

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

In the Matter of)
) OAH No. 13-0377-CMB
 N W) Division No.

DECISION

I. Introduction

N W applied for Food Stamp (also referred to as Supplemental Nutrition Assistance Program) benefits.¹ The Division of Public Assistance (Division) denied her application.² Ms. W requested a hearing.³

Ms. W' hearing was held on April 11 and 22, 2013. Ms. W represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division.

Because Ms. W has a felony drug conviction, she is not eligible to receive Food Stamp benefits. The Division's decision denying her application is affirmed.

II. Facts

Ms. W received a felony drug conviction in the state of Kentucky in September 2010.⁴ She applied for Food Stamp benefits in Kentucky and her application was denied due to that conviction. She completed a drug rehabilitation program, reapplied for Food Stamp benefits in Kentucky, and was approved. She subsequently moved to Alaska.⁵ Ms. W applied for Food Stamp benefits from the State of Alaska on March 4, 2013. She disclosed her drug felony conviction on her application.⁶ The Division denied her application due to her felony drug conviction.⁷

III. Discussion

Food Stamps is a federal program administered by the State.⁸ The Code of Federal Regulations contains the rules for determining whether individuals qualify for Food Stamp benefits. The federal Food Stamp regulations state:

¹ Ex. 2.0.

² Ex. 2.12.

³ Ms. W originally requested a hearing on both the Food Stamp and Medicaid programs. At hearing, she clarified that she was only disputing the denial of her Food Stamp application.

⁴ Ex. 2.1.

⁵ W testimony.

⁶ Ex. 2.1.

⁷ Ex. 2.12.

⁸ 7 C.F.R. § 271.4(a).

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996.^{9]}

“Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction” may not receive Food Stamp benefits.¹⁰

On its face, Ms. W is not eligible to receive Food Stamp benefits because she has a 2010 felony drug conviction. Ms. W argued that this eligibility exclusion should not apply to her for two reasons.

Ms. W’ first argument was that since her conviction was from Kentucky, it could not be used to bar her from receiving benefits in Alaska. The Food Stamp regulations, however, do not place a geographical limit on where the eligibility exclusion applies. They apply to any federal or state felony drug conviction.

Ms. W’ second argument was that she should be approved for Food Stamp benefits in Alaska because she had received them in Kentucky. A state has the ability to adopt exemptions which allows its residents to receive Food Stamp benefits despite having a felony drug conviction.¹¹ Alaska, however, does not have an exemption that allows a person with a felony drug conviction to obtain Food Stamp benefits.¹² Alaska also has not limited the length of time during which an applicant can be excluded from receiving Food Stamp benefits due to a felony drug conviction, nor does it allow an exemption for someone who has completed a drug rehabilitation program.¹³

⁹ 7 C.F.R. § 273.11(m) (emphasis in original).

¹⁰ 7 C.F.R. § 273.1(b)(7)(vii).

¹¹ 7 C.F.R. § 273.11(m).

¹² The Alaska regulations which contain the state options for the Food Stamp program do not contain any exemptions from the federal requirement, under 7 C.F.R. § 273.1(m), that bar a person with a drug felony conviction from receiving Food Stamp benefits. *See* 7 AAC 46.010 *et. seq.*

¹³ *See* 7 AAC 46.010 *et. seq.*

As a purely legal matter, Ms. W is not eligible to receive Food Stamp benefits in the State of Alaska.

IV. Conclusion

The Division's decision to deny Ms. W' application for Food Stamp benefits is affirmed.

DATED this 30th day of April, 2013.

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 14th day of May, 2013.

By: *Signed* _____

Name: Jeffrey A. Friedman

Title/Agency: Administrative Law Judge/OAH

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