

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

In the Matter of)
)
 K H)
 _____)

OAH No. 14-1468-CMB¹
Agency No.

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance was correct to place K H’s grandsons on their mother’s Food Stamp and Temporary Assistance benefits cases even though Ms. H has full legal and physical custody. Because Ms. H has sole legal and full physical custody of the children and neither biological parent has any legal decision-making or parental control of the children, the Division’s decisions are reversed.

II. Facts

In 2012, the Alaska Superior Court awarded Ms. H full legal and physical custody of her two grandsons, Y and A Qs.² The court order outlines that Ms. H shall apply for PFDs for the children and receive child support from the biological parents.³ The court order is still in effect.⁴ The boys had been living with Ms. H for many years, without support from their biological parents.⁵ Ms. H received support from the state in the form of Food Stamp and “Adult Not Included” (ANI) Temporary Assistance benefits for several years.⁶

In late May 2014 D P, Ms. H’s daughter and the boys’ mother, was released from custody to live with Ms. H and have Ms. H act as her 3rd party custodian.⁷ Z N, Ms. H’s granddaughter and the boys’ half-sister, also moved into the home. Ms. H reported this to the Division on her June 2, 2014, eligibility review form.⁸ Ms. H wrote on the form that she was not asking for any public assistance benefits for Ms. P or Z.⁹ Ms. P informed a Division case worker that she did

¹ The case identifier was changed from ATP to CMB (combination) because the case involves both Food Stamps and Temporary Assistance.

² Ex. 17, 3KN-11-617-CI; H testimony.

³ Ex. 17.

⁴ H testimony.

⁵ Ex. 17; H testimony.

⁶ Ex. 1.

⁷ H testimony. Ms. H agreed to act as 3rd party custodian to ensure that Ms. P could attend custody proceedings for her youngest child, Z. Z was severely abused by her biological father.

⁸ Ex. 2.

⁹ Ex. 2.

not want Y and A added to her public benefits cases because she did not have custody of them.¹⁰ As soon as Ms. P was off 3rd party custody, in July 2014, she moved into separate garage living quarters with Z.¹¹ Ms. P and Z do not shop for or prepare meals with Ms. H and the boys.¹²

When the Division learned Ms. P was living with Ms. H, it reevaluated Ms. H's and Ms. P's benefit cases.¹³ The Division removed the boys from Ms. H's ANI Temporary Assistance case and added them to Ms. P's case.¹⁴ Ms. P then closed her Temporary Assistance case.¹⁵ Ms. H explained that Ms. P closed her Temporary Assistance case because she did not want to get in trouble for violating the court order granting Ms. H custody and requiring Ms. P to pay child support to Ms. H for the boys' care.¹⁶

Regarding Food Stamp benefits, the Division notified Ms. P and Ms. H that more information was needed.¹⁷ Specifically, the Division's notice stated:

We need to know whose household the food stamp case will be under, D's or K's. Because you are living in the same home as your two children, A and Y, we are required to put them in your household food stamp case unless you agree that you and Z become part of K's food stamp case. You and K need to discuss and make your decision and let our office know by July 25, 2014.¹⁸

The Division could have placed the boys under either head of household, as long as both adults were in agreement.¹⁹ The Division did not receive a response from either Ms. H or Ms. P.²⁰ The Division followed up with a phone call to Ms. H.²¹ Ms. H explained that the boys should stay on her Food Stamp case because she had sole legal and physical custody of them.²² Ms. P was not available during the discussion and was not available by phone afterward.²³ Because the Division did not have agreement from both adults that the children should be included in Ms. H's household for Food Stamp purposes, it relied on the default regulation that

¹⁰ H testimony. Mr. Miller did not have this information in front of him and Ms. P did not participate in the hearing. Ms. H's testimony on this issue was credible and no evidence was presented to counter her assertion.

¹¹ H testimony.

¹² H testimony.

¹³ Miller testimony.

¹⁴ Miller testimony.

¹⁵ H testimony.

¹⁶ H testimony.

¹⁷ Ex. 4 – 4.1.

¹⁸ Ex. 4 – 4.1.

¹⁹ Ex. 3; Miller testimony.

²⁰ Miller testimony.

²¹ Miller testimony.

²² H testimony.

²³ Miller testimony.

children would ordinarily be included in their parent’s household and removed the boys from Ms. H’s Food Stamp case and added them to Ms. P’s Food Stamp case.²⁴

Ms. H requested a fair hearing on both the Food Stamp and Temporary Assistance decisions, stating that she had court ordered custody of both children.²⁵ Ms. H’s hearing was held on September 16, 2014. Jeff Miller, Public Assistance Analyst and Hearing Representative, represented the Division and presented evidence on its behalf. Ms. H represented herself.

The record was held open until September 24, 2014, in order for Ms. H to provide the OAH and the Division with a Delegation of Powers signed by Ms. P granting power of attorney for A and Y to Ms. H. Ms. H provided the additional documentation.²⁶ The document appears to grant Ms. H all, “powers regarding the care, custody, and property” of A and Y.²⁷ Ms. H testified credibly that Ms. P filled out the delegation in an attempt to end the confusion regarding public assistance benefits. Per Ms. H, Ms. P told her Division case worker that the boys were not to be added to her benefits cases because she does not have custody of them.

III. Discussion

Ms. H has sole legal and primary physical custody of Y and A.²⁸ The court order describes Ms. H as the *in loco parentis*, or “in place of the parent; charged with a parent’s right, duties, and responsibilities.”²⁹ Both Ms. P and the boys’ father, Jerry Qs, were declared unfit parents, required to take parenting classes, and ordered to pay child support to Ms. H.³⁰ Ms. H was instructed to apply for boys’ Permanent Fund Dividends and claim federal tax exemptions/tax credits.³¹ This necessarily means that Ms. P does not have legal authority over A and Y. Though the court order is silent regarding public assistance benefits, it can be inferred that it is Ms. H, not Ms. P, who would apply for and stand in as parent for the boys. This reasoning applies to both Food Stamp and Temporary Assistance benefits.

Not only does the court order grant complete legal authority over Y and A to Ms. H, Ms. P herself has bolstered the court order with a delegation of her own.³² Though superfluous,³³

²⁴ Ex. 5; Miller testimony.

²⁵ Ex. 7.1, Ex. 7.3.

²⁶ Ex. A.

²⁷ The document is not fully completed.

²⁸ Ex. 18.

²⁹ Black’s Law Dictionary (5th ed.) at 708.

³⁰ Ex. 18.4 – 18.7.

³¹ Ex. 18.7.

³² Ex. A.

³³ The court order establishes Ms. H’s custody and cannot be disregarded. No other document is necessary.

this is a clear indication that Ms. P gave Ms. H full authority to act on the boys' behalf and does not wish to undermine the court's custody order.

A. Food Stamp benefits

The Division relied on the federal "household concept" regulation when it decided to place Y and A on Ms. P's Food Stamp case.³⁴ The regulation addresses required household combinations, specifically individuals that must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so.³⁵ Part of the regulation requires a person under 22 years old who is living with his or her natural or adoptive parent to be placed together in a household.³⁶ The next subpart addresses Ms. H and the boys' situation. It requires a child under 18 years of age who lives with and is under the parental control of a household member other than his or her parent to be considered one household.³⁷ "A child must be considered to be under parental control for purposed of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult."³⁸

The Division attempted to resolve this by notifying Ms. P and Ms. H that they needed to designate a head of household.³⁹ The regulations allow a designation of head of household if all adult household members agree to the selection.⁴⁰ Ms. H clarified that she should be the head of household, but Ms. P failed to respond or give her consent.⁴¹ Because of Ms. P's failure to respond, the Division determined that the boys should be added to the biological mother's Food Stamp case.⁴²

However, the decision to add the boys to Ms. P's Food Stamp case is not supported by the court order and is not required by law. It is undisputed that Ms. H has full parental control over A and Y and that they are dependent on her. Ms. P has no parental control or legal authority over the boys. The regulations do not specifically address A and Y's situation, wherein their biological mother, with no legal authority over them, moves into the household of their

³⁴ Ex. 6; Miller testimony.

³⁵ 7 CFR 273.1(b).

³⁶ 7 CFR 273.1(b)(ii).

³⁷ 7 CFR 273.1(b)(iii).

³⁸ *Id.*

³⁹ Ex. 4 – 4.1; Miller testimony.

⁴⁰ 7 CFR 273.1(d)(1).

⁴¹ Miller testimony.

⁴² Miller testimony.

court-ordered caretaker, Ms. H. However, the regulation must be read in a way that does not nullify the court order by granting and allows the boys to remain on Ms. H's Food Stamp case. The regulation requires a minor and the person who has parental control of the minor to be considered a single household. That is the case of Ms. H and the boys.

Furthermore, Ms. P submitted the delegation of all the boys' legal rights to Ms. H. This, in essence, is agreement from Ms. P that A and Y should be on Ms. H's Food Stamp case. The Division has authority to keep A and Y on Ms. H's Food Stamp case and should do so.

B. *Temporary Assistance*

The Division relied on the mandatory filing unit regulation when it determined that A and Y should be removed from Ms. H's Temporary Assistance case. The regulation requires a dependent⁴³ child to be placed with a parent or parents if they are living in the same household.⁴⁴

Like the case of Food Stamps, the regulation does not squarely address the situation whereby a parent has been declared unfit and full custody has been awarded to the grandmother. Here, Ms. H is acting in place of the parents, per court order. Accordingly, Ms. H may be included in place of Ms. P in terms of the Temporary Assistance program. This is also supported by the regulation governing caretaker relatives. In the case of two caretaker relatives living together, the department determines which relative is exercising primary responsibility for the care and control of the child.⁴⁵ It is undisputed that Ms. H has full care and control of A and Y. As such, the Division has authority under the court order to keep the boys on Ms. H's ANI Temporary Assistance case and should do so.

IV. Conclusion

The Division reasonably assumed that it needed to add A and Y to Ms. P's benefits cases because she is their biological mother. It did not consider that the Court order granting Ms. H sole legal and primary physical custody trumps the Division's standard practice when dealing with household composition. Ms. H is the appropriate head of household for both A and Y for all benefit determinations, unless the court order is lifted or modified. Accordingly, the

⁴³ In the normal usage sense, A and Y are dependent on Ms. H, not Ms. P. However, the 7 AAC 45.990 definition of dependent is the same as in AS 47.27.900, an individual who has not attained 18 years of age.

⁴⁴ 7 AAC 45.195(a).

⁴⁵ 7 AAC 45.225(d).

Division's decision to remove A and Y from Ms. H's Food Stamp and ANI Temporary Assistance cases is reversed.

Dated this 24th day of October, 2014.

Signed _____
Bride A. Seifert
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 17th day of October, 2014.

By: *Signed* _____
Signature
Bride A. Seifert _____
Name
Administrative Law Judge
Title

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