

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

In the Matter of:)
)
 O D) OAH No. 13-1228-CMB
) DPA Case No.
)
_____)

DECISION

I. Introduction

The issue in this case is whether O D timely provided the Alaska Division of Public Assistance (DPA or Division) with verification of a decrease in her income sufficient to qualify for increased Adult Public Assistance (APA) and Food Stamp benefits for the period from August 1, 2013 through October 2013. This decision concludes that, as of the end of the hearing held in this case, Ms. D had not provided the Division with verification of her decreased income sufficient to allow the Division to increase her monthly APA and Food Stamp benefits. Accordingly, the Division was correct not to increase Ms. D's benefits for the three months at issue. The Division's decision declining to increase Ms. D's benefits during that period is therefore affirmed.¹

II. Facts

Ms. D is 72 years old and has a single-person household for purposes of the APA and Food Stamp programs.² Ms. D works in the seafood processing industry and her employment is seasonal; she works more hours during the summer, and works fewer hours during the fall, winter, and spring.³

On July 30, 2013 Ms. D submitted an Eligibility Review Form to the Division in order to renew her benefits.⁴ Ms. D included two pay statements from her employer, the latest one for the pay period ending July 15, 2013.⁵ Ms. D wrote on one of these pay statements that "this is my last check."⁶

On August 9, 2013 a DPA eligibility technician (ET) processed Ms. D's renewal application.⁷ The ET called Ms. D's former employer, No Name, in order to verify Ms. D's last day

¹ Of course, Ms. D is free to apply for a future increase in benefits based on a current decrease in her income, but she will need to supply the Division with accurate wage and hour information from her employer in order to do so.

² Ex. 1.

³ O D hearing testimony.

⁴ Exs. 2.0 - 2.4.

⁵ Exs. 2.5, 2.6.

⁶ Exs. 2.5, 2.6.

⁷ All references in the next two paragraphs are based on Ex. 3.0 unless otherwise stated.

worked, reason for leaving, and her ending gross pay. The ET was unable to reach a payroll employee and therefore left a message requesting this information.

Information available to the ET from state databases indicated that Ms. D had recently become employed by No Name. The ET called No Name and spoke with someone in its payroll department, who stated that Ms. D began work there on August 8, 2013, that she was earning \$8.50 per hour, and that it was estimated she would be working 20 hours per week.

On August 12, 2013 the Division mailed a notice to Ms. D requesting additional information.⁸ The notice stated in relevant part as follows:⁹

Our office has received information about a change in your household's circumstances. We need more information from you to reevaluate your eligibility for . . . assistance Please provide [the information] to our office by 8/26/13. If we do not receive this information by this date, your assistance may be stopped or your benefits reduced. Please call me right away if you have any questions about this letter. Information needed . . . (1) provide employer verification [from] North Pacific Seafoods stating your last day worked / reason why [job ended] / and gross amount of last check received. (2) Provide verification that you have [reported] to [Social Security] office that your employment has ended with North Pacific Seafoods.

On August 21, 2013 the Division received a completed Employment Statement form from Ms. D's former employer (No Name) which verified Ms. D's last day worked, reason for leaving, and her ending gross pay.¹⁰

On August 27, 2013 the Division mailed a notice to Ms. D stating that her APA renewal application had been approved and that her August 2013 benefit amount would be \$1.00.¹¹ The notice further stated that this benefit amount was based, among other things, on income from working 20 hours per week at No Name. The Division issued a second notice to Ms. D on August 27, 2013 stating that her Food Stamp renewal application had been approved and that her August 2013 benefit amount would be \$19.00.¹² The notice further stated that this benefit amount was based, among other things, on income from working 20 hours per week at No Name.

On September 9, 2013 Ms. D requested a hearing regarding the amount of her APA and Food Stamp benefits.¹³ On the hearing request form she wrote that the canneries are slow at this time of year, and that she was not working 20 hours per week. Included with Ms. D's hearing

⁸ All references in this paragraph are based on Ex. 4 unless otherwise stated.

⁹ The formatting of the original notice is modified here for purposes of brevity.

¹⁰ Ex. 6.1.

¹¹ All references in this paragraph are based on Ex. 7.1 unless otherwise stated.

¹² All references in this paragraph are based on Exs. 7.0 and 8.0 unless otherwise stated.

¹³ All references in this paragraph are based on Ex. 8.1 unless otherwise stated.

request was a pay statement from No Name, for the two week pay period from July 29 through August 11, 2013, indicating that she had worked 21.25 hours during that period, or approximately ten hours per week.¹⁴ However, Ms. D also included a second pay statement from No Name, for the two week pay period from August 12 through August 25, 2013, indicating that she had worked 80.5 hours during that period, or approximately 40 hours per week.¹⁵

On September 12, 2013 the DPA hearing representative assigned to the case telephoned Ms. D to clarify her concerns.¹⁶ Ms. D stated that the pay statements she had previously submitted were not an accurate indication of her current earnings; that she was now working for No Name on an on-call basis; and that she expected to be working less than 20 hours per week. The DPA representative advised Ms. D that the Division needed a statement from No Name verifying her assertions; the Division had received one letter from No Name, but all it stated was the start date and location of her employment.¹⁷ Ms. D stated that she understood, and that she would provide the verification requested.

On October 2, 2013 a DPA ET telephoned Ms. D because the Division still had not received the verification of hours worked that it had previously requested.¹⁸ The ET did not reach Ms. D, but left a voice mail message for her explaining the situation. The next day (October 3, 2013) the Division mailed a notice to Ms. D listing the items as to which verification was still needed.¹⁹ The notice stated in relevant part as follows:²⁰

Our office has received information about a change in your household's circumstances. We need more information from you to reevaluate your eligibility for . . . assistance Please provide [the information] to our office by 10/21/13. If we do not receive this information by this date, your assistance may be stopped or your benefits reduced. Please call me right away if you have any questions about this letter. Information needed . . . (1) All your paystubs from No Name Seafoods for the months of August, September, and October showing your hours decreasing as you had stated. (2) You need to provide your work schedule, how many hours you are scheduled to work per week, your rate of pay, your pay periods, and if you are on call. You also need to specify your reduced hours and when [they] took effect. Your work schedule will need to be verified by your current employer before we can recalculate your . . . benefits.

¹⁴ Ex. 8.3.

¹⁵ Ex. 8.2.

¹⁶ All references in this paragraph are based on Ex. 9 unless otherwise stated.

¹⁷ Ex. 10.1.

¹⁸ All references in this paragraph are based on Ex. 11 unless otherwise stated.

¹⁹ All references in this paragraph are based on Ex. 12 unless otherwise stated.

²⁰ The formatting of the original notice is modified here for purposes of brevity.

Ms. D received \$1.00 per month in APA benefits from February 2013 through August 2013.²¹ Ms. D's monthly APA benefit amount increased to \$8.00 per month beginning in September 2013.²² Ms. D received \$19.00 per month in Food Stamp benefits from February 2013 through October 2013.²³ Ms. D's monthly Food Stamp benefit amount decreased to \$18.00 per month beginning in November 2013.²⁴

Ms. D's hearing was held on November 5, 2013. Ms. D participated in the hearing by telephone, represented herself, and testified on her own behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone, represented the Division, and testified on its behalf. Ms. Gagne credibly testified that Ms. D had not yet provided verification by No Name of the number of hours per week she was currently working. When questioned, Ms. D was unable to state a specific average number of hours that she was working each week; she testified that it was some number less than twenty.

All testimony and exhibits offered by the parties were admitted into evidence. At the conclusion of the hearing the record was closed and the case became ripe for decision.

III. Discussion

A. *Applicable Burden of Proof*

This case involves Ms. D's request for additional APA and Food Stamp benefits. The Division asserts that Ms. D never submitted her employer's verification of her current work hours and other requested information. This is a purely factual issue as to which the burden of proof can become significant. Under Alaska "Fair Hearing" regulation 7 AAC 49.135, when (as here) an applicant or recipient requests new or additional benefits, he or she bears the burden of proving entitlement to said benefits by a preponderance of evidence. Accordingly, Ms. D bears the burden of proving that she timely provided the Division with verification of her current work hours so as to justify an increase in her monthly APA and Food benefits.

The APA program and the Food Stamp program each have their own regulations pertaining to an applicant / recipient's duty to provide verification of eligibility information. Accordingly, the issue of whether or not Ms. D satisfied applicable verification requirements must be analyzed separately as to each of these two programs.

²¹ Exs. 5.3, 6.13.

²² Ex. 6.13.

²³ Ex. 6.13.

²⁴ Ex. 6.13.

B. Analysis Under the Adult Public Assistance Regulations

Alaska's Adult Public Assistance (APA) program provides cash assistance to needy aged, blind, and disabled Alaskans. APA recipients are also eligible for Medicaid benefits.²⁵

In general, the lower the APA recipient's income, the higher the monthly APA benefit amount received by the recipient.²⁶ The income counted for purposes of determining eligibility is everything received during a given month that can be used to meet basic needs, except that certain receipts are excluded and do not "count" toward the total.²⁷ Examples of these exclusions include the value of any social services furnished to the applicant by a governmental or private agency (for example, Ms. D's Food Stamp benefits), income tax refunds, and foodstuffs obtained through subsistence activities. There is also a \$20.00 exclusion for "the first \$20 per month of income, earned or unearned, other than unearned income based on need."²⁸

When an individual is found eligible for APA, the amount of benefits to which the person is entitled is calculated as follows.²⁹ First, the "maximum APA payment standard" for the household type is determined based on a table which is updated annually based on inflation.³⁰ Next, the applicant / recipient's total monthly income is subtracted from the first number. If the result is a positive number greater than one, the resulting number is the monthly APA benefit amount. If the result (as in this case) is zero or less than zero, then the monthly APA benefit amount is \$1.00.³¹

The Division is required by regulation to re-determine an APA recipient's eligibility at least once each year.³² The Division may require a recipient to complete a review application and furnish documentation to support it.³³ In addition, an APA applicant or recipient is required to report any change in circumstances which may affect his or her program eligibility or benefit amount within ten days of the change.³⁴ The applicant or recipient may report in

²⁵ See APA program description on the Division's website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (accessed on November 15, 2013).

²⁶ 7 AAC 40.370.

²⁷ 7 AAC 40.300 – 330.

²⁸ 7 AAC 40.320(a)(23).

²⁹ See 7 AAC 40.370.

³⁰ See table in the Adult Public Assistance Manual, Addendum 1 (Exs. 9.1 - 9.2).

³¹ For detailed explanations and examples, see the Adult Public Assistance Manual at Section 452.

³² 7 AAC 40.450(b).

³³ 7 AAC 40.450(b).

³⁴ 7 AAC 40.440(a).

person, by telephone, or by mail.³⁵ Changes which must be reported include any change in the amount or source of income.³⁶ Upon receipt of information indicating that a change in circumstances affecting an applicant or recipient's eligibility or benefit amount may have occurred, the Division is required to investigate and (if appropriate) adjust the amount of assistance or suspend or terminate assistance.³⁷

In this case, Ms. D notified the Division that her work hours were being reduced and that her income would decrease. The Division subsequently advised Ms. D by phone and in writing, on several occasions, as to exactly what information / documentation it needed in order to verify her statements and calculate a new income figure and a new benefit amount. The Division also contacted Ms. D's employer directly in an effort to obtain verification of her current hours and earnings. However, neither Ms. D nor her employer ever provided the Division with a specific number of work hours from which the Division could estimate Ms. D's new income level. Because the Division was never able to verify that Ms. D's work hours and wages had been reduced to a specific amount, the Division was correct to calculate Ms. D's APA benefit amount based on the last verified wage and hour information it had received from her employer on August 9, 2013.³⁸

C. Analysis Under the Food Stamp Regulations

The Division is required by federal regulations to verify whether an applicant meets, or a recipient continues to meet, Food Stamp eligibility requirements.³⁹ Pursuant to federal Food Stamp regulation 7 CFR 273.2(f)(2), state agencies must verify, prior to certification of a household, all factors of eligibility which the agency determines are questionable and which affect the household's eligibility and benefit level. State agencies use documentary evidence as the primary source of verification for all eligibility factors except residency and household size.⁴⁰

Under Food Stamp program regulations, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any

³⁵ 7 AAC 40.440(a).

³⁶ 7 AAC 40.440(b)(3).

³⁷ 7 AAC 40.450(a).

³⁸ APA regulation 7 AAC 40.490(b) requires the Division to issue a corrective APA payment if it finds that it has underpaid an applicant in an amount of \$25 or more during previous months. Accordingly, Ms. D is entitled to request back benefits if she submits the necessary verification in the future. However, the Division is not required to issue a corrective payment if the underpayment resulted from the recipient's failure, without good cause, to accurately report a change in the recipient's circumstances. No opinion is expressed here as to whether Ms. D will in the future be able to satisfy the requirements of 7 AAC 40.490(b).

³⁹ Federal Food Stamp regulation 7 CFR 273.2(b)(1)(i); 7 CFR 273.2(c)(5).

⁴⁰ Federal Food Stamp regulation 7 CFR 273.2(f)(4)(i).

questionable information.⁴¹ However, in cases where verification of the household's information is incomplete, the state agency must provide the household with a statement of the information still needed, and must offer to assist the household in obtaining the missing information.⁴²

As discussed above with regard to Ms. D's APA benefits, Ms. D notified the Division that her work hours were being reduced and that her income would decrease. The Division subsequently advised Ms. D by phone and in writing, on several occasions, as to exactly what information / documentation it needed in order to verify her statements and calculate a new income figure and a new benefit amount. The Division also tried to assist Ms. D and contacted her employer directly in an effort to obtain verification of her current hours and earnings. However, neither Ms. D nor her employer ever provided the Division with a specific number of work hours from which the Division could estimate Ms. D's new income level. Because Ms. D never provided verification that her work hours and wages had been reduced to a specific amount, the Division was correct to maintain Ms. D's Food Stamp benefits at their prior level.

IV. Conclusion

Ms. D failed to carry her burden and did not prove, by a preponderance of the evidence, that she provided the Division with the income verification necessary in order to recalculate her monthly countable income and increase her monthly APA and Food Stamp benefit amounts. Accordingly, the Division was correct to set Ms. D's APA benefit amount at \$8.00 per month beginning in September 2013, and to maintain her Food Stamp benefit amount at \$19.00 per month through October 2013. The Division's determinations regarding the amount of Ms. D's APA and Food Stamp benefit amounts are therefore affirmed.

DATED this 21st day of November, 2013.

Signed _____
Jay Durych
Administrative Law Judge

⁴¹ Federal Food Stamp regulation 7 CFR 273.2(f)(5)(i).

⁴² Federal Food Stamp regulation 7 CFR 273.2(h)(1)(i)(C).

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 5th day of December, 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.]