

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

In the Matter of )  
 )  
 F Q )  
\_\_\_\_\_ )

OAH No. 13-0337-CMB  
Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance (Division) terminated F Q's Adult Public Assistance, Medicaid, and Food Stamp benefits because Ms. Q had left Alaska to stay in Florida for about six months. Although Ms. Q was ill, and was receiving medical treatment in Florida, no evidence indicates that she could not have obtained the medical treatment in Alaska. Because she was gone for more than 30 days, and nothing shows that the reason for her absence was to seek medical care that would not have been available in Alaska, Ms. Q is not eligible for Adult Public Assistance, Medicaid, or Food Stamps benefits. The Division's decision is affirmed.

**II. Facts**

F Q is a resident of No Name, Alaska, who is in her late sixties. She has several very serious medical problems. In October 2012, Ms. Q was living in Alaska and receiving Adult Public Assistance, Medicaid, and Food Stamps. On November 2, 2012, Ms. Q left Alaska to receive medical treatment in Florida for about six months.<sup>1</sup> The Division of Public Assistance does not dispute that Ms. Q was eligible for benefits under all three programs, and she would have remained eligible if she had stayed in Alaska. The only question here is whether Ms. Q became ineligible to receive these benefits when she left Alaska for an extended stay in Florida.

Ms. Q's purpose for leaving Alaska in November 2012 was to seek medical treatment in Florida.<sup>2</sup> When Ms. Q was preparing to leave Alaska, she asked one of her doctors to send an explanatory note to the Division.<sup>3</sup> The doctor, Dr. Corbett, was not her general practitioner, but was a specialist at the heart institute. The note that he provided was very brief, and said only

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<sup>1</sup> Q testimony; Division Exhibit 2.0.

<sup>2</sup> Q testimony.

<sup>3</sup> *Id.*

“To Whom it may concern: The above named patient will be out of the [S]tate of Alaska for continuing medical care from November 2, 2012 through August 27, 2013.”<sup>4</sup>

After review, the Division determined that Ms. Q was absent from the state for more than 30 days, which made her ineligible for Adult Public Assistance unless she met one of the exceptions.<sup>5</sup> The only potentially applicable exception was one that allowed absences for medical treatment not available in Alaska. After a review of the evidence in its possession, the Division determined that it had no evidence that the treatment being received by Ms. Q in Florida was not available in Alaska.<sup>6</sup>

In reviewing the evidence, the Division was able to review records from the previous year, because during the fall/winter of 2010-11, Ms. Q had also left the state for treatment in Florida.<sup>7</sup> In that instance, like this case, the Division had concluded that Ms. Q did not meet one of the exceptions to being absent, and had denied her benefits. Ms. Q appealed, and eventually the Division conceded because the evidence showed that Ms. Q was very ill, and that Ms. Q was planning to return to Alaska shortly after the time that the hearing would have occurred.<sup>8</sup> The evidence also showed that in February 2012, Ms. Q’s clinic in Florida had written that Ms. Q would need to return to Florida in October 2012 for ongoing medical follow ups.<sup>9</sup> Nothing in the record from the prior year’s proceedings, or in the statement from the doctor received in October 2012, however, indicated that the services being received in Florida were not available in Alaska.<sup>10</sup> Accordingly, on March 15, 2013, the Division notified Ms. Q that she would no longer be eligible for Adult Public Assistance, Food Stamp, and Medicaid benefits.<sup>11</sup> On the same day, Ms. Q made a telephonic request for a fair hearing disputing the Division’s decision.<sup>12</sup>

A telephonic hearing was held on April 3, 2013. Ms. Q represented herself, and Terri Gagne represented the Division. The evidence at the hearing established that Ms. Q remains an Alaska resident. She owns a home in Alaska, and her belongings remain in that home.<sup>13</sup> She is

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<sup>4</sup> Division Exhibit 2.0.  
<sup>5</sup> Division Position Statement at 2 (citing 7 AAC 40.110).  
<sup>6</sup> Division Exhibit 2.2.  
<sup>7</sup> Division Exhibit 2.2.  
<sup>8</sup> Division Position Statement at 2.  
<sup>9</sup> Division Exhibit 2.2.  
<sup>10</sup> *Id.*  
<sup>11</sup> Division Position Statement at 1.  
<sup>12</sup> Division Exhibit 2.5.  
<sup>13</sup> Q testimony.

registered to vote in Alaska, and she has an Alaskan driver's license.<sup>14</sup> She intends to return to Alaska when the Florida clinic advises her that she no longer needs treatment at that clinic.<sup>15</sup> Therefore, Ms. Q is an Alaska resident.

No credible evidence in the record, however, addresses the question of whether the treatment being sought by Ms. Q in Florida was available in Alaska. Ms. Q testified that she was receiving coordinated care at the Florida clinic—care that addressed each of her major illnesses, rather than having different specialists separately address one problem at a time.<sup>16</sup> She also indicated that Dr. Beyeler, an internist from No Name, had a role in her treatment plan.<sup>17</sup> When asked, however, if Dr. Beyeler had advised her to seek treatment in Florida that was not available in Alaska, Ms. Q responded that no such conversation had ever occurred.<sup>18</sup> She expressed her opinion that she did not need to address the question of whether the treatment was available in Alaska.<sup>19</sup> She stated that she informed the Division that she was leaving the state, and that she understood the Division would approve her absence with the provision of the note from her doctor.<sup>20</sup> She believed that she prevailed in her appeal on this issue in 2011, and that she should not have to go through another hearing on the same issue.<sup>21</sup>

In presenting its case, the Division relied on the absence of evidence on whether the treatment being received in Florida was available in Alaska.<sup>22</sup> The Division did not provide evidence of the medical treatment needed by Ms. Q or on the treatment being received by Ms. Q in Florida. The Division reported, but did not submit admissible evidence of, a conversation that had occurred with a representative from the Heart Institute, in which the representative had apparently reported that Ms. Q could receive appropriate medical care in Alaska.<sup>23</sup> This report was not in evidence, however, and it was multiple hearsay from a person who was not a treating physician. Therefore, this report will not be relied upon in this decision.

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<sup>14</sup> *Id.*  
<sup>15</sup> *Id.*  
<sup>16</sup> *Id.*  
<sup>17</sup> *Id.*  
<sup>18</sup> *Id.*  
<sup>19</sup> *Id.*  
<sup>20</sup> *Id.*  
<sup>21</sup> *Id.*  
<sup>22</sup> Division Exhibit 2.2.  
<sup>23</sup> Statement of Terri Gagne.

Because of the absence of evidence in the record, Ms. Q was given 30 days to supplement the record.<sup>24</sup> The order granting the extension advised that the two issues that had been discussed at the hearing for which additional time was being allowed were (i) whether Ms. Q left Alaska for medical treatment that was not available in Alaska, and (ii) whether Ms. Q was prevented from returning home because of her illness.<sup>25</sup> The order provided that the Division would have ten days to respond to any supplemental filing by Ms. Q.<sup>26</sup> No additional information was provided by Ms. Q or the Division, and the record closed on May 13, 2013.

### **III. Discussion**

#### **A. Adult Public Assistance and Medicaid**

Ms. Q receives benefits under three different programs: Adult Public Assistance, Medicaid, and Food Stamps. Her eligibility for Medicaid is contingent upon her eligibility for Adult Public Assistance.<sup>27</sup> Because the Division does not dispute that she would be eligible for benefits under both programs had she not left the state for more than thirty days, her eligibility for both Medicaid and Adult Public Assistance will turn on whether her absence from the state meets the requirements of the Adult Public Assistance regulations.

A person who leaves the state for more than 30 days is not eligible for Adult Public Assistance unless the person meets strict requirements for medical or education absences.<sup>28</sup> For medical absences, a person may be gone for more than 30 days if “the individual leaves this state to (1) obtain prescribed medical treatment that is not available in this state and (A) does not establish residency outside this state; and (B) intends to return to this state once the prescribed medical treatment is completed.”<sup>29</sup> A person who leaves the state for a short absence and is prevented from returning because of an illness may also remain eligible if the person notifies the Division and provides a corroborating statement from a physician.<sup>30</sup>

Here, no evidence establishes that Ms. Q left the state to obtain medical treatment that is not available in Alaska. No evidence establishes that Ms. Q was unable to return because of illness. Ms. Q had the burden of proving that she qualified for an allowable absence under the

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<sup>24</sup> Extension/Scheduling Order (April 3, 2013).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 7 AAC 100.410(b) (“An individual who is eligible for and receiving APA is eligible for Medicaid”). If Ms. Q were eligible for Supplemental Security Income (SSI), that would also make her eligible for Medicaid. 7 AAC 100.410(a). The evidence shows, however that Ms. Q is not eligible for SSI. Division Exhibit 2.6.

<sup>28</sup> 7 AAC 40.110(c).

<sup>29</sup> *Id.*

<sup>30</sup> 7 AAC 40.110(d).

Adult Public Assistance regulations.<sup>31</sup> She was given extra time in which to produce evidence on the issue of allowable absence, and did not provide any evidence. Accordingly, Ms. Q did not meet the burden of proof, and she is not eligible for Adult Public Assistance or Medicaid benefits.

## **B. Food Stamps**

The Food Stamp program is a federal program administered by the states, and to administer the program in Alaska, the Alaska Department of Health and Social Services has adopted by reference the federal regulations governing the program.<sup>32</sup> The federal Food Stamp regulation on residency requires that an eligible household “shall live in the State in which it files an application.”<sup>33</sup> The Division of Public Assistance, which administers the program, has published a manual that interprets this requirement to mean that a Food Stamp recipient must be physically present in Alaska to remain eligible for Food Stamps.<sup>34</sup>

The Division’s manual is not adopted in regulation. Therefore, the interpretation contained in the manual must be given legal scrutiny before being accepted in this decision.<sup>35</sup> The requirement of continued physical presence contained in the manual, however, is consistent with the Federal requirement that the recipient “live” in the State that is issuing the Food Stamps. At this time, although Ms. Q remains a resident of Alaska for purposes of some legal requirements—for example, she is still a resident for voting, having a driver’s license, and other purposes—she is not currently living in Alaska for Food Stamp purposes because she is on an extended absence in Florida. The Federal Government’s choice of the term “live,” instead of “resident,” as the operative term to determine the state in which a person is eligible for Food Stamps, indicates that the two terms must have different meanings.<sup>36</sup> Therefore, the Division properly interpreted the federal regulations to require that a household remain in Alaska to

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<sup>31</sup> 2 AAC 64.290(e).

<sup>32</sup> 7 AAC 46.010.

<sup>33</sup> 7 C.F.R. § 273.3(a). Food Stamps are administered by household rather than by individual. Here, for purposes of Food Stamps, Ms. Q is an eligible household.

<sup>34</sup> Department of Health and Soc. Serv., Div. of Pub. Assistance, *Alaska Food Stamp Program Manual* § 602-1 (B) (2007). The Manual also notes exceptions to the requirement of physical presence, including that if the Food Stamp recipient is receiving Medicaid during the recipient’s absence from the state to receive medical treatment, the recipient remains eligible for Food Stamps. *Id.* Here, because Ms. Q is not eligible for Medicaid, this exception does not apply to her.

<sup>35</sup> See, e.g., AS 44.62.640(3); *Kenai Peninsula Fisherman’s Co-op Ass’n v. State*, 628 P.2d 897, 905-06 (Alaska 1981).

<sup>36</sup> Cf., e.g., *Casperson v. Alaska Teachers’ Retirement Bd.*, 664 P.2d 583, 585 (Alaska 1983) (“It must be assumed that the legislature consciously used different terms for a reason”).

remain eligible for Food Stamps. And because Ms. Q has left the state for an extended stay in Florida, she is no longer eligible for Food Stamps.

#### **IV. Conclusion**

Ms. Q left Alaska, with the intent to stay in Florida for about six months. Although the evidence shows that Ms. Q is receiving medical care in Florida, no evidence has been produced to show that Ms. Q could not receive that medical care in Alaska. Therefore, she is not eligible for Adult Public Assistance, Medicaid, or Food Stamps. The Division's decision terminating her benefits is affirmed.

DATED this 30<sup>th</sup> day of May, 2013.

By: Signed \_\_\_\_\_  
Stephen C. Slotnick  
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 20<sup>th</sup> day of June, 2013.

By: Signed \_\_\_\_\_  
Name: Stephen C. Slotnick  
Title: Administrative Law Judge/DOA

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