

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

In the Matter of)	
)	
T G)	OAH No. 17-1333-CMB
_____)	Agency No.

DECISION

I. Introduction

T G applied for Food Stamp benefits and Alaska Temporary Assistance Program (ATAP) benefits on October 20, 2017.¹ The Division of Public Assistance (Division) denied his application because Mr. G failed to provide certain additional information by the requested date.

A telephonic hearing was convened on January 22, 2018 but was continued.² The telephonic hearing resumed on January 25, 2018. Mr. G appeared and testified on his own behalf. Sally Dial, a Public Assistance Analyst, represented the Division and also testified. The record was held open until February 1, 2018 to allow either party to supplement the record.

The Division's denial of Food Stamp benefits from December 1, 2017 through December 8, 2017 is reversed. Its denial of ATAP benefits from November 1, 2017 through December 8, 2017, is affirmed.

II. Facts

Mr. G moved to Alaska from California in October of 2017.³ He applied for Food Stamps and ATAP benefits on October 20, 2017.⁴ He was interviewed about his application by a fee agent on October 23, 2017.⁵ The Division received his application on October 26, 2017.⁶ Along with the application, Mr. G submitted the print-out of a Wells Fargo bank account ending in 0000, showing a balance of \$158.81.⁷

The Division processed the application on October 30, 2017.⁸ It notified Mr. G on

¹ Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp program to the Supplemental Nutritional Assistance Program ("SNAP"). However, the program is still commonly known as the Food Stamp program and will be referred to as the Food Stamp program in this decision.

² Mr. G testified that he had only received the agency record in the mail the morning of the hearing and had not yet had time to review it, so a continuance was granted.

³ See Ex. 2.3.

⁴ See Ex. 2.4-2.29.

⁵ See Ex. 2.2-2.3.

⁶ See Testimony of Ms. Dial; see also Ex. 2.4.

⁷ See Ex. 2.28-2.29.

⁸ See Testimony of Ms. Dial.

October 31, 2017 that his Food Stamp benefits would start on November 1, 2017.⁹ On the same day, the Division informed Mr. G that his application for ATAP benefits was pended because the Division was waiting for information from the state of California regarding the number of months that Temporary Assistance benefits had been used there.¹⁰

On November 1, 2017, the Division received information from California suggesting that Mr. G might have a joint account with his parents and an account in the Philippines.¹¹ The Division then asked Mr. G to provide the following information by November 13, 2017 in order to re-evaluate his eligibility for benefits:

Verification of all financial/bank accounts held by T and C [sic] separately & jointly including the bank account(s) that T shares or shared with his parents and the account in the Philippines [sic] that funds have been sent to. We need 3 months bank statements for all accounts with complete transaction history and detailed explanation of any/all deposits and withdrawals for each account. If T no longer shares a joint account with his parents or in the Philippines [sic] we need proof of the closure of the account to include closure date, amount withdrawn and where the money was transferred or how the money was spent.¹²

On November 8, 2017, Mr. G submitted print-outs of Wells Fargo accounts ending in 0000 and 0000, containing explanations as to the deposits and withdrawals.¹³ On the print-out, Mr. G also pointed to two transactions of \$160 and of \$100 to “M M” in the Philippines, stating that “this is not a bank and that there is no bank account.”¹⁴ At hearing, Mr. G explained M M is a financial service. He testified that he would send cash to relatives in the Philippines who needed money through that service.¹⁵ However, Mr. G did not provide the Division with the requested information concerning the bank account in the Philippines by the November 13, 2017 due date.¹⁶

As a consequence of this omission, the Division sent two denial notices – one for Food Stamp benefits and one for ATAP benefits -- on November 15, 2017.¹⁷ The Division informed

⁹ See Ex. 3.1. The reason why Mr. G’s household was not eligible to receive Food Stamp benefits for October of 2017 is because the household had already received such benefits from the State of California that month. See Ex. 3.1; Testimony of Ms. Dial.

¹⁰ See Ex. 3. Since there is a 60-month limit on Temporary Assistance benefits, the Division was seeking to determine the number of months Mr. G and his wife had received these benefits in California.

¹¹ See Ex. 4-4.1.

¹² See Ex. 5-5.1.

¹³ See Ex. 6.1-6.6. At the hearing, the agency representative agreed that the Wells Fargo print-outs of November 8, 2017 contained sufficient information about the bank accounts that Mr. G held in the U.S. so that these accounts were not an issue in this appeal.

¹⁴ See Ex. 6.3

¹⁵ Testimony of Mr. G.

¹⁶ Testimony of Ms. Dial.

¹⁷ See Ex. 7-7.1.

Mr. G that his ATAP case was closed and that the Food Stamp benefits previously approved would stop on November 30, 2017 because he had failed to provide the requested information about the bank account in the Philippines.¹⁸ Both denial letters stated that the following documents were still missing:

Verification of all financial/bank accounts held by T & C [sic] separately or jointly including the bank accounts in the Philippines [sic] that funds have been sent to. We need 3 months of bank statements for all accounts with complete transaction history & detailed explanation of any/all deposits, & withdrawals for each account. If T no longer shares a joint account with his parents or in the Philippines [sic] we need proof of the closure of the account to include closure date, amount withdrawn, & where the money was transferred or how the money was spent.¹⁹

Mr. G requested a fair hearing on December 7, 2017.²⁰ In his fair hearing request, Mr. G stated that nobody called to explain why the information submitted was not sufficient and that his wife's bank account in the Philippines held 10 Cents. He also claimed they never had to provide that print-out for that account in the past.²¹ At the hearing, Mr. G testified that he was confused about what information he still needed to provide. He observed that he had no phone number for the Department of Public Assistance, just a number where he could leave a message. Mr. G said he called Public Assistance and left a message, but they "never returned his calls."²² He further testified that he was also initially confused about what he needed to supply regarding his United States bank account, until somebody he met at Wells Fargo gave him some guidance.²³

Mr. G submitted a new application for Food Stamps benefits and ATAP benefits on December 8, 2017 and also provided a print-out of the bank account in the Philippines.²⁴ The Division approved that application and Mr. G has received those benefits since December 8, 2017.²⁵ Consequently, this appeal arises out of the Division's denial of Food Stamp benefits from December 1, 2017 through December 8, 2017 and the denial of ATAP benefits from November 1,

¹⁸ See Ex. 7-7.1.

¹⁹ See Ex. 7-7.1. At the hearing, the agency's representative testified that the purported joint account with his parents was no longer an issue. See Testimony of Ms. Dial.

²⁰ See Ex. 8.

²¹ See Ex. 8-8.1; Testimony of Mr. G. At the hearing, Mr. G admitted that the state of California had also requested a print-out for that account.

²² Testimony of Mr. G. He testified that he had called A D, who is somebody who knew at DPA, but she did not have access to the information he needed and couldn't help him. He said he finally called the Governor's office because nobody at Public Assistance would return his calls and the person he spoke with encouraged him to have patience.

²³ Testimony of Mr. G. According to Mr. G, somebody he met at Wells Fargo who had been on public assistance told him what information from Wells Fargo he should submit to the Division and then he submitted this information about his United States bank account. See Ex. 6.3-6.6;

²⁴ Testimony of Ms. Dial.

²⁵ Testimony of Ms. Dial.

2017 through December 8, 2017.²⁶

III. Discussion

Mr. G's appeal concerns the denial of his application for two separate assistance programs -- Food Stamps and ATAP. Both programs are administered by the Division of Public Assistance, but they are governed by different regulations. Mr. G's eligibility for assistance from each program is addressed below. Because this was a new application for benefits, Mr. G has the burden of proving by a preponderance of the evidence that the Division's decision was incorrect.²⁷

A. Eligibility for Food Stamps

The processing standard for a Food Stamp application is 30 days.²⁸ Here, the Division initially *approved* Mr. G's application for Food Stamp benefits shortly after his application was filed and those benefits commenced on November 1, 2017. Several days later, the Division asked Mr. G to submit verification concerning certain bank accounts by November 13, 2017. The Division did not receive that information by the requested date and notified Mr. G that his Food Stamp benefits would end on November 30, 2017.²⁹

The Division can terminate a household's Food Stamp benefits for a refusal to cooperate.³⁰ If an applicant "refuses to cooperate," the household "may reapply but shall not be determined eligible until it cooperates with the State agency."³¹ The question here is whether Mr. G's failure to provide the requested information concerning a bank account in the Philippines constitutes a "refusal to cooperate" or merely a "failure to cooperate." If Mr. G "refused to cooperate," his household was not entitled to receive Food Stamps after November 30, 2017 until he submitted a new Food Stamps application along with the information he was previously asked to provide. However, if Mr. G merely "failed to cooperate," then his household should have received

²⁶ Testimony of Ms. Dial.

²⁷ 7 AAC 49.135.

²⁸ 7 CFR §273.2(g)(1).

²⁹ See Ex. 7.1.

³⁰ In making this determination, the Division cited 7 C.F.R. §273.2. Under 7 C.F.R. § 273.2(d), a household shall be "determined ineligible if it refused to cooperate in any subsequent review of its eligibility." See Ex.7.1 & Ex. 11; At the hearing and in its supplemental record, the agency also relied on language in 7 C.F.R. § 273.2(h) and its Manual in support of its position that the G household was not entitled to receive Food Stamps from December 1, 2017 through December 7, 2017. However, 7 C.F.R. § 273.2(h) has no bearing here: this provision relates to cases where there has been no eligibility determination. Here, the G household was deemed eligible to receive Food Stamps on October 31, 2017 and the Food Stamps application was not pended; thus, this regulation is inapplicable. As for the Manual, it is not a regulation and thus does not have the force of law. Moreover, the Manual simply echoes the language of 7 C.F.R. § 273.2(h) and is equally irrelevant. Cf. 7 C.F.R. § 273.2(h) with Ex. 17 (referring to the denial of an application because the applicant failed to provide the necessary verification *by the end of the pend period*).

³¹ 7 C.F.R. § 273.2(d).

Food Stamp benefits from December 1, 2017 through December 7, 2018.

The law instructs the Division that “[i]f there is *any question* whether the household has merely failed to cooperate, as opposed to refuse to cooperate, the household shall not be denied, and the agency shall provide assistance.”³² Additionally, the law provides that in providing notice of what information is needed to verify the application, the Division must “inform the household of the State Agency’s responsibility to assist the household in obtaining the required information.”³³ However, neither of the notices provided by the Division communicated the Division’s responsibility in assisting the household in this regard and, as such, did not meet the requirements of federal law.³⁴

At the hearing, Mr. G credibly testified that the notices of the Division were ambiguous and confusing and that he did not understand what documents the Division was looking for.³⁵ It is not unreasonable that Mr. G could have been confused by the notice of November 15, 2017. This notice states that the case was closed because Mr. G did not submit the “bank accounts in the Philippines that funds have been sent to.”³⁶ However, on the Wells Fargo print-out that Mr. G submitted on November 8, 2017, Mr. G pointed to two money transfers to the Philippines (M M), explaining that these were cash transfers, not transfers to a bank account.³⁷ Thus, Mr. G reasonably could have believed that he had already provided this information to the Division.³⁸

Mr. G credibly testified that he tried to get more information from the Division after receiving this notice, that he called the Division and left messages, but the Division never called him back.³⁹ The Division did not rebut this testimony. Moreover, Mr. G in his fair hearing request stated:

No one called us to explain why the info we submitted was not sufficient. We submitted the usual Wells Fargo on-line print out. . . . we never submitted that printout [of C’s account in the Philippines]

³² 7 C.F.R. § 273.2(d)(1); *see also* ITMO M X, OAH No. 13-0417-SNA.

³³ 7 C.F.R. § 273.2(c)(5).

³⁴ *See* Ex. 5 (notice that more information was needed to reevaluate the household’s eligibility for Food stamps) & 7.1 (notice terminating the household’s Food stamp benefits because the Division had not received the requested information).

³⁵ Testimony of Mr. G; *see also* Ex. 5 & 7.1.

³⁶ *See* Ex. 7.

³⁷ *See* Ex. 6.3. Mr. G submitted this information in response to the Division’s request for verification dated November 2, 2017. *See* Ex. 6.3.

³⁸ Adding to the ambiguity and confusion surrounding the November 15, 2017 notice was the statement in the notice that Mr. G had not provided information about the “joint account with his parents,” although that issue had been resolved by the documentation Mr. G submitted on November 8, 2015. *See* Ex. 6-6.6; *see also* Testimony of Ms. Dial.

³⁹ Testimony of Mr. G. It should be further noted that neither the notice of November 8, 2017 nor the notice of November 15, 2017 provided a phone number for Mr. G to call, although the earlier notice instructed Mr. G to “call . . . right away if you have any questions about this letter.” *See* Ex. 5 & 7.1.

in the past. We don't understand if our info submitted is acceptable or was merely late.”⁴⁰

The record clearly shows that Mr. G proved by a preponderance of the evidence that he did not “refuse to cooperate.” Instead, he merely failed to cooperate because he was confused about what additional information he needed to provide to the Division. In the absence of a clear demonstration of a refusal to cooperate, federal law requires that the Division take additional steps before determining that Mr. G’s household was ineligible. Accordingly, the Division should have returned Mr. G’s phone calls and should have informed Mr. G that the Division or its fee agent would assist him in obtaining the necessary information.⁴¹ Because the Division did not take those steps, Mr. G’s household remained eligible for Food Stamps. Therefore, the Division’s denial of Food Stamp benefits from December 1, 2017 through December 8, 2017 is reversed.

B. Eligibility for ATAP Benefits

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal program for Temporary Aid to Needy Families, or TANF.⁴² A family may not receive ATAP benefits from the state (or parallel TANF programs in other states) for a total period of more than 60 months.⁴³

The Division initially did not approve Mr. G’s application for ATAP benefits.⁴⁴ Instead, the application was pended to determine how many months of TANF benefits Mr. G had received in the state of California, to make sure that he did not exceed the 60 months lifetime limit.⁴⁵ When the Division received that information, it also learned that Mr. G might have other bank accounts beyond what was disclosed in his application.⁴⁶ Consequently, the Division requested that Mr. G provide information about these additional accounts, and the application remained pended.⁴⁷ The denial notice was issued on November 15, 2017.⁴⁸ After Mr. G submitted a new application with the requested documents on December 8, 2017, his ATAP benefits were

⁴⁰ Ex. 8.

⁴¹ See Ex. 11.

⁴² See AS 47.05.010(1); AS 47.27.005 – AS 47.27.990; 42 U.S.C. §601 *et. seq.*

⁴³ AS 47.27.015(a)(1).

⁴⁴ See Ex. 3. If an applicant is ineligible for ATAP benefits, the notice must indicate the specific reason for the denial and explain the applicant’s right to request a hearing to reconsider the denial. See 7 AAC 45.205(a).

⁴⁵ See Ex. 3.

⁴⁶ See Ex. 4.1.

⁴⁷ See Ex. 5.1.

⁴⁸ See Ex. 7.

approved.⁴⁹

An applicant's claim for ATAP "must be supported by verification satisfactory to the department that the applicant meets all eligibility requirements."⁵⁰ If an applicant "refused to provide the department with verification of eligibility," the applicant is not eligible to receive ATAP benefits.⁵¹ However, if an applicant is "otherwise eligible to receive ATAP benefits" but has not provided all of the documentary evidence needed to verify an eligibility factor, the Division will pay benefits for a limited period of time under certain circumstances.⁵² To be eligible to receive benefits under this scenario, Mr. G must establish that the necessary documents are not in his possession and that he could not readily obtain them.⁵³

As discussed earlier in this decision, Mr. G did not *refuse* – *i.e.*, decline -- to provide the department with the requested documentation. Instead, Mr. G simply failed to provide that information by November 13, 2017 because he was confused about what information the Division wanted. Since Mr. G was "otherwise qualified" to receive these benefits, the question is whether Mr. G should have received benefits from November 1, 2017 through December 8, 2017 pursuant to 7 AAC 45.180, although he did not provide all the documentary evidence needed to verify an eligibility factor.

Here, the preponderance of the evidence establishes that the Mr. G could have readily obtained the documents establishing that the bank account in the Philippines only had 10 cents in it.⁵⁴ At hearing, Mr. G mentioned several times that, at the time of the application, he was not sure if the bank account in the Philippines still existed.⁵⁵ However, he admitted that this account was an issue when the household had applied for assistance in California and that a print-out of that account had been submitted to the Division of Public Assistance in California.⁵⁶ Thus, Mr. G was aware that there was an account in the Philippines, he had submitted documentation about the account to the agency in California, and he could have submitted the same documents to the Division.

⁴⁹ Testimony of Sally Dial. Where an applicant, like Mr. G, is initially determined to be ineligible for ATAP benefits but is subsequently approved for benefits, the applicant's eligibility for benefits begins on the date the Division concludes that the applicant is eligible. *See* 7 AAC 45.540(a)(2).

⁵⁰ 7 AAC 45.175(a).

⁵¹ *See* 7 AAC 45.175(a).

⁵² *See* 7 AAC 45.180.

⁵³ *See* 7 AAC 45.180(a)(1).

⁵⁴ The documentation that Mr. G submitted in connection with his December 8, 2018 application corroborates that the Philippines bank account only had 10 cents in it. *See* Ex. 23.

⁵⁵ Testimony of Mr. G.

⁵⁶ Testimony of Mr. G.

Later in the hearing, Mr. G testified that his wife had instructed her sister in the Philippines to close the account but said he and his wife were not sure that she had done so.⁵⁷ He then testified that his wife had set up the online banking for the account at some point, with the help of his aunt, and had noted the username and password.⁵⁸ This testimony dove-tailed with a print-out of the account, which shows that somebody had logged on to the account and changed password on November 7, 2017.⁵⁹ Mr. G presented no evidence to rebut the inference that his wife would have been able to access and obtain a copy of the requested information from her on-line banking account before the denial of the ATAP application. Consequently, Mr. G did not prove by a preponderance of the evidence that he was unable to furnish the Division with the requested information by November 13, 2017. Accordingly, the Division's denial of ATAP benefits for the time from November 1, 2017 through December 8, 2017, is affirmed.

IV. Conclusion

Mr. G did not refuse to cooperate with the Division. Consequently, the Division's denial of Food Stamps from December 1, 2017, through December 8, 2017, is reversed. The Division's denial of Mr. G's ATAP benefits from November 1, 2017 through December 8, 2017, is affirmed because Mr. G could have readily obtained the requested bank statements for the bank account in the Philippines before his ATAP application was denied.

Dated March 6, 2018

Signed

Kathleen A. Frederick

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 4th day of April, 2018.

By

Signed

Erin Shine

Special Assistant to the Commissioner

Department of Health and Social Services

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

⁵⁷ Testimony of Mr. G.

⁵⁸ Testimony of Mr. G.

⁵⁹ See Ex. 23-23.1.