

**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. 13-1424-CMB
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether F Q timely provided certain information, relevant to her household's eligibility for the Family Medicaid and Food Stamp programs, requested by the Division of Public Assistance (Division). This decision concludes that, although Ms. Q never refused to provide any of the requested information, she did not submit all of the information / documentation the Division requested within the time specified. Further, Ms. Q did not advise the Division that she was having difficulty obtaining the requested information / documentation, did not request the Division's assistance in obtaining it, and did not request additional time to obtain it. Ms. Q therefore failed to satisfy her obligation, under the applicable Family Medicaid and Food Stamp regulations, to timely provide all relevant information requested by the Division. Accordingly, the Division was correct to deny Ms. Q' household's renewal application for Family Medicaid and Food Stamp benefits dated August 27, 2013, and to terminate those benefits effective September 30, 2013. The Division's decision is therefore affirmed.

II. Facts

Ms. Q has a four-person household consisting of herself, her husband E C, her nine year old daughter, and her eight year old son.¹ The household began receiving Food Stamp benefits in March 2013, and Family Medicaid benefits in April 2013.²

On June 20, 2013 Ms. Q began working at an No Name restaurant.³ At this same time Ms. Q' husband was working for a landscaping business; he had begun working there in May 2013.⁴ However, within his first two months of working there he injured his ankle.⁵ He saw a doctor, who

¹ Exs 1, 2.0.

² Ex. 1.

³ F Q hearing testimony.

⁴ Ex. 9.5; F Q hearing testimony.

⁵ F Q hearing testimony.

told him that he needed to avoid putting weight on his ankle for six to eight weeks.⁶ Accordingly, Ms. Q' husband was forced to stop working on or about July 26, 2013.⁷

On July 15, 2013 an Employment Statement form was faxed either to or from the Division's contractor, Nine Star Education and Employment Services.⁸ The form stated that Ms. Q was employed part-time at the restaurant; that she was paid \$7.75 per hour; that she received tips in an unspecified amount; that she worked 30 hours per week; that she was paid once per month, and that her gross wages were \$201.44 for the pay period ending July 5, 2013.⁹ Ms. Q testified at hearing that this form was timely faxed to the Division, and that she had a fax confirmation page showing this, but she was not able to locate the confirmation page and did not submit it as an exhibit. Ms. Q believes that her employer turned in this form to the Division for the second time on September 20, 2013.¹⁰

On August 27, 2013 the Division received from Ms. Q a renewal / recertification application for Family Medicaid and Food Stamp benefits.¹¹ Ms. Q' application stated in part that she was employed at a restaurant, that she was paid \$7.75 per hour, and that her hours varied from week to week.¹² Ms. Q' application further stated that her husband was not currently employed, but that she expected him to become employed in the near future.¹³

On August 27, 2013 the Division also received copies of two of Ms. Q' paystubs,¹⁴ which included the tips received by Ms. Q during each pay period. Included was a note from Ms. Q stating that these were the only paystubs she had, but that her employer was in the process of completing a statement, and that she would forward it to the Division as soon as possible.

Ms. Q stated that, when she received her recertification application in the mail, she filled it out and returned it to the Division, along with two work statements, a copy of her lease agreement, a bank statement, and copies of the only two paystubs she had received from the restaurant up to that

⁶ F Q hearing testimony.

⁷ F Q hearing testimony.

⁸ Ex. 9.7. The document contains a fax transmittal date stamp, but from the document itself it cannot be determined whether the blank document was being faxed from Nine Star to Ms. Q' employer, or (on the other hand) whether the completed document was being faxed from Ms. Q' employer to Nine Star.

⁹ Ex. 9.7.

¹⁰ Ex. 9.4, F Q hearing testimony.

¹¹ Exs. 2.0 - 2.5.

¹² Ex. 2.1.

¹³ Ex. 2.2.

¹⁴ Ex. 2.6 (source for entire paragraph).

date.¹⁵ She stated that she checked with the Division's local office on August 25, 2013 and was told that they had everything needed to process her application.¹⁶

On September 16, 2013 a Division employee telephoned Ms. Q and left a voice mail message indicating that additional information was needed to complete the processing of her renewal application.¹⁷ On September 17, 2013 the Division mailed a notice to Ms. Q requesting certain additional information needed to complete the processing of her Family Medicaid application.¹⁸ The notice stated in relevant part as follows:

Items needed: (1) Proof F has applied for and is pursuing unemployment benefits. (2) Proof E has applied for and is pursuing unemployment benefits. (3) We need . . . F's three most recent pay stubs. If you don't have these you can have your employer complete one of the employment statements we sent separately to you. (4) We need to know how much F receives each week in tips. (5) Regarding E's ending job we need [the] following from the employer: his last day of work, the date and gross amount of his final pay, [and] the reason the job ended. He can take an employment statement to the employer for this information.

The notice further stated that if the Division did not receive the information requested by September 27, 2013 Ms. Q' renewal application would be denied. Ms. Q testified at hearing that she did not receive this notice. However, she also testified that she receives her mail at her parents' residence, and that it could have gotten misplaced there.

Also on September 17, 2013 the Division mailed a notice to Ms. Q requesting certain additional information needed to complete the processing of her Food Stamp application.¹⁹ The notice stated in relevant part as follows:

Information or proof needed: (1) We need . . . F's three most recent pay stubs. If you don't have these you can have your employer complete one of the employment statements we sent separately to you. (2) We need to know how much F receives each week in tips. (3) Regarding E's ending job we need [the] following from the employer: his last day of work, the date and gross amount of his final pay, [and] the reason the job ended. He can take an employment statement to the employer for this information. (4) Your written statement of how long you expect to retain any monies from your family's Permanent Fund Dividends.

¹⁵ Ex. 9.4.

¹⁶ Ex. 9.4. Although Ms. Q indicated she was told that the Division had received all the necessary information on August 25, 2013, the "received" stamp on the renewal application indicates that it was not received by the Division until two days later on August 27, 2013.

¹⁷ Ex. 4.

¹⁸ Ex. 6.1.

¹⁹ Ex. 6.0.

The notice further stated that if the Division did not receive the information requested by September 27, 2013 Ms. Q' application might be denied.

It is uncontested that at least *some* of the documentation requested by the Division was timely provided by Ms. Q and/or her employer. A note on the Division's Electronic Information System (EIS) dated October 7, 2013 states that on September 25, 2013 the Division's No Name office received a completed employment statement from Ms. Q' husband stating that he had last worked on July 26, 2013 and that his last paycheck of that date was in the amount of \$432.00.²⁰ Ms. Q testified at hearing that she had numerous phone contacts with the Division, and that someone at the Division's No Name office told her that she did not need to provide proof that she and her husband had applied for and were pursuing unemployment benefits.

The Division will telephone an applicant's employer to obtain required information concerning the applicant's wages and hours.²¹ However, the Division will only do this if the applicant requests it or indicates he or she is having trouble getting the necessary information. In this case, Ms. Q testified that she had some communication problems with her employer because she and her employer spoke different languages. However, Ms. Q testified that her employer never refused to provide any information, and she did not advise the Division that she was having trouble getting the required information or that she needed its help.

On October 8, 2013 the Division mailed a notice to Ms. Q stating that her Medicaid benefits were being terminated, effective September 30, 2013, based on her alleged failure to provide some of the information the Division had requested.²² The notice stated in relevant part:²³

Medicaid coverage for you and E will end on 09/30/13 because we did not get the information or proof we asked you to provide Items we asked for but did not get: (1) Proof F has applied for and is pursuing unemployment benefits. (2) Proof E has applied for and is pursuing unemployment benefits. (3) Information about whether you are receiving tips from your employment.

On October 8, 2013 the Division also mailed a second notice to Ms. Q stating that her Food Stamp recertification application of August 27, 2013 had been denied based on her alleged failure to provide some of the information the Division had requested.²⁴ The notice stated that the items the Division had asked for but had not received were (1) two additional pay stubs; (2) information

²⁰ Ex. 7.

²¹ Terri Gagne hearing testimony.

²² Exs. 8.1, 9.2.

²³ Exs. 8.1, 9.2 (formatting modified from the original for purposes of brevity).

²⁴ Exs. 8.0, 9.0.

about Ms. Q' tips; and (3) a written statement about Ms. Q' household's spend-down of their Alaska Permanent Fund Dividend checks.²⁵

Ms. Q requested a hearing with regard to the Division's actions on October 10, 2013.²⁶ Ms. Q' hearing was held on October 29, 2013. Ms. Q 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 November 4, 2013, at which time the record closed. Ms. Q' post-hearing filing consisted of completed DPA Employment Statement forms for her and her husband, which Ms. Q has testified at hearing had previously been submitted to the Division.²⁷ There were no stamps or other marks on these documents to indicate that they had been received by the Division. The Division stated in its post-hearing filing that it had no record of having received the documents.

III. Discussion

A. Applicable Burden of Proof

This case involves the Division's denial of a recertification application for Food Stamp benefits, and a renewal application for Family Medicaid benefits. At issue in this case is what happened between the time that Ms. Q' application was submitted on August 27, 2013, and the time the Division denied her application on October 8, 2013. Ms. Q asserts that she timely provided the Division with the documentation which it had requested. The Division asserts that it received some, but not all, of the requested documentation. This is a purely factual issue as to which the burden of proof can become significant. Because the law applicable to the two programs is different, placement of the burden of proof can differ between the two programs.

The Medicaid program contains a regulation, 42 CFR § 435.930(b), which has the effect of treating the denial of a renewal application as a termination of existing benefits rather than a denial of an application for new benefits. Under Alaska "Fair Hearing" regulation 7 AAC 49.135, the Division bears the burden of proof in cases involving the termination or reduction of benefits. Accordingly, the Division bears the burden of proving that its termination of Ms. Q' Medicaid benefits was factually correct.

The situation is different under the Food Stamp program regulations. Under federal law, Food Stamp recertification applications, like the one at issue here, are considered to involve new

²⁵ Exs. 8.0, 9.0.

²⁶ Exs. 9.1, 9.3.

²⁷ Exs. A1 and A2.

and independent eligibility determinations, and are therefore treated like an initial application.²⁸ Under Alaska "Fair Hearing" regulation 7 AAC 49.135, the applicant bears the burden of proof in cases involving applications for new or additional benefits. Accordingly, Ms. Q bears the burden of proving that the Division erred in denying her application for Food Stamp benefits.

The Family Medicaid program and the Food Stamp program each have their own regulations pertaining to an applicant / recipient's duty to provide information. Accordingly, the issue of whether or not Ms. Q failed to timely provide requested information must be analyzed separately as to each of these two programs.

B. Duty to Provide Information Under the Family Medicaid Program

The Division is required by regulation to verify whether an applicant meets, or a recipient continues to meet, Medicaid eligibility requirements.²⁹ Pursuant to Alaska Medicaid regulation 7 AAC 100.020(a), the Division must require a recipient who is eligible for Medicaid to submit a review application at least once every 12 months, and furnish the documentation requested by the Division to support the applicant's continuing eligibility. If required information / documentation is *readily available* to the Division from a source other than the applicant or recipient, the Division has the obligation to seek such readily available information / documentation itself.³⁰ However, the applicant or recipient has the primary responsibility for providing documentary evidence.³¹ Under Alaska Medicaid regulation 7 AAC 100.022(a), if requested documentation is not received on or before the due date, the Division must notify the recipient that, starting the first day of the month immediately after the date of that notice, the recipient will no longer be eligible for Medicaid.

C. "Failure to Provide" Analysis Under the Family Medicaid Regulations

The Division denied Ms. Q' Medicaid renewal application on the basis that she had failed to provide proof that she and her husband had applied for and were pursuing unemployment benefits, and information about whether Ms. Q was receiving tips from her employment. Ms. Q did provide the Division with information regarding her tips,³² so that was not a valid basis for terminating her benefits. However, Ms. Q acknowledged at hearing that she did not provide proof that she and her husband had applied for and were pursuing unemployment benefits. Although Ms. Q also testified that someone at the Division's No Name office told her that she did not need to submit this

²⁸ See *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

²⁹ Alaska Medicaid regulation 7 AAC 100.016(a).

³⁰ Alaska Medicaid regulation 7 AAC 100.016(b).

³¹ Alaska Family Medicaid Eligibility Manual (Manual) Section 5000-4.

³² See Ex. 2.6.

information, her testimony on this important point was vague, which decreases the credibility of the testimony. Accordingly, the preponderance of the evidence shows that the Division requested this information in writing, and that it did not later rescind its request.

As discussed above, 7 AAC 100.016(b) requires that the Division attempt to obtain information and/or documentation from a third party source, prior to denying or terminating benefits, in circumstances where “the required documentation” is “readily available . . . from any alternative source . . .” [emphasis added]. However, in order to activate this duty, the applicant or recipient must first advise the Division that he or she is having trouble getting the required information and/or that he or she needs the Division's help. Ms. Q testified that she did not do this. Accordingly, in this case the Division did not have the duty to obtain the information on unemployment benefits itself. The Division 's decision to deny Ms. Q' Family Medicaid renewal application, based on failure to provide requested information, was therefore correct.

D. Duty to Provide Information Under the Food Stamp Program

The Division is required by regulation to verify whether an applicant meets, or a recipient continues to meet, Food Stamp eligibility requirements.³³ 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.³⁴

Under Food Stamp program regulations, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.³⁵ 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.³⁶

E. "Failure to Provide" Analysis Under the Food Stamp Regulations

The Division denied Ms. Q' Food Stamp renewal application on the basis that she had failed to provide two additional pay stubs, information about Ms. Q' tips, and a written statement about Ms. Q' household's spend-down of their Alaska Permanent Fund Dividend checks.³⁷ Ms. Q did

³³ Federal Food Stamp regulation 7 CFR 273.2(b)(1)(i); 7 CFR 273.2(c)(5).

³⁴ Federal Food Stamp regulation 7 CFR 273.2(f)(4)(i).

³⁵ Federal Food Stamp regulation 7 CFR 273.2(f)(5)(i).

³⁶ Federal Food Stamp regulation 7 CFR 273.2(h)(1)(i)(C).

³⁷ Exs. 8.0, 9.0.

provide the Division with two pay stubs and information regarding her tips,³⁸ so that was not a valid basis for terminating her benefits. However, there is no evidence in the record indicating that Ms. Q provided the Division with information regarding her household's planned spend-down of their Alaska Permanent Fund Dividend checks. Accordingly, the preponderance of the evidence shows that the Division requested this information, and that Ms. Q did not provide it.

As discussed above, 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.³⁹ The Division did so,⁴⁰ but Ms. Q did not request the Division's assistance. Accordingly, the Division did not have the duty to attempt to obtain the missing information / documentation itself. The Division's decision to deny Ms. Q' Food Stamp renewal / recertification application, based on failure to provide requested information, was therefore correct.

IV. Conclusion

The Division met its burden and proved, by a preponderance of the evidence, that Ms. Q failed to timely provide the Division with all the information / documentation which it had requested in order to process her Medicaid renewal application. Ms. Q failed to carry her burden and did not prove, by a preponderance of the evidence, that she provided the Division with all the information / documentation which it had requested in order to process her Food Stamp recertification application. Accordingly, the Division was correct to deny Ms. Q' household's renewal / recertification application for Family Medicaid and Food Stamp benefits dated August 27, 2013, and to terminate those benefits effective September 30, 2013. The Division's decision is therefore affirmed.

Dated this 18th day of November, 2013.

Signed _____
Jay Durych
Administrative Law Judge

³⁸ See Ex. 2.6.

³⁹ Federal Food Stamp regulation 7 CFR 273.2(h)(1)(i)(C).

⁴⁰ See Ex. 6.0, containing a list of the information / documentation still needed, and the statement "[i]f you need help or have questions, contact your local office."

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 27th day of November, 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.]