D household's ATAP and Food Stamp benefits.¹⁶ The notice stated that, based on a review of its policies, the

⁶ Exs. Y, 2.1. Another Division case not appears to indicate that J has Denali KidCare Medicaid coverage (Ex. 2.0). In any event, J's Medicaid coverage is currently separate from Ms. P-D's Medicaid coverage (Ex. 2.0).

⁷ Ex. J.

⁸ E P-D hearing testimony.

⁹ Ex. U.

¹⁰ Exs. 2.30, U.

¹¹ Exs. C, E, U, W. Ms. P-D herself did not receive Food Stamp benefits or a full month of ATAP benefits for January 2013 because a work penalty had previously been imposed on her, in both programs, which did not end until January 31, 2013 (Exs. Q, U, R). However, the Division did retroactively authorize and pay Ms. P-D's household \$327.00 in ATAP benefits for January 2013 once Ms. P-D cured her ATAP work penalty (Ex. P).

¹² Exs. N, 2.24, 2.25. Ms. P-D and her son had previously received ATAP benefits continuously since April 2012 ((Ex. G), and Food Stamp benefits sporadically since May 2011 (Ex. F).

¹³ Exs. C, M, 2.24. The Division subsequently determined that this supplemental ATAP payment had been issued in error (Ex. E). However, as of this date the Division has not sought repayment of these benefits (Ex. E).

¹⁴ Ex. O. Ms. P-D and her son received Medicaid benefits continuously from August 2012 through March 2013 (Ex. H).

¹⁵ Ex. O.

¹⁶ Exs. L, 2.26.

Division was required to count L's SSI in calculating the amount of the P-D household's ATAP benefits, and that including this income caused the household's ATAP benefits to decrease from \$923.00 to \$823.00 per month.¹⁷ The notice also stated that, due to the household's decrease in ATAP benefits, its Food Stamp benefits would increase from \$460.00 to \$505.00 per month.¹⁸

Ms. P-D requested a hearing with regard to the Division's actions on February 11, 2013. Ms. P-D's hearing was held on March 7, 2013. Ms. P-D participated in the hearing by phone, represented her household, and testified on its behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone, represented the Division, and testified on its behalf. The record was held open for post-hearing filings through March 19, 2013.

III. Discussion

Ms. P-D originally asserted (1) that L should be treated as constituting a separate household for purposes of ATAP and Food Stamp benefits; (2) that she notified the Division that L was residing with her on January 9, 2013 rather than on January 28, 2013; and (3) that, if L is to be included in her household, her household's ATAP benefits should have been increased effective January 9, 2013, and her household's Food Stamp benefits should have been increased effective February 1, 2013.¹⁹ Ms. P-D also asserted at hearing that L was not receiving Medicaid benefits to which she was entitled.²⁰ Ms. P-D subsequently withdrew her first argument, leaving only the second, third, and fourth issues for resolution here.²¹

The Alaska Temporary Assistance Program, Family Medicaid program, and Food Stamp program each have different regulations pertaining to the start date of benefits for new household members. Accordingly, the appropriate start date for L's benefits as a member of Ms. P-D's household must be analyzed separately as to each of these three programs.

A. The Factual Issue of When Ms. P-D Notified the Division

An initial issue which must be resolved is the purely factual issue of whether Ms. P-D notified the Division that L was residing with her on January 9, 2013, or whether she did so 19 days later on January 28, 2013. Ms. P-D's assertion that she notified the Division on January 9, 2013 is

¹⁷ Exs. L, 2.26. The Division's notice also advised that Ms. P-D would receive a greater net benefit amount between the programs in which her household was participating if she would leave J off her ATAP case. It appears doubtful under the regulations that J should be included in Ms. P-D's household for purposes of ATAP benefits. *See* 7 AAC 45.390 and 7 AAC 45.515. However, this issue was dropped by Ms. P-D at her pre-hearing conference and so need not be further addressed here.

¹⁸ Exs. L, 2.16.

¹⁹ Exs. B, C, 2.27, 2.29, E P-D hearing testimony.

²⁰ E P-D hearing testimony.

²¹ Exs. B, C, 2.27, 2.29, E P-D hearing testimony.

based on her memory. The Division's assertion that Ms. P-D notified it on January 28, 2013 is based on a business record created by one of the Division's employees on January 28, 2013.²²

The evidence on this issue is equivocal. On one hand, Ms. P-D testified convincingly that she reported the change at issue to the Division on January 9, 2013. On the other hand, the Division's records show a lack of contact from Ms. P-D on this household composition issue until January 28, 2013. In cases (like this one) in which the evidence for both sides is comparable, the burden of proof becomes determinative. In this case, Ms. P-D bears the burden of proving that she reported the addition of L to her household on January 9, 2013.²³ Because the evidence on both sides is basically equal, Ms. P-D failed to carry her burden of proof. Where both parties' evidence is equally credible, the party bearing the burden of proof (here Ms. P-D) must lose. Accordingly, the undersigned finds that the Division was not notified that L had become part of Ms. P-D's household until January 28, 2013.

B. The Alaska Temporary Assistance Program Benefits

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal program for Temporary Aid to Needy Families, or TANF.²⁴ ATAP is designed to help financially eligible families with minor children.²⁵

Under the Alaska Temporary Assistance Program, a household receives benefits for a new household member beginning in the month in which the eligibility requirements for the new member's participation in that household are satisfied, effective the date the request to add the new member is received by the Division.²⁶ Payment for the needs of the new household member, during his or her first month as a household member, is prorated from the date the Division receives the request to add the new member.²⁷ As discussed in the preceding section, the Division received notice that L had become part of Ms. P-D's household on January 28, 2013. Accordingly, the Division was correct to add L to Ms. P-D's household, for purposes of ATAP, effective January 28, 2013.

²² Ex. U.

²³ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). In this case, Ms. P-D is seeking to change the status quo by challenging the Division's determination regarding the date on which J became part of Ms. P-D's household.

²⁴ See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990; 42 U.S.C. § 601 *et. seq.* ATAP's governing regulations are found in the Alaska Administrative Code at 7 AAC 45.149 – 7 AAC 45.990.

²⁵ AS 47.27.010.

²⁶ 7 AAC 45.555(a), Alaska Temporary Assistance Manual Section 790-6 A.

²⁷ 7 AAC 45.555(a), Alaska Temporary Assistance Manual Section 790-6 A.

C. The Family Medicaid Benefits

The Division provided credible evidence that L has been receiving Medicaid, through OCS, continuously since at least February 2013.²⁸ Ms. P-D provided no countervailing evidence; she asserted only that she personally was not receiving L's Medicaid coupons.

There are two reasons why Ms. P-D was not receiving L's Medicaid benefits directly. First, as discussed in Section II, above, although L is now physically residing in Ms. P-D's household, legally she is still a ward of the state.²⁹ As such, OCS, as L's legal guardian, is the party to whom the Division must pay L's Medicaid benefits.³⁰ Second, L receives SSI.³¹ Under state Medicaid regulation 7 AAC 100.118(a), a Family Medicaid household (like Ms. P-D's) may not include a child or adult who is receiving SSI, APA, or foster care maintenance payments.

In summary, L has Medicaid coverage; the coverage is simply through OCS rather than as a member of Ms. P-D's household. The Division's actions as to L's Medicaid coverage were correct.

D. The Food Stamp Benefits

The Division's inclusion of L as a member of Ms. P-D's household, for purposes of the Food Stamp program, is controlled by federal Food Stamp regulation 7 CFR § 273.12(c)(1)(i). That regulation provides in relevant part as follows:

For changes which result in an increase in a household's benefits . . . the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a \$30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

This case is almost identical to the example set forth in the last sentence of the regulation. L's addition to the household was reported on January 28, 2013. The household's normal issuance cycle is the first day of the month. The first allotment issued ten days after the report of change was the March 2013 allotment. Accordingly, while the Division *could* normally have added L to Ms. P-D's Food Stamp case effective February 1, 2013, the Division was also allowed, under 7 CFR § 273.12(c)(1)(i), to delay adding L to Ms. P-D's Food Stamp case until March 1, 2013.³²

²⁸ Exs. I, 2.34, 17.0, 17.1.

²⁹ Ex. 17.0.

³⁰ See generally A.S. 13.26.070; *Johnson v. Johnson*, 544 P.2d 65 (Alaska 1975); *T.B. v. State*, 922 P.2d 271 (Alaska 1996).

³¹ Exs. Y, 2.1.

³² Further, under 7 C.F.R. § 273.3, “[n]o individual may participate [in the food stamp program] as a member of more than one household or in more than one project area, in any month.” Thus, under 7 C.F.R. § 273.3, the Division

IV. Conclusion

The Division was correct to add L to Ms. P-D's household as of January 28, 2013 for purposes of ATAP, and as of March 1, 2013 for purposes of Food Stamp benefits. L is not a part of Ms. P-D's household for purposes of Family Medicaid, but the Division issued Medicaid benefits to L through OCS, and the Division was correct to do so because L is a ward of OCS. Accordingly, the actions taken by the Division with regard to Ms. P-D's household's eligibility for ATAP, Family Medicaid, and Food Stamp benefits, as stated in the Division's notices dated January 29, February 11, and February 13, 2013, are affirmed.

Dated this 29th day of April, 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 9th day of May, 2013.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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

was unable to add J to Ms. P-D's Food Stamp case for January or February 2013 because J's Food Stamp benefits had been paid through Ms. B's household through February 2013.