

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

In the Matter of)
)
D N) OAH No. 18-0419-SNA
) Agency No. 05831904
_____)

DECISION

I. Introduction

D N submitted a recertification application for Supplemental Nutrition Assistance Program (SNAP) benefits, commonly called “Food Stamps,” on January 29, 2018. His Food Stamps recertification application (“Recertification Application”) initially was denied because he could not be reached for an interview. When Mr. N stopped receiving Food Stamps in February, he contacted the Department of Health and Social Services, Division of Public Assistance (“Division”). At that time, the Division learned that Mr. N had been in Arizona since November 12, 2017 and that he would not be returning to Alaska until April of 2018. The Division then denied his Recertification Application, stating that Mr. N needed to be physically present in Alaska to be eligible for Food Stamps. Mr. N requested a hearing.

A telephonic hearing commenced on May 7, 2018. Mr. N appeared on his own behalf; Sally Dial, a Fair Hearing Representative, represented the Division. Shortly after the hearing began, Mr. N requested a continuance since he had not yet received the Division’s position statement or exhibits because his mail was still being forwarded to a friend in Las Vegas. The hearing was continued to May 21, 2018. At the continued hearing, the parties agreed to keep the record open until June 5, 2018 to supplement the record with documents referenced at the hearing.

The Division’s denial of Mr. N’s Recertification Application is reversed on grounds of equitable estoppel.

II. Facts

D N has been an Alaskan resident for eight years.¹ He submitted his original application for Food Stamps approximately four years ago and has received Food Stamps since September of 2014.² He is permanently disabled and has received Medicaid and Heating Assistance.³

At the end of June in 2017, Mr. N had a house fire at his home in No Name. One day later, Mr. N had emergency knee surgery.⁴ He had already planned to take a vacation after he received his PFD but testified that the house fire hastened his decision to leave Alaska during the winter since he needed to go someplace warm to heal until he could rebuild his home. His physician also thought this was a good idea.⁵

Prior to leaving Alaska on November 12, 2017, Mr. N went to the Division's Street A Office to pick up a Recertification Application, since he was aware his Food Stamps would end while he was out-of-state.⁶ While there, he explained to the Division's representative at the front desk that he had a house fire, had lost most of what he owned, had no insurance, and was living in an ATCO trailer in No Name.⁷ He also explained that he had the opportunity to spend the winter with a friend out-of-state and asked whether there was a time limit or other rules related to the amount of time he could spend out of Alaska while still retaining his eligibility for Food Stamps.⁸ Mr. N testified that the Division's representative said that there were no rules or definitions regarding either vacations or the amount of time a person could be out-of-state as long as he maintained Alaska residency.⁹

On January 10, 2018, while he was out-of-state, Mr. N completed his Recertification Application; the Division's Street A Office received it on January 29, 2018.¹⁰ In the

¹ Testimony of Mr. N.

² Ex. 9; Testimony of Mr. N.

³ Ex. 8.2-8.3 & 8.7; Testimony of Mr. N.

⁴ Ex. 3; Testimony of Mr. N. Mr. N testified that he was using a wheelchair and a walker until January of 2018.

⁵ Testimony of Mr. N.

⁶ A recertification form, also referred to as an Eligibility Review Form, is a simplified form compared to an initial application for Food Stamps. *See* Agency Record (Additional Information, dated June 5, 2018), at p. 1; *see also* Alaska SNAP (Supplemental Nutrition Assistance Program, formerly known as The Food Stamps Program) Manual, 2007 (hereinafter referred to as the "Manual"), at 601-2 A (noting that Form Gen 50C is the initial Application for Services Form while Gen 72 is the Eligibility Review Form used to determine continued eligibility).

⁷ Testimony of Mr. N. Mr. N testified that he was unable to get the ATCO trailer insulated enough to spend the winter in No Name, where it could get to be -55 degrees during the winter.

⁸ Mr. N testified that while he was out-of-state, he also visited friends in Nevada and California. He characterized this additional travel as "vacation travel."

⁹ Testimony of Mr. N.

¹⁰ Ex. 8 & 8.4. In his Recertification Application, Mr. N also applied for Adult Public Assistance, Temporary Assistance, and Medicaid.

Recertification Application, he listed No Name as his residence.¹¹ When Mr. N did not get his Food Stamps in February of 2018, he began making daily calls to the Division, leaving a message each day. He also began sending e-mails to individuals at the Division inquiring about his Food Stamps. However, Mr. N received no response to his calls or e-mails. In March, he began calling state representatives and contacted the Governor's office in his attempt to get a response to his Recertification Application.¹² At some point, Mr. N was advised that the Division had a large backlog of public assistance applications and that the Division would eventually contact him.¹³

The Division's records show that the Division tried to contact Mr. N by telephone regarding his Recertification Application twice – once on March 1, 2018 and again on March 9, 2018.¹⁴ When the Division was unable to interview Mr. N, his Recertification Application was denied.¹⁵

On March 30, 2018, Mr. N finally reached the Division and spoke with K N, the Eligibility Manager at the Street A Office.¹⁶ Mr. N reported that Ms. N in a "harsh tone" told him that he was "well known" in the Street A Office because of his many phone calls and messages.¹⁷ Mr. N asked to be interviewed in order to reinstate his Food Stamp benefits and mentioned that he was staying with a friend in Arizona temporarily. Ms. N advised him that he was not eligible for Food Stamps because he was "not physically present" in Alaska. Mr. N then explained that he had a lease for his home in Alaska, paid for utilities in Alaska, had his personal belongings in Alaska, and considered Alaska to be his "permanent home." He further explained that he had travelled out of Alaska temporarily due to his house fire and his need for a warm place to recover from surgery.¹⁸ However, the Division told him that unless he had travelled to

¹¹ Ex. 8.

¹² Testimony of Mr. N.

¹³ Testimony of Mr. N.

¹⁴ Ex. 2. The Division's records describe this as a "cold call attempt." See Ex. 2. The Division eventually spoke to Mr. N at another phone number on March 30, 2018 and at that time, Mr. N explained that he was "not getting calls for an unknown reason." See Ex. 3.

¹⁵ See Ex. 2. However, there is nothing in the agency record indicating that the Division sent a denial notice to Mr. N at that time. Mr. N did not receive Food Stamps from February through April, 2018.

¹⁶ Ex. 3; Presentation of Ms. Dial.

¹⁷ Presentation of Ms. Dial.

¹⁸ Ex. 3; Testimony of Mr. N.

Arizona for medical treatment paid by Medicaid, he was not eligible for Food Stamps.¹⁹ Mr. N testified that he felt he was being singled out because of his persistent phone calls.

It was during this telephone interview that he requested a fair hearing.²⁰ On April 2, 2018, the Division sent Mr. N a formal denial of his Recertification Application.²¹

III. Discussion

The Division argues that Mr. N is not entitled to receive Food Stamps because he was not physically present in Alaska at the time he filed his Recertification Application and at the time of his interview with the Division.²² In sole support of its argument, the Division points to 602-1 B of the Alaska SNAP Manual (hereinafter, “Manual”) which states, under the heading of “Residency,” that:

To be eligible for SNAP, the applicant must be physically present within the State of Alaska. Households must remain in Alaska to continue to be entitled to SNAP from Alaska. There is no minimum length of time requirement, however, persons in Alaska solely for vacation are not considered *residents*.²³

The Manual further notes that “Households that leave the state will have their cases closed for not meeting the *residency* requirement.”²⁴ The Division claims the only exception to this rule is if a Medicaid recipient from Alaska is out-of-state for medical treatment being paid by Medicare.²⁵

Mr. N argues that there are no rules or regulations requiring him to be physically present in Alaska at the time of his *recertification* so long as he remains an Alaskan resident. He points out the federal Food Stamps regulations draw a distinction from “*living in a State*” to being in a location for “vacation purposes.”²⁶ Mr. N also cites to the Manual to support his claim that the Division erred in denying his Recertification Application.²⁷ He argues that he was already

¹⁹ Ex. 3.

²⁰ Testimony of Mr. N. Ex. 3 & Ex. 4.

²¹ See Ex. 5.

²² Presentation of Ms. Dial; Testimony of Mr. N (describing his conversation with K N, Eligibility Manager at the Gambell office); see also Ex. 3 & Ex. 5.

²³ Manual, at 602-1 B (emphasis added).

²⁴ Manual, at 602-1 B (emphasis added). The phrase “leave the state” implies that a household is moving from Alaska with no intent to return. During the hearing, the Division acknowledged that Mr. N could have spent time out-of-state if he was in Alaska at the time he submitted his Recertification Application and at the time of the interview.

²⁵ Ex. 3; Presentation of Ms. Dial.

²⁶ See 7 C.F.R. § 273.3(a).

²⁷ See Manual, at 604-3 E; see also 7 C.F.R. § 273.14.

approved for Food Stamps through his initial Food Stamps application, and there is no requirement in the Manual or in the federal Food Stamps regulations that his physical presence in the State be verified for *recertification*.²⁸

Mr. N makes two other arguments in support of his appeal. He asserts that his temporary absence from Alaska does not affect his status as an Alaska resident who is entitled to the benefits and privileges of residency, including participation in Alaska’s Food Stamps program.²⁹ He also makes an estoppel argument, noting that he specifically asked the Division if there were any rules relating to his Food Stamps eligibility or time limits on his time out-of-state if he left Alaska temporarily.³⁰

A. Did Mr. N Need to Be Physically Present in the State to be Recertified?

1. Applicable Statutes and Regulations

The Division does not dispute that Mr. N is an Alaskan resident: he considers Alaska to be his home, pays rent, and pays for his utilities in Alaska.³¹ The federal Food Stamp regulation on residency states that a “household *shall live* in the State in which it files an application for participation.”³² The same regulation further specifies that persons “in a project area for vacation purposes shall not be considered *residents*” and that *residency* does not “require an intent to reside permanently in the State.”³³ However, there is nothing in the federal regulations under the Manual’s recertification section which requires a Food Stamps recipient to be “physically present” in the State in order to be recertified.³⁴

Alaska’s statutes and regulations relating to Food Stamps likewise do not have a “physical presence” requirement for households at the time a Recertification Application is filed or at the time the interview is conducted.³⁵ Similarly, Alaska’s Food Stamp regulations do not

²⁸ Testimony of Mr. N; *see also* Manual at 604-2 E (verification requirements for recertification).

²⁹ Testimony of Mr. N; *see also* Ex. 3. It is not necessary to address this argument because Mr. N’s Alaskan residency is not in dispute.

³⁰ Testimony of Mr. N.

³¹ Testimony of Mr. N; Presentation of Ms. Dial.

³² 7 C.F.R. § 273.3(a) (emphasis added). Food Stamps are administered by household rather than by individual. Here, for purposes of Food Stamps, Mr. N is an eligible household.

³³ 7 C.F.R. § 273.3(a). The term “project area” is defined as a county or similar political subdivision designated by a State as the administrative unit for program operations. However, a State as a whole may also be designated as a single project area. *See* 7 C.F.R. § 271.2; *see also* 7 AAC 46.990(c) (adopting by reference the definitions contained in 7 C.F.R. §§ 271-273).

³⁴ *See* 7 C.F.R. § 273.14 (addressing recertification).

³⁵ *See* AS 47.25.975 - 47.25.990; 7 AAC 46.010 - 46.990. In his testimony, Mr. N mentioned how other states treat temporary absence, noting that a vacation or a temporary absence did not impact Food Stamps recipients

address what effect, if any, a temporary absence has on a household's eligibility for Food Stamps.³⁶

2. The Alaska Manual

The Division and Mr. N both claim that the Manual supports their respective positions. However, the Manual is not adopted in regulation, but rather simply provides guidance to caseworkers involved in the certification and recertification process.³⁷

In the Manual, the Division interprets the federal requirement that a Food Stamps recipient "live" in the State that is issuing the Food Stamps to require physical presence at the time a recertification application is filed *and* at the time of the Food Stamps interview.³⁸ However, it is not necessary to determine whether the Division's interpretation is correct when a recipient is seeking recertification. This is because the Division is equitably estopped from denying Mr. N's Recertification Application.

B. Equitable Estoppel Applies to the Facts of This Case

The basic elements of equitable estoppel are: (1) a governmental body asserts a position by conduct or words, (2) the private party acts in reasonable reliance thereon, (3) the private party suffers resulting prejudice, and (4) the estoppel serves the interest of justice so as to limit public injury.³⁹

Here, the basic elements of equitable estoppel are met. Mr. N testified that he disclosed his travel plans to the Division's representative and asked whether there were any limitations on his proposed out-of-state travel. He was advised that there were no such limits or any applicable rules.⁴⁰ His reliance on this advice was reasonable because it came from a representative of the Division after he discussed his situation and disclosed his travel plans. Mr. N subsequently suffered prejudice when his Food Stamp Recertification Application was denied because he was

in other states unless the absence was longer than six months or a year. However, the regulations or statutes of other states are not controlling here.

³⁶ By contrast, the regulations pertaining to Adult Public Assistance specifically define a "temporary absence" as an absence of less than 30 days. *See* 7 AAC 40.110(b).

³⁷ Manual, at 600.

³⁸ *See* OAH No. 13-0337-CMB (stating that the Division interprets "live" to mean that a Food Stamp recipient must be physically present in Alaska to remain eligible for Food Stamps); *see also* Testimony of Mr. N (regarding his conversation with K N); Presentation of Ms. Dial.

³⁹ *See Crum v. Stalaker*, 936 P.2d 1254, 1256; *see also Beecher v. City of Cordova*, 408 P.3d 1208, 1214 (2018).

⁴⁰ The Division did not rebut his testimony.

temporarily out of Alaska. Finally, estoppel will prevent Mr. N from suffering a substantial and unfair hardship while causing no harm to the public.⁴¹

For these reasons, the Division is estopped from denying Mr. N's Recertification Application.

IV. Conclusion

The Division is equitably estopped from taking a position inconsistent with what the Division's representative previously told Mr. N. Accordingly, the Division's decision denying Mr. N's Recertification Application is reversed.

Dated: July 17, 2018

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

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

⁴¹ See *Crum*, at 1258. The public interest is not significantly prejudiced since there are no federal or Alaska regulations limiting the amount of time an otherwise eligible Food Stamps recipient seeking recertification can be out-of-state.

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 26th day of July, 2018.

By: Signed
Name: Chris Kennedy for Kathleen A. Frederick
Title: Administrative Law Judge