

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

In the Matter of )  
 )  
D B ) OAH No. 19-0009-SNA  
 ) Agency No. 05598087  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

D B submitted a Food Stamps recertification application. The Division of Public Assistance (Division) subsequently notified her that her Food Stamp allotment would be reduced from \$68.00 to \$55.00 a month because her social security benefits had increased on January 1, 2018. Ms. B requested a hearing.

A telephonic hearing commenced on January 24, 2019. Ms. B represented herself; Jeff Miller, a Fair Hearings Representative, represented the Division. Shortly after the hearing commenced, Ms. B requested a continuance since she had not received the agency's position statement or accompany exhibits. Her request for a continuance was granted and the telephonic hearing was rescheduled. On February 11, 2019, the continued telephonic hearing resumed. At the continued hearing, Ms. B again represented herself while Sally Dial, a Fair Hearings Representative, represented the Division. A brief supplemental hearing was held on March 12, 2019 to determine whether the Division had considered Ms. B's property tax and insurance when it calculated her shelter costs, with Ms. B and Ms. Dial both attending telephonically.

The evidence presented at the hearing demonstrated that the Division had calculated Ms. B's monthly income and applicable deductions correctly and that she is only entitled to received \$55.00 a month in Food Stamp benefits. Although Ms. B is on a special diet while awaiting a kidney transplant, costs for special diets are not an allowable deduction. Therefore, the Division's decision in affirmed.

**II. Facts**

Ms. B is a Food Stamps recipient.<sup>1</sup> She filed her Food Stamps recertification application on November 28, 2018.<sup>2</sup> On that recertification application, Ms. B listed two forms of income: social security benefits and senior benefits.<sup>3</sup> Previously, Ms. B had been receiving \$1,482 a month in social

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<sup>1</sup> Ex. 1.  
<sup>2</sup> Ex. 2.2.  
<sup>3</sup> Ex. 2.2.

security benefits and \$76 a month in senior benefits.<sup>4</sup> On January 1, 2019, her social security benefits were increased to \$1524 a month due to a COLA adjustment, thus increasing her gross income.<sup>5</sup> Using Ms. B's gross income as of January 1, 2019, the Division calculated Ms. B's Food Stamp allotment on its SPECAT worksheet and determined that Ms. B was eligible to receive a \$55.00 per month Food Stamp allotment.<sup>6</sup>

Ms. B did not dispute the information the Division presented concerning her income and the applicable deductions.<sup>7</sup> Instead, Ms. B testified about why a reduction in her Food Stamp benefits would detrimentally affect her health.<sup>8</sup> Ms. B stated that she was undergoing dialysis while awaiting a kidney transplant and was told she had to be on a protein-rich renal diet, which includes protein powders and other types of foods that are rich in protein in order to remain on the transplant list.<sup>9</sup> Ms. B noted that if she doesn't eat the correct food, she winds up in the hospital. She further testified that she cannot obtain the food she needs for her special renal diet at the local food bank and that she won't be able to stay on that diet and survive on \$55.00 a month in Food Stamp benefits.<sup>10</sup> Ms. B said it means "life or death" and that she wishes to live and stay on the transplant list.<sup>11</sup>

### **III. Discussion**

#### **A. The Food Stamp Program and the Parties' Arguments**

The Food Stamp program is a federal program administered by the State. Benefit amounts are based on the number of people living in the household and the monthly income after subtracting applicable deductions received by those household members. As a general principle, the greater the household's income, the smaller the amount of Food Stamp benefits the household will receive each month. Similarly, because the amount of a household's deductions affects its countable income, the

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<sup>4</sup> Ex. 3.1-3.2.

<sup>5</sup> Presentation of Ms. Dial; see also Position Statement, pp. 1-2; Presentation of Ms. Dial, Exs. 3.1, 4, & 5.1.

<sup>6</sup> Ms. B's gross income is the starting point for determining her eligibility for Food Stamps and the amount of her Food Stamps allotment. See Ex. 6-6.12. A household with at least one individual who is at least 60 years of age, like Ms. B, are considered a "special category (SPECAT)" household and Food Stamp eligibility is determined using only the net income test. See Ex. 8-8.2.

<sup>7</sup> Testimony of Ms. B.

<sup>8</sup> Testimony of Ms. B.

<sup>9</sup> Testimony of Ms. B; see also Ex. 5. Ms. B said her blood is tested each month to see that she is following a protein-rich diet.

<sup>10</sup> Testimony of Ms. B. Ms. B testified that she needs to eat foods rich in protein, and that she cannot eat pasta, fruits, or vegetables.

<sup>11</sup> Testimony of Ms. B.

greater the amount of the household's deductions, the greater its benefit amount will be.<sup>12</sup> Because it is reducing Ms. B's monthly Food Stamp benefits, the Division bears the burden of proof.<sup>13</sup>

At the hearing, Ms. Dial noted that Ms. B's social security benefits had increased from \$1,482 a month to \$1,524 a month on January 1, 2019.<sup>14</sup> Ms. Dial stated that this increase in Ms. B's income had led to a reduction in her Food Stamp benefits.<sup>15</sup> As part of her presentation, Ms. Dial also went through the Division's Food Stamp Worksheet to show how the Division calculated Ms. B's gross income, adjusted income, and net income, and also how the Division had determined that Ms. B now was only entitled to \$55.00 in Food Stamp benefits.<sup>16</sup> The Division's step-by-step analysis of the Food Stamp Budget Worksheet established that it had correctly calculated the new monthly Food Stamp allotment for Ms. B in light of the recent increase in her social security benefits.<sup>17</sup>

Ms. B did not dispute the Division's calculations concerning how it arrived at the amount of her monthly net income vis-à-vis her eligibility for Food Stamps or how the Division determined that her new Food Stamp benefits should be \$55.00 a month.<sup>18</sup> Instead, she argued that she is on a "renal diet" that is high in protein and that she can't afford to buy foods that are high in protein or protein supplements if her Food Stamp benefits are decreased.<sup>19</sup> In other words, Ms. B would like her renal diet to be considered by the Division as part of its determination of her Food Stamp allotment. The Division counters Ms. B's argument by pointing out that the regulations do not permit special diets to be an allowable medical deduction and that an earlier OAH decision determined that protein shakes, powders, and protein bars constitute a special diet and are not an allowable medical expense.<sup>20</sup>

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<sup>12</sup> See Ex. 6-6.1.

<sup>13</sup> See 7 AAC 49.135.

<sup>14</sup> Presentation of Ms. Dial.

<sup>15</sup> Presentation of Ms. Dial.

<sup>16</sup> Presentation of Ms. Dial.

<sup>17</sup> At the supplemental hearing, Ms. Dial explained that Ms. B's mortgage payment included her taxes and property insurance; consequently, Ms. B received the benefit of these deductions because the Division used her monthly mortgage payment to calculate her shelter costs when the Division completed its worksheet regarding the amount of Food Stamps Ms. B was entitled to receive. Presentation of Ms. Dial; *see also* Ex. 2.8. Ms. B also confirmed that her mortgage payment included her property taxes and property insurance. *See* Testimony of Ms. B.

<sup>18</sup> Testimony of Ms. B.

<sup>19</sup> Testimony of Ms. B.

<sup>20</sup> Presentation of Ms. Dial; *see also* OAH No. 13-1474-SNA (2013).

## B. Special Diets

A household who has a member who is at least 60 years of age is a Special Category (SPECAT) household for Food Stamps purposes.<sup>21</sup> This SPECAT designation means that Ms. B only has to meet the “net income” requirements to be eligible for food stamps, her shelter costs are deducted differently, and medical expenses are an allowable deduction when the calculating a Food Stamps recipient’s adjusted income.<sup>22</sup> Medical costs are totaled and then the amount of such costs over \$35 is subtracted from a recipient’s gross income, along with the standard deduction based on the size of the household (here, \$281), in order to arrive at the recipient’s adjusted income.<sup>23</sup> After the adjusted income is determined, the Division computes monthly shelter costs and subtracts half of the adjusted income from the monthly shelter costs in order to arrive at the recipient’s “excess shelter costs.”<sup>24</sup> The excess shelter costs are then subtracted from the recipient’s adjusted income in order to determine the recipient’s monthly “net income.”<sup>25</sup>

Medical costs in excess of \$35 lower a recipient’s adjusted income which, in turn, lowers the recipient’s net income.<sup>26</sup> The recipient’s monthly “net income” is multiplied by .3 to find the “adjusted food stamp income,” and the recipient’s food stamp allotment is then determined by subtracting the “adjusted food stamp income” from the maximum food stamp allotment amount (here, \$232 for a one-person urban household).<sup>27</sup> Thus, the greater the amount of allowable medical deductions, the more Food Stamp benefits a recipient will be entitled to receive up to the maximum food stamp allotment.<sup>28</sup> Consequently, if Ms. B’s renal diet is an allowable medical expense, she would get the benefit of the medical expense deduction and, in turn, would receive more Food Stamp benefits.

The issue of whether a “special diet” can be considered when determining Food Stamps benefits is addressed the federal Food Stamp regulations.<sup>29</sup> The Food Stamp regulations are clear: A Food Stamp recipient may deduct “[t]hat portion of medical expenses in excess of \$35 per months, *excluding special diets . . .*”<sup>30</sup> There are no exceptions to that rule. Thus, protein powders and other foods

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<sup>21</sup> Ex. 7.1.

<sup>22</sup> Presentation of Ms. Dial; *see also* Exs. 6-6.1 & 8-8.2;

<sup>23</sup> Exs. 6 & 8.1.

<sup>24</sup> Exs. 6 & 8.1.

<sup>25</sup> Exs. 6 & 8.2.

<sup>26</sup> Exs. 6 & 8.1-8.2.

<sup>27</sup> Ex. 6.1.

<sup>28</sup> *See* Exs. 6-6.1.

<sup>29</sup> *See* 7 C.F.R. § 273.9(d)(3).

<sup>30</sup> 7 C.F.R. § 273.9(d)(3)(emphasis added).

needed on a renal diet are not an allowable medical expense.<sup>31</sup> It is undisputed that Ms. B is in a very difficult position, since her renal diet is essential to her health, yet she cannot derive the benefit of the medical expense deduction because the federal regulations do not permit such a deduction.

#### IV. Conclusion

The Division has met its burden of proof in establishing that it correctly calculated Ms. B's monthly Food Stamp allotment and that there is no applicable medical deduction for Ms. B's renal diet. Accordingly, the Division's determination is affirmed.

Dated: March 13, 2019

By: Signed  
Signature  
Kathleen A. Frederick  
Name  
Administrative Law Judge  
Title

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

### 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 29<sup>th</sup> day of April, 20 19.

By: Signed  
Signature  
Jillian Gellings  
Name  
Project Analyst  
Title

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