

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

In the Matter of)	
)	
E L)	OAH No. 18-1174-SNA
<hr style="width: 40%; margin-left: 0;"/>)	Agency No. 05081035

DECISION

I. Introduction

On November 6, 2018, the Division of Public Assistance (Division) closed E L’s Food Stamps case after concluding she was ineligible. Ms. L requested a hearing on the matter. Following a brief continuance at Ms. L’s request, the matter was heard on December 11, 2018 to address whether the Division correctly closed Ms. L’s recertification Food Stamps case.

The evidence presented at the hearing demonstrated that Ms. L is temporarily travelling away from Alaska but has maintained her residence in Alaska. Contrary to the Division’s conclusion that she must be present in Alaska at the time of application to be considered a resident, the applicable regulations only require she “live” in the State. Because Ms. L continues to “live” in Alaska, she remains eligible for Food Stamps.

The termination of her Food Stamp benefits is reversed.

II. Facts¹

Ms. L is a 61-year-old woman who has resided in Alaska since she was fifteen years old. Ms. L has lived with friends in No Name since her husband left her after six months of marriage without any money. Initially, she resided in their home but later moved into a work studio on their property. She sells crafts that she makes to support herself. Ms. L’s friends do not charge her rent and she has no household bills in her name.

Ms. L’s daughter was undergoing surgery, so she purchased her mother a round trip ticket to travel to Michigan to care for her and her family while she recovered in early October 2018. Ms. L also has a 2-year-old granddaughter who had surgery on December 5, 2018 and has another surgery scheduled on December 20, 2018. Ms. L will remain in Michigan until January 4, 2019, to help care for her daughter and granddaughter as they recuperate. She will use the second half of the round-trip ticket for her return.

¹ The facts are based on Ms. L’s testimony; Ms. Dial agreed with the facts as Ms. L presented them.

Before she left, Ms. L packed a suitcase; she left behind “everything”, including clothing, linens, dishes, and items she uses to make the crafts she sells to support herself. Ms. L has maintained the same phone number and mailing address. She has an Alaskan driver’s license, although she no longer has a vehicle. She is registered to vote in Alaska.²

On October 9, 2018, Ms. L mailed in her recertification application for Food Stamps from Michigan. She was in a hurry before she left and didn’t have time to complete it before she left Alaska. She was candid about where she was physically located at the time of the recertification. The Division concluded, based on her physical presence in Michigan at the time of application, she did not meet the residency requirements from the Alaska Food Stamps manual (Manual) to continue to be eligible.

On November 9, 2018 Ms. L requested a hearing.

III. Discussion

The Food Stamps program is a federal program administered by the state in which an applicant applies for benefits. To administer the program in Alaska, the Alaska Department of Health and Social Services has adopted the federal regulations governing the program.³ The specific regulation applicable to Ms. L’s case requires that she “shall live in the State in which [she] files an application.”⁴

Alaska residency is established by an “individual who is physically present in this state with the intent to remain permanently in the state under the requirements of AS 01.10.055 *or, if the individual is not physically present in the state, intends to return to the state and remain permanently in the state under the requirements of AS 01.10.055 and is absent only temporarily.*”⁵ So an individual is a resident if they are either physically present in the state *or* temporarily absent.⁶ An Alaskan resident can maintain residency and still be considered “living” in Alaska even after leaving the state temporarily.⁷ Presumably, because residency is not disestablished by location, but by the intent the resident has regarding continuing to call

² Exhibit 2.5.

³ 7 AAC 46.010.

⁴ 7 C.F.R. § 273.3. The provisions of 7 AAC 46.021 - 7 AAC 46.990 address elements of the program which have been committed to the discretion of the Division. While there is other criterion that make one eligible for Food Stamps, there is no dispute Ms. L meets those requirements. The only issue in this case is regarding residency.

⁵ AS 01.10.055; *Heller v State Department of Revenue*, 314 P.3d 6 (Alaska 2013)

⁶ *Id.*

⁷ 15 AAC 23.143 (c).

Alaska their home.⁸ Ms. L remains an Alaska resident until her intent to remain an Alaska resident for an indefinite period of time ends.

So it follows, that Ms. L will be eligible for Food Stamps if she meets, and maintains, the residency requirement established by state and federal law. Ms. L demonstrated she is an Alaskan resident because she has lived in Alaska since 1972 and is only temporarily absent from Alaska to assist her daughter and granddaughter while they recuperate from surgery. She expressed her intent to live in Alaska indefinitely and will return on January 4, 2019 by a ticket that was purchased prior to her departure. She maintains a home in Alaska and left her personal property in that residence during her travels. She votes in Alaska. She showed she continues to “live” in Alaska throughout the months she has cared for her daughter and granddaughter in Michigan, for the purposes of residency. Because she lives in Alaska with the intent to remain, she is a resident and therefore qualifies for Food Stamps.

The Division, however, concluded, based on its Manual, that Ms. L was not a resident of Alaska because to be a resident “the applicant must be physically present with the State of Alaska *at the time the application is made.*”⁹ While the Food Stamp manual is an internal guidance tool, it has not been adopted into regulation, so it does not carry the force and effect of law.¹⁰

More importantly, the Manual’s interpretation of 7 CFR 723.3 that in order to be “living” in Alaska, one must physically be present at the time of application, conflicts with other state and federal laws regarding residency and travel.¹¹ 7 CFR 723.3 does not require physical presence to establish residency.

Because the Division’s interpretation of 7 CFR 723.3, that an applicant for Food Stamps to be physically in the state at the time of application to be considered “living” in Alaska, conflicts with other state and federal laws, the Division erred by relying on its Manual for interpretation of residency.¹²

⁸ AS 01.10.055.

⁹ Manual 602-1 B (*italics added*).

¹⁰ OAH No. 13-0063-MDS. *See also US Ford Motor Co.*, 516 F. Supp.2d 770 (W.D.Tex. 2007); *Jerrel v. State. Dept. of Natural Resources*, 999 P.2d 138, 144 (Alaska 2000); APA 44.62.010-A.S.44.62.950.

¹¹ Division position statement.

¹² Because the Division’s expertise would not be particularly probative on the meaning of the statute, it is appropriate to independently interpret the statute. *Eberhart v ALASKA PUBLIC OFFICES COMMISSION* 426 P.3d 890 (Alaska 2018).

IV. Conclusion

The conclusion that Ms. L is no longer living in Alaska is incorrect. A person who is travelling or visiting family outside of Alaska does not stop living in Alaska simply because they are not present in the state at that moment. While there may be instances when extended travel or lack of intent to return to Alaska can result in a loss of residency, the facts in this case do not support the conclusion that Ms. L no longer lives in Alaska. The Division’s determination to close Ms. L’s Food Stamp case is overturned.

Dated: December 17, 2018

By: Signed
Signature
Hanna Sebold
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 9th day of January, 2019.

By: Signed
Signature
Jessica L. Leah
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.]