

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

In the Matter of)
)
F T T) OAH No. 18-0708-GRE
) Agency No.
_____)

DECISION

I. Introduction

F T T applied to the Division of Public Assistance (the Division) for senior benefits under the General Relief Program. The Division denied Mr. T's application because his household income exceeded the applicable program limit.

Mr. T requested a hearing arguing that his wife's income should not be used to calculate household income because she was not living with him. A telephonic hearing was held on August 20, 2018. Mr. T represented himself and testified at the hearing. Sally Dial represented the Division and Bradley Lightner, an eligibility worker for the Division also testified.

Mr. T's wife works in City B during the week. The issue at the hearing concerned whether Ms. T was living with Mr. T so as to include her income in determining eligibility. Mr. T testified that he is separated from Ms. T and she is not living with him. The Division presented evidence that members of the community, and Mr. T's prior statements show that Ms. T lives with Mr. T when she returns to the community. After listening to the testimony and reviewing all the evidence the weight of the evidence supports the Division's determination that Ms. T is a member of Mr. T's household. The Decision of the Division is affirmed.

II. Facts

Mr. T lives in City A. He is married to D T. Ms. T works in City B.¹ In January 2018, Mr. T submitted a recertification application for Food Stamp benefits. As part of that application process, he and Ms. T appeared for a face to face interview with a Division benefits worker. In that interview, Ms. T stated that her home was in City A, but she works in City B. She further stated that she is home on weekends and holidays and when people are sick.²

On May 24, 2018, the Division received a Senior Benefits application from Mr. T. The application for benefits was denied due to the household income based on the previous information

¹ Exhibits 1, 2.

² Exhibit 2

provided.³ On June 8, 2018, Mr. T submitted a second Senior Benefits application. In this application, as with the previous application, he did not include Ms. T as a household member.⁴

The Division conducted a further investigation to determine whether Ms. T lived in the household by calling Mr. T's sister who also lives in City A. Mr. T's sister told the Division representative that Mr. and Ms. T are in the T home and that Ms. T lives with Mr. T when she returns to City A. Based on that information the Division sent a notice to Mr. T requesting further information concerning Ms. T's income.⁵

Mr. T requested a Fair Hearing, stating that: "Nobody was with me. Only my grandchild...." ⁶ To further investigate Mr. T's claim that his wife does not live with him, a case worker contacted Ms. L E a social worker with a Village Council through e-mail. Ms. E provided information consistent with Mr. T's sister, stating that Mr. T's grandson lives with him, but Ms. T works in City B but visits on weekends and stays with Mr. T when she is in City A.⁷

A telephonic Fair Hearing was held on August 20, 2018. The sole issue at the hearing was whether Ms. T lived with Mr. T as a member of the household. Mr. T testified that Ms. T lives in City B; that she has not lived with him for approximately two and one-half years and that she stays with their daughter when she is in City A.⁸ Sally Dial, representing the Division provided the information concerning Mr. T's application and Mr. and Ms. T's statements at the face to face interview for food stamps. Ms. Dial also testified that Mr. and Ms. T share a bank account.⁹ Bradley Lightner, an eligibility worker for the Division, testified concerning the case note describing his telephone contact with Mr. T's sister in City A. He reaffirmed that Mr. T's sister told him the Ms. T works in City B and comes home on weekends and stays with Mr. T when she is in City A.¹⁰ Finally, Mr. T explained that the bank account with his and his wife's joint names is a very old bank account. Mr. T further testified that his wife does not support the household at all and that he is living off the land as he receives only social security and retirement. ¹¹

³ Exhibit 3-3.23, 4.

⁴ Exhibit 5-5.4.

⁵ Exhibit 6.

⁶ Exhibit 7.

⁷ Exhibit 8.

⁸ Testimony of F T,T.

⁹ Testimony of Sally Dial.

¹⁰ Testimony of Bradley Lightner

¹¹ Testimony of Mr. T.

III. Discussion

The sole issue for this appeal is whether Ms. T's income must be included in calculating the annual gross income for Mr. T's household when determining his eligibility for senior benefits under the General Relief Program. Because Mr. T is applying for new benefits, he bears the burden of proof by a preponderance of the evidence to demonstrate that he is eligible.¹²

The General Relief program was established to provide financial assistance to needy persons in an amount "determined by the department with regard to the resources and needs of the person and the conditions existing in each case."¹³ To qualify for senior benefits under the General Relief program, Mr. T's gross income before deductions must be below \$26,015.00.¹⁴ Mr. T's income without including Ms. T's income would qualify him as below the income eligibility level. With Ms. T's income included, the gross income for Mr. T's household would be \$38,001.00 which is over the income eligibility limit.¹⁵

7 AAC 47.549(a) provides:

An individual is eligible for assistance under AS 47.45.301 – 47.45.309 and 7 AAC 47.547 – 7 AAC 47.599 if the individual or the individual's household has a total annual gross income for the calendar year in which the application is received that does not exceed the appropriate income levels in AS 47.45.302(a)(4). In this subsection, "individual's household" means *the individual and the individual's spouse if they are living together*. (emphasis added).

7 AAC 47.551 further provides:

The income of a spouse who is living with the applicant is considered available to the applicant to the extent to which income is considered available to the individual under 7 AAC 47.549, except that the income must be legally available to the applicant to spend for the applicant's basic needs.

In this case the parties provided conflicting testimony and evidence concerning whether Ms. T and Mr. T are "living together". After reviewing all the evidence and testimony I find that Mr. T has failed to meet his burden to prove that he is separated from Ms. T and that they are not living together as a household. This determination is based on the two statements from members of the City A community provided to the Division and the statements made by Ms. T to the Division in January 2018 in the face to face interview related to Mr. T's food stamp application. It is also based on the documentary evidence in the record. The weight of the evidence supports the Division's determination that Mr. and Ms. T are

¹² 7 AAC 49.135.

¹³ AS 47.25.130(a).

¹⁴ 7 AAC 47.150, & AAC 47.549, Exhibit 4.

¹⁵ Exhibit 4.

living together as a household. This, in turn requires the Division to consider Ms. T's income in determining Mr. T's eligibility for senior benefits under the General Relief Program.

IV. Conclusion

Mr. T failed to meet his burden to prove that the Division erred in finding that he was not eligible for senior benefits because his gross annual household income exceeds the income limit to qualify for the program. The decision of the Division is affirmed.

Dated: August 29, 2018

Signed _____
Karen L. Loeffler
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 12th day of September, 2018.

By: *Signed* _____
Name: Karen L. Loeffler
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.]