

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

In the Matter of)
)
M N) OAH No. 16-1113-CMB
) Agency No.
_____)

DECISION

I. Introduction

M N applied for Medicaid and food stamp benefits. The Division of Public Assistance requested verification of employment and wages, as well as verification of Ms. N’s pregnancy. The division did not receive the information by the deadline it set and denied the application for both programs. Ms. N appeals.

Although Ms. N missed the division’s deadline and was not able to provide all of the information the division requested, she had provided sufficient information by August 11, 2016 for the division to evaluate her eligibility for the two programs. The division’s denials are reversed.

II. Facts

M N applied for food stamps and Medicaid on June 21, 2016.¹ On her application form, she listed income from her job at Restaurant A, and reported that her husband, B N (Mr. N), was looking for work.² She also indicated, in response to a question on the form, that both she and her husband had stopped working within the past two months.³ The division interviewed Ms. N on July 13, 2016. At the time of the interview, Ms. N was no longer working for Restaurant A. She had just started a new job with Restaurant B. Her husband had also changed jobs recently, ending his employment with Company C, and starting at Restaurant D. During the interview, the Eligibility Technician phoned Restaurant D and verified Mr. N’s hours and hourly wages. He also phoned Restaurant B, but the person who answered could not provide payroll information, and the owners of the business were out of town.⁴ The Eligibility Technician faxed verification forms to Restaurant A and

¹ Exhibit 2.
² Exhibit 2.5, 2.7.
³ Exhibit 2.6.
⁴ Exhibit 3.

Company C.⁵ The Eligibility Technician also gave Ms. N an employment statement form, which she took to Restaurant B.⁶ However, Restaurant B did not submit the employment statement form to the division. Ms. N did not discover until her next visit to the public assistance office that Restaurant B had not submitted the form to the division.⁷

Following the interview, the division sent Ms. N two written notices (the “pend” notices), one for food stamps and one for Medicaid, indicating that employer verification of her wages and hours at Restaurant A and Restaurant B, and her husband’s wages and hours at Company C, would be required before it could act on her Medicaid and food stamp applications. The division gave a deadline of July 25, 2016 for providing that information.⁸

The deadline for providing the employment verifications passed. Mr. N’s hours and wages at Company C were never verified. However, on August 9, 2016, the division received an employment statement and wage history for Ms. N from Restaurant A.⁹ On August 11, 2016, the division received a change report from Ms. N, along with a copy of a paystub from Restaurant B and a copy of a paystub from Restaurant D for Mr. N.¹⁰ Ms. N noted that she had been fired by Restaurant B on July 22, 2016, and that the Restaurant B paystub was for her final check. On the Restaurant D paystub, Ms. N wrote that her husband would receive one more check for three and a half to four hours, and that he had quit after a coworker threw trays at him. Ms. N reported that she had started working at Restaurant A again part time, approximately 20 hours a week, at ten dollars an hour, and that her husband was unemployed. She asked the division to call her.¹¹

On August 24, 2016, the division denied Ms. N’s application for food stamps, citing her failure to provide ending income from Restaurant A, proof of income from Restaurant B, and proof of ending income from Company C.¹² On September 13, 2016, Ms. N went to the division’s office to find out why she had been denied benefits.¹³ The Eligibility Technician who spoke to Ms. N that day noted the receipt of Ms. N’s change report form

⁵ Exhibit 32 - 32.2.

⁶ Exhibit 3.

⁷ Testimony of N October 11, 2016.

⁸ Exhibit 4, 4.3 - 4.4.

⁹ Exhibit 7.1 - 7.2 (from No Name, LLC dba Restaurant A).

¹⁰ Exhibits 7.3 - 7.5. Although the date stamps on exhibits 7.3 and 7.4 are difficult to read, the Medicaid case note at Exhibit 7.6 confirms that those documents were received on August 11, 2016.

¹¹ *Id.*

¹² Exhibits 6, 8.1.

¹³ Exhibits 7.6, 8.

and paystubs. The Eligibility Technician also called both Restaurant B and Company C but was unable to reach either employer.¹⁴

On September 14, 2016, the division notified Ms. N that she and her husband were not eligible for Medicaid, citing failure to provide verification of Ms. N's pregnancy, Ms. N's income from Restaurant B, and Mr. N's ending income from Company C.¹⁵

A telephonic hearing convened on October 11, 2016 and continued on October 20, 2016. Ms. N represented herself. Jeff Miller, a Public Assistance Analyst with the division, represented the division. Michael Czopek, an Eligibility Technician for the division, testified.

III. Discussion

Ms. N's appeal concerns two separate assistance programs, food stamps and Medicaid. The two programs are both administered by the Division of Public Assistance, but they are governed by separate regulations. Ms. N's eligibility for assistance from each program is addressed below. Because this was a new application for benefits, Ms. N has the burden of proving by a preponderance of the evidence that the division's decision was incorrect.¹⁶

A. Eligibility for Food Stamps

The division denied Ms. N's application for food stamps for failure to provide employer verification of income from Restaurant A, Restaurant B, and Company C. Because the denial in this case was for failure to provide verification, we must first ascertain what income verification is actually required in order to qualify for food stamps.

The federal regulations governing the food stamp program direct the division to verify a household's gross income before it approves an application.¹⁷ Income can be verified through documents or contact with a third party.¹⁸ The household applying for food stamps has the primary responsibility for providing documentary evidence, although the division must assist the household in obtaining the verification.¹⁹ The division "must accept any reasonable documentary evidence provided by the household and must be primarily

¹⁴ Exhibit 7.6.

¹⁵ Exhibit 9 - 9.1.

¹⁶ 7 AAC 49.135.

¹⁷ 7 CFR 273.2(f)(1)(i).

¹⁸ 7 CFR 273.2(f); *esp.* 7 CFR 273.2(f)(4) (Sources of Verification).

¹⁹ 7 C.F.R. 273.2(f)(5)(i).

concerned with how adequately the verification proves the statements on the application.”²⁰ Where documentary evidence is insufficient or cannot be obtained, the division may require oral confirmation of the information by a person outside the household.²¹ The division is responsible for “obtaining verification from acceptable collateral contacts.”²² Where all else fails and verification of income is not available, the eligibility worker is required to “determine an amount to be used for certification purposes based on the best available information.”²³

The division denied Ms. N’s application due to her failure to provide the information it requested. In the denial notice, dated August 24, 2016, the division said that it needed but did not receive:

1. Proof of M’s ending income with Restaurant A. Proof can be a written or verbal statement from her employer which states the date she last worked, the date she received her final paycheck, the gross amount of her final paycheck and the reason she no longer works there.
2. Proof of M’s income from her new job at Restaurant B proof must include date job started, number of average hours per week, rate of pay, pay date and pay periods. Proof can be a written or verbal statement from her employer.
3. Proof of B’s ending gross income from Company C. Proof can be a written or verbal statement from his employer . . . ²⁴

This list of items is identical to the list on the notice the division sent Ms. N on July 14, 2016, stating that additional information was needed in order to process her application (the “pend notice”).²⁵ Ms. N did not submit the information requested before the July 25, 2016 deadline on that notice.

However, the fact that Ms. N missed the July 25, 2016 deadline does not mean that she was not eligible for benefits. Because Ms. N did not provide the requested information

²⁰ *Id.*

²¹ 7 C.F.R. 273.2(f)(5)(ii), 7 C.F.R. 273.2(f)(4)(ii).

²² 7 C.F.R. 273.2(f)(5)(ii).

²³ 7 C.F.R. 273.2(f)(1)(i) (“Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.”)

²⁴ Division Exhibit 6.

²⁵ Division Exhibit 4.

by July 25, 2016, she was not eligible for benefits for the month of June, the month in which she applied.²⁶ However, both the pend notice and the denial notice specifically stated that

If you give us the requested information after the due date, but within sixty (60) days from the date you applied, an eligibility determination will be made. If you are found eligible, benefits will be provided from the date you gave us the requested information.²⁷

Ms. N's application was received on June 21, 2016.²⁸ Ms. N had sixty days after that date, until August 19, 2016, to provide the information before the window for consideration of her food stamp application closed. Ms. N did submit most of the requested information before that date. The division should have determined Ms. N's eligibility based on the information it had on that date, or it could have requested additional information if needed, instead of denying her application based on failure to provide the requested information.

1. Employment at Restaurant A

The first verification the division requested on the pend notice was proof of Ms. N's ending income from Restaurant A. Specifically, the division requested the date Ms. N last worked at Restaurant A, the date she received her final paycheck from Restaurant A, the gross amount of the final paycheck, and the reason she no longer worked there.²⁹ On August 9, 2016, the division received an employment statement form from Restaurant A with a wage history for Ms. N. Ms. N's final paycheck, for the pay period ending May 24, 2016, was dated June 1, 2016. Her gross pay for the pay period was \$372.30. The form noted that Ms. N quit for "personal reasons."³⁰ The verification provided met these requirements. Ms. N provided the requested verification of her employment at Restaurant A in time for the division to determine her eligibility for food stamps. Nonetheless, on August 24, 2016, the division sent Ms. N a notice that her application for food stamps had been denied, citing a failure to provide the requested employment verification from Restaurant A.

2. Employment at Restaurant B

The second part of the division's request for additional information concerned Ms. N's employment at Restaurant B. That job was not listed on Ms. N's application form, but Ms. N reported at her interview on July 13, 2016 that she had just started a new job working

²⁶ 7 C.F.R. 273.2(h)(2)(i) and (ii).

²⁷ Exhibit 4, 6. *See also* 7 C.F.R. 273.2(h)(2).

²⁸ *Id.*

²⁹ Exhibit 4.

³⁰ Exhibit 7.1 - 7.2.

at Restaurant B two days earlier. The Eligibility Technician called Restaurant B to obtain information about Ms. N's employment during Ms. N's eligibility interview. The person who answered the phone at Restaurant B referred him to the owners of the business, who were out of town.³¹ Ms. N followed up by delivering an employment statement form to Restaurant B, but Restaurant B did not return the form to the division.³² Both Ms. N and the division attempted to obtain employment verification from Restaurant B while Ms. N was still working there, but Restaurant B did not provide verification.

On August 11, 2016, the division received a change report form from Ms. N. She reported that Restaurant B fired her on July 22, 2016.³³ She supplied a copy of her paystub from Restaurant B dated July 22, 2016 and covering the pay period July 4 through July 17, 2016.³⁴ Ms. N wrote on the paystub copy that this was her final check from Restaurant B. At the hearing, she testified that Restaurant B "shorted" her 8.5 hours ending pay, and that she "had to go there three times for my final paycheck because I was fired, but [an employee at Restaurant B] says I quit." She also testified that she had mailed Restaurant B an additional copy of the employment verification form.

At the hearing, the division took the position that it was Ms. N's responsibility to supply the requested verification from her former employer, that the division had fulfilled its obligation when it attempted to assist her in obtaining the information, and that it could not evaluate her eligibility without the requested verification.

This discounts the value of the paystub that Ms. N provided. That paystub was documentary evidence from the employer of Ms. N's hours and rate of pay. This evidence could have been used to determine Ms. N's income. Although this was not the specific form of verification the division sought, it was documentary evidence the division could have used to determine income. Here, the division knew from its interview with Ms. N that she had started working at Restaurant B on July 11, 2016 and that her first paycheck would be July 22, 2016.³⁵ Ms. N provided a copy of that paystub, which covered the pay period July 4, 2016 through July 17, 2016. She said this was her final paycheck from Restaurant B.³⁶

³¹ Exhibit 3.

³² Testimony of N, October 11, 2016.

³³ Exhibit 7.4.

³⁴ Exhibit 7.3.

³⁵ Exhibit 3.

³⁶ Exhibit 7.3.

Ms. N reported that she was fired by Restaurant B on July 22, 2016.³⁷ From this information, the division could have estimated Ms. N's income from her employment at Restaurant B.

Furthermore, even if the division had found that the paystub was not adequate verification, it should have considered whether failure to provide the verification was Ms. N's fault or that of her employer. Ms. N was unable to provide a statement from Restaurant B to prove the details of her employment there because Restaurant B did not cooperate with her or the division's request to provide that information. Under the applicable federal regulation, where the person providing the income fails to cooperate with the household and the agency, and all other sources of verification are unavailable, "the eligibility worker shall determine an amount to be used for certification purposes based on the best available information."³⁸

Ms. N's application should not have been denied based on Restaurant B's failure to cooperate with the verification process or lack of information about Ms. N's wages and income from Restaurant B.³⁹ The copy of the paystub from Restaurant B that Ms. N provided was reasonable documentary evidence, and the division could have used that to make an eligibility determination.⁴⁰

3. Employment at Company C

The third piece of information the division requested was verification of Mr. N's employment with Company C. Mr. N left Company C before Ms. N even applied for food stamps. The application, which was signed by Mr. N as well as Ms. N, stated that Mr. N had stopped working within the past two months, and that he was looking for a job.⁴¹ At the interview on July 13, 2016, Ms. N reported that Mr. N had been working for Company C at the airport, and that he received his final pay on June 3, 2016. The eligibility technician then faxed a request for information to Company C.⁴² The division did not receive a response.

³⁷ Exhibit 7.4.

³⁸ 7 C.F.R. 273.2(f)(1).

³⁹ 7 C.F.R. 273.2(d) ("The state agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification.")

⁴⁰ See 7 C.F.R. 273.2(f)(5)(i).

⁴¹ Exhibit 2.6 - 2.7.

⁴² Exhibit 3.

By the time of the interview, Mr. N had started a new job at the Restaurant D. The division called the Restaurant D and verified Mr. N's employment and wages. The Restaurant D verified that Mr. N had started work and that his first check would be on July 16, 2016, with future checks on the 1st and 16th of each month.⁴³ On August 11, 2016, Ms. N supplied a copy of Mr. N's first paystub from Restaurant D dated July 15, 2016 and noted that Mr. N had quit the job because a coworker threw trays at him, and that he expected one more paycheck on August 16, 2016 for 3.5 to 4 hours.

Ms. N did not provide any documentary evidence relating to Mr. N's employment at Company C. Mr. N's Company C paychecks were deposited directly into his account, so he did not have a paystub. Ms. N testified that her husband had attempted to obtain evidence by calling his former supervisor, without success. He was told the information was available online, but he did not know how to access those records. The division questioned Ms. N about whether she had tried to obtain information from Company C herself. She testified that she would not be able to obtain that information from Company C because her husband would have to do that.

As was the case with Restaurant B, the division attempted to assist Ms. N in obtaining verification from Company C, and, as with Restaurant B, Company C apparently failed to cooperate. However, with Company C, unlike Restaurant B, Ms. N was not able provide any documentary evidence of wages and hours.

The division argued that it was required to verify income in the month of application and estimate income for future months in order to determine whether a household meets the program's income limits. However, the division did not cite authority for the proposition that it needed to verify gross nonexempt income for the month of application. The only support it provided was Mr. Czopek's statement that this information was required to determine the level of benefits. The federal regulation 7 C.F.R. 273.2(f)(1)(i) requires verification of "gross nonexempt income."⁴⁴

The law does not specifically require verification of income in the month of application, and it does not make sense to impose such a rule in this case. The denial of Ms.

⁴³ Exhibit 3.

⁴⁴ 7 AAC 273.2(f)(1) lists several categories of information that must be verified before the division can certify an application, and gross nonexempt income is the first category. 7 AAC 273.2(f)(2) provides that the division shall also verify "all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level."

N's application based on the failure to provide verification of the amount of Mr. N's final paycheck from Company C, received June 3, 2016, does not make sense because by the time the division received Ms. N's change report form and paystub for Restaurant B on August 11, 2016, Ms. N was no longer eligible for benefits for June.⁴⁵ Mr. N's income from Restaurant D, his subsequent employer, had been verified. The division could have determined the household's gross nonexempt income based on Mr. N's income from Restaurant D and calculated benefits starting in July.

4. Timeliness of Ms. N's Interview

At the hearing, Ms. N argued that the division had not treated her fairly because she applied on June 21, 2016, when both she and her husband were unemployed and in need of immediate assistance, and the division did not interview her until July 14, 2016. However, this was not an unacceptable delay under the federal food stamp regulations. If an applicant is not interviewed on the day the applicant submits an application, the division must schedule an interview within 30 days.⁴⁶ The division met this requirement in this case by scheduling and completing the interview on July 13, 2017.

5. Need for Eligibility Determination

When Ms. N applied for food stamps, both she and her husband were unemployed.⁴⁷ By the time the division interviewed Ms. N, three weeks later, both she and her husband had found new jobs. A month after that, Ms. N had gone back to work at her old job at Restaurant A and Mr. N was unemployed again. These changes in employment during the application process complicate the analysis of this case.

Further complicating the analysis is the fact Ms. N did not provide the division with any of the information it requested in the pend notice until after the deadline in the pend notice had run. However, after that deadline had run and before 60 days from the date of her application had elapsed, Ms. N did provide sufficient information for the division to determine her household's gross income.

⁴⁵ Mr. Czopek testified that the division requested verification of final pay from Restaurant A and Company C because "it may have affected their eligibility for June."

⁴⁶ Alaska Food Stamp Manual at 601-3 E.

⁴⁷ She listed Restaurant A on the application, but had received her final paycheck on June 1, 2016. Exhibit 2.5, 7.1 - 7.2. She did not list Mr. N's job with Company C on the application, but disclosed it at the interview and said his final check was received on June 3, 2016. Exhibit 3.

Rather than processing the information Ms. N had provided, and requesting more information if needed, the division waited until after 60 days had elapsed and denied Ms. N's application for food stamps. When Ms. N visited her local public assistance office and requested an explanation of the denial, the Eligibility Technician suggested she fill out another application.⁴⁸ The problem here is that when an applicant provides the requested information within 60 days of the date of the application was filed, they are entitled to a determination of eligibility.⁴⁹

Here, the division did not receive the precise verification it had requested from each of the three employers listed on the pend notice, and it denied the application on that basis. However, it may have had enough information from Ms. N to determine her household's monthly income and eligibility for benefits within 60 days of the date of the application, so the denial for failure to provide was inappropriate.

6. Delays in Processing Food Stamp Applications

The federal food stamp regulations provide an excruciatingly detailed method for analyzing delays in processing food stamp applications. If the division does not determine a household's eligibility and provide an opportunity to participate in the food stamp program within 30 days of the date of an application, it must determine the cause of the delay.⁵⁰ In this case, the initial delay was due to incomplete verification. The division gave Ms. N a statement of the required verification on the pend notice. Because the eligibility technician phoned Restaurant B and Restaurant D during the interview, and faxed verification forms to Company C and Restaurant A the same day, the division "offered to assist" Ms. N in obtaining the required verification. Because the division set the deadline for providing the information 12 days after the interview, it allowed sufficient time to provide the missing verification.⁵¹ Thus, the initial delay can be considered the fault of the household.⁵²

This is where things get more complicated. To quote the federal regulation on the processing of food stamp applications,

- (i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the

⁴⁸ Exhibit 7.

⁴⁹ *See* 7 C.F.R. 273.2(h).

⁵⁰ 7 C.F.R. 273.2(h)(1).

⁵¹ *See* 7 C.F.R. 273.2(h)(1)(i)(C).

⁵² *See* 7 C.F.R. 273.2(h)(1)(i).

household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

...

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.⁵³

Having established that the delay in the initial 30-day period was Ms. N's fault, it is clear that Ms. N is not entitled to benefits for June 2016, the month of application.

However, Ms. N is entitled to a determination of eligibility and benefits for July 2016 forward, or at the very least an explanation of why the file is not complete enough to make an eligibility determination. It is true that Ms. N did not provide exactly the verification that the division requested. She provided the requested information from Restaurant A. Rather than the requested "written or verbal statement" from Restaurant B, Ms. N provided documentary evidence, a copy of what was apparently her one and only paystub from that employer. She did not provide verification at all for Company C, but as noted above, that could have been due to a failure to cooperate on the part of Company C.

The reason the division gave for denying Ms. N's application was "failure to provide."⁵⁴ But this is not entirely accurate -- Ms. N provided information from two of the three listed employers, and although she failed to provide verification from Company C, she did provide verification from Mr. N's subsequent employer, Restaurant D. By August 11, 2016, it appears that Ms. N had provided the division with enough information to determine Ms. N's eligibility and benefits. She had provided enough information and enough of a request for help to require the division to respond in some fashion other than the denial it issued.⁵⁵

⁵³ 7 C.F.R. 273.2(h)(2)(i) and (ii).

⁵⁴ Exhibit 6.

⁵⁵ At the hearing, the division argued that Ms. N had not requested further assistance from the division in obtaining the requested verifications. However, Ms. N testified that she was not aware that Restaurant B had not returned the employer verification form until she went to the public assistance office on September 13, 2016, after her application was denied. She also may not have been aware that Company C failed to respond to the Eligibility Technician's faxed request. On her report of change form, Ms. N wrote "please call me." Exhibit 7.5.

The division cited 7 C.F.R. 273.2(f)(i) for the proposition that a household has the responsibility for providing employment verification.⁵⁶ However, Ms. N was not solely responsible for obtaining verification. The federal regulation says that the household has “primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.”⁵⁷ It goes on to say that where documentary evidence “is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact” and it assigns responsibility for “obtaining verification from acceptable collateral contacts” to the agency.⁵⁸ Under the federal regulation, the division has an obligation to assist in the verification process, and although the division made efforts to help obtain documentary evidence on the day of the interview, it did not offer assistance thereafter.

It is important to note at this point that the division did not allege that Ms. N refused to cooperate in the verification process. Had she refused to cooperate, that would have been grounds for denial of her application.⁵⁹ However, refusal to cooperate is a high bar -- the household must “clearly demonstrate that it will not take actions that it can take and that are required to complete the application process” before it can be denied on this basis. Mere failure to cooperate is not sufficient, and indeed, where a household has “merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied.”⁶⁰ Furthermore, the “State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification.”⁶¹ To the extent there was a failure to cooperate in this case, it was a failure on the part of two of the employers, Restaurant B and Company C, and, as explained above, Ms. N should not be penalized for the failure of third parties to cooperate.

Turning back to the section of the regulation that deals with delays, having determined that denying Ms. N’s application for failure to provide was inappropriate, we must determine what should have happened. As discussed above, the initial delay in this matter -- that prohibited the agency from taking action within the first 30 days after the

⁵⁶ Exhibit 11.2.

⁵⁷ 7 C.F.R. 273.2(f)(5)(i).

⁵⁸ 7 C.F.R. 273.2(f)(5)(ii).

⁵⁹ 7 C.F.R. 273.2(d)(1) (if a household refuses to cooperate with the State agency in completing the process of verifying information on the application “the application shall be denied at the time of refusal.”)

⁶⁰ *Id.*

⁶¹ *Id.*

application -- was due to the fault of the household. Ms. N remedied this when she provided the verification from Restaurant A, the paystubs, and the report of change form in August, before 60 days had elapsed.

At this point, the division should have either made an eligibility determination, or requested any other information it needed in order to make an eligibility determination, either from Ms. N or collateral sources.⁶² It did not. Instead, it issued a denial notice after 60 days had elapsed that was essentially a carbon copy of the pend notice and did not acknowledge the additional information that had been provided after the interview.⁶³

What we have now in the process is a delay beyond 60 days. If a household is at fault for not completing the application process by the end of the second 30 day period, the division shall deny the household and require a new application.⁶⁴ However, while Ms. N was at fault for the failure to complete within the first 30 days, the fault for not completing the process in the second 30 days in this case was the division's. If the division is at fault for not completing the application process by the end of the second 30-day period, what happens next depends on whether the case file is complete enough to reach an eligibility determination.⁶⁵

If the case file is "otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached."⁶⁶ If the case file is not complete enough to reach an eligibility determination, "the State agency may continue to process the original application, or deny the case and notify the household to file a new application."⁶⁷

B. Eligibility for Medicaid

The division denied Ms. N's application for Medicaid because "unfortunately we didn't receive the necessary verifications to finish processing your case and so we had no

⁶² 7 C.F.R. 273.2(h)(2). It is possible that the division did not have all of the information it needed at that point -- for example, it may have needed more information from Ms. N to determine whether a job quit penalty applied. However, the fact that Ms. N provided a significant amount of information before 60 days elapsed differentiates this case from the two provided by the division, in Exhibits 12 and 13, where denial was upheld for failure to provide verification because additional information was provided after the 60 day period had elapsed.

⁶³ Exhibit 6.

⁶⁴ 7 C.F.R. 273.2(h)(4)(iii).

⁶⁵ 7 C.F.R. 273.2(h)(4)(i) and (ii).

⁶⁶ 7 C.F.R. 273.2(h)(4)(i).

⁶⁷ 7 C.F.R. 273.2(h)(4)(ii).

choice [but] to deny your application at this time.”⁶⁸ Specifically, the division found that Ms. N was ineligible for Medicaid for pregnant women, and that Mr. N was ineligible for Denali Care.⁶⁹ The division’s notification to Ms. N that she was not eligible listed the information it had requested but not received: 1) verification of Ms. N’s pregnancy; 2) verification of Ms. N’s income and employment with Restaurant B; and 3) verification of Mr. N’s ending employment with Company C.⁷⁰

When the division denied Ms. N’s application, it based the denial on failure to provide verification, not on refusal to provide verification. Under state regulations governing the Medicaid program, the division will find an applicant who refuses to provide the department with documentation ineligible.⁷¹ However, the division did not argue that Ms. N refused to provide information, at the hearing or in its denial notice.⁷²

The division cited a previous decision upholding a denial of Medicaid benefits based on the applicant’s failure to provide information.⁷³ That case involved a review application, and relied on a regulation providing that if documentation requested for a review application is not received by the due date, the division will send the recipient a notice that they are no longer eligible for the program.⁷⁴ This regulation does not apply to new applications for Medicaid. Ms. N’s application was a new application.

The case cited by the division also held that, because the recipient did not request assistance from the division in obtaining the information, the division did not have the duty to attempt to obtain the missing information itself from a third party source.⁷⁵ The present case is distinguishable, because on August 11, 2016, Ms. N responded to the division’s request for additional information by submitting the documents she had, and concluding her change report form with the request “please call me.”⁷⁶ This was a request for help. The division did not call Ms. N or provide other assistance in response to this request, nor did

⁶⁸ Exhibit 9.1.

⁶⁹ Exhibit 9.

⁷⁰ Exhibit 9.1.

⁷¹ 7 AAC 100.016(b).

⁷² See discussion above; Exhibit 7.6.

⁷³ Exhibit 31.

⁷⁴ *In re F. Q.*, OAH No. 13-1424-CMB at 6 (Exhibit 31.5); 7 AAC 100.022(a).

⁷⁵ *Id.* at 7.

⁷⁶ Exhibit 7.1 - 7.5.

the division use the information Ms. N had provided to process her application and make an eligibility determination.⁷⁷

On August 24, 2016 the division denied Ms. N's *food stamp* application.⁷⁸ On September 13, 2016, Ms. N went to the public assistance office to find out why her application had been denied.⁷⁹ The division explained to her "that her case had been denied correctly due to failure to provide."⁸⁰ However, it was not until September 14, 2016 that the division actually sent Ms. N a written notice that it had denied her application for Medicaid.⁸¹

The division can use information from the Supplemental Nutrition Assistance Program (the food stamp program) to determine financial eligibility for Medicaid.⁸² However, the financial eligibility requirements for the two programs are distinct, so the fact that a person has been found to be ineligible for food stamps does not compel the conclusion that they are also ineligible for Medicaid. It appears in this case that the division may have informed Ms. N that her Medicaid application had been denied before the division had actually made a determination.

The division should have attempted to determine Ms. N's eligibility for the Medicaid program based on the information it had after Ms. N submitted her report of change form. In general, in evaluating an application for Medicaid, the division may accept information an applicant provides.⁸³ Indeed, if the information "provided by or on behalf of an individual (on the application or renewal form or otherwise) is reasonably compatible with information obtained by the agency in accordance with [42 C.F.R. 435.948, 435.949, or 435.956] the agency must determine or renew eligibility based on such information."⁸⁴ The Medicaid Manual states that when an applicant submits an application, "most eligibility

⁷⁷ There is nothing in the record documenting any communication between the division and Ms. N after she submitted the change report on August 11, 2016, Exhibit 7.4 - 7.5, and before her visit to the office on September 13, 2016, other than a letter denying her food stamp application. Exhibit 6.

⁷⁸ Exhibit 6.

⁷⁹ Exhibit 7.6.

⁸⁰ Exhibit 7.6.

⁸¹ Exhibit 9.

⁸² 42 C.F.R. 435.948(a)(2).

⁸³ 42 C.F.R. 435.945(a) ("Except where the law requires other procedures (such as for citizenship and immigration status information), the agency may accept attestation of information needed to determine the eligibility of an individual for Medicaid (either self-attestation by the individual or attestation by an adult who is in the applicant's household ...) without requiring further information (including documentation) from the individual.")

⁸⁴ 42 C.F.R. 435.952(b).

requirements will be verified through client statement.”⁸⁵ If the division needed more information, it could have sought it from other sources. The division has the authority to verify financial information with other agencies, including the Internal Revenue Service and the agency responsible for administering the state’s unemployment compensation laws under 42 C.F.R. 435.948 and 42 C.F.R. 435.949.⁸⁶ There is no evidence that the division attempted to verify either Ms. N or Mr. N’s earnings with the Alaska Department of Labor in this case. The agency could have used the information Ms. N provided about her employment at Restaurant B, even without separate verification directly from Restaurant B.

The division denied the Medicaid application in part because it did not receive verification from a physician of Ms. N’s pregnancy and estimated due date. Under 42 C.F.R. 435.956(e), the division is required to accept self-attestation of pregnancy by an applicant “unless the State has information that is not reasonably compatible with such attestation.”⁸⁷ There is nothing in the case notes that explains what, if any, information the division had that was not compatible with Ms. N’s statement that she was pregnant. At the hearing, the agency representative stated that the agency had Ms. N’s statement that she was pregnant, citing the Medicaid manual, and conceded that the issue was resolved.⁸⁸ Even if the division had reason to doubt Ms. N’s report that she was pregnant, the division could have evaluated Ms. N’s eligibility for other forms of Medicaid, instead of simply finding that she was ineligible for pregnant women Medicaid.⁸⁹

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⁸⁵ Family Medicaid Eligibility Manual sec. 5720 (Exhibit 18).

⁸⁶ 42 C.F.R. 435.948(a)(1).

⁸⁷ 42 C.F.R. 435.956(e). This is subject to the requirements of 42 C.F.R. 435.952 regarding the use of information and requests of additional information from individuals.

⁸⁸ Family Medicaid Eligibility Manual 5702A provides “Client statement is accepted as verification of pregnancy. If questionable, verification may be requested.” Exhibit 17.

⁸⁹ Exhibit 9.

IV. Conclusion

The division's denial of Ms. N's application for food stamp and Medicaid benefits based on Ms. N's failure to provide all of the verifications requested by the division is reversed. The division should determine Ms. N's eligibility for each program based on the available information. If the division determines that Ms. N's food stamp case file is not complete enough to reach an eligibility determination, the division may deny the application on that basis under 7 C.F.R. 273.2(h)(4)(ii).

Dated: March 1, 2017.

Signed _____
Kathryn L. Kurtz
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 March, 2017.

By: *Signed* _____
Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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