

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

In the Matter of	)	
	)	
C Q	)	OAH No. 19-0228-SNA
_____	)	Agency No.

**DECISION**

**I. Introduction**

C Q is a Food Stamp recipient whose benefits were due to expire at the end of February 2019. She applied to renew those benefits. Her application was approved effective March 11, 2019. Ms. Q argued that there should have been no interruption in her benefits and requested a hearing.

Ms. Q’s hearing was held telephonically on April 4, 2019. Ms. Q testified on her own behalf. Amanda Holton, a Fair Hearing Representative for the Division, represented the Division and testified on its behalf. The evidence in this case shows that it is more likely than not true that Ms. Q submitted her Food Stamp application before March 1, 2019. As a result, the benefit start date should have been March 1, 2019.

**II. Facts**

Ms. Q is a Food Stamp recipient. On January 16, 2019, the Division sent notice to Ms. Q that her Food Stamps case would close on February 28, 2019, if the recertification was not received by February 15, 2019.<sup>1</sup> The Division has no record of receiving Ms. Q’s application by February 15, 2019, and it closed her Food Stamps case at the end of February.<sup>2</sup>

On March 11, 2019, Ms. Q submitted a Fair Hearing request challenging the closure of her Food Stamp case, along with a new application for Food Stamps.<sup>3</sup> The Division processed Ms. Q’s application and approved her benefits effective March 11, 2019.<sup>4</sup>

Ms. Q testified that she thinks she placed her Food Stamp application in the Division’s City A office’s drop box on or about February 13, 2019. Her hearing request states that she did that because there was a note on the door that the office was closed until further notice. Her testimony was consistent with her hearing request.<sup>5</sup>

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<sup>1</sup> Exhibit 3.  
<sup>2</sup> Holton testimony.  
<sup>3</sup> Exhibit 2; Exhibit 5.  
<sup>4</sup> Exhibit. 6, p. 3.  
<sup>5</sup> Exhibit. 2.

On February 22, 2019 at noon, the Division’s City A office closed because of structural damage resulting from the November 30, 2018 earthquake. The office reopened on February 25, 2019. The applications in the drop box between February 22 and February 25, 2019 were processed and date stamped.<sup>6</sup>

Ms. Holton investigated Ms. Q’s assertion that she placed her application for Food Stamps in the drop box on February 13, 2019. Ms. Holton searched the action history in the Eligibility Information System (EIS) and Alaska’s Resource for Integrated Eligibility Services (ARIES) because it is the Division’s practice to document all contact. Ms. Holton found no contact documented between Ms. Q and the Division between October 7, 2018 and March 11, 2019, even though Ms. Q said she called the Division.<sup>7</sup>

Ms. Holton inquired into the office closure. She found no evidence of unscheduled office closure of the local Food Stamps office, other than February 22-25, 2019.

### **III. Discussion**

Food stamps is a federal program administered by the states.<sup>8</sup> Its statutes are codified primarily at 7 U.S.C. §§ 2011 – 2029, and its regulations are codified primarily at 7 C.F.R. §§ 271-274. The Division administers the food stamp program in Alaska and has promulgated its own regulations at 7 AAC 46.010 - 7 AAC 46.990. Eligibility for Food Stamps, and the amount of benefits awarded, depends primarily on household size, household income, and applicable income exclusions and deductions.

The Division closed Ms. Q’s case at the end of February 2019 because its records did not show that she filed her application. Because Ms. Q did not receive Food Stamps on March 1, she submitted another application on March 11, 2019, which was approved effective March 11, 2019. She did not receive Food Stamp benefits for March 1 – March 10, 2019. Ms. Q argued there should have been no lapse in benefits.

In this case, there is no dispute as to Ms. Q’s eligibility for Food Stamps. The only question is when she became eligible in March. Ms. Q could have been eligible for Food Stamps beginning March 1, 2018, by reapplying any time before the end of February 2019.<sup>9</sup> So, Ms. Q

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<sup>6</sup> Holton testimony.

<sup>7</sup> Exhibit 5; Exhibit 2; Holton testimony.

<sup>8</sup> 7 C.F.R. § 271.4(a).

<sup>9</sup> If a recipient submits a recertification application before the end of the certification period, then the benefits do not lapse. 7 C.F.R. § 273.14(e).

must show it is more likely than not true she submitted her recertification application before the end of February 2019.

This case requires the resolution of a factual dispute. Ms. Q testified that she put her application in the Division's City A office's drop box on or about February 13, 2019 because the office was not open and there was a sign on the door that said the office was closed until further notice. On the other hand, Ms. Holton's testimony showed the Division had no record of Ms. Q's filing a recertification application until March 11, 2019.

It is a well-established rule that the "absence of documentation in regularly kept records is admissible to prove the nonoccurrence [or] nonexistence of the matter."<sup>10</sup> The Division documents all contact between an applicant and the Division in the regular course of business, so its accuracy is reliable.<sup>11</sup> Conversely, the lack of documentation supports a nonoccurrence or nonexistence of a particular matter. However, the lack of documentation alone is not dispositive, so it is important to look at the surrounding circumstances.

Ms. Q said she submitted her application on or about February 13, 2019. But the Division found no application before the submission of the March 11, 2019 application. Simply because the Division's records do not show an earlier application, is not conclusive evidence that it was not submitted. It is not improbable that Ms. Q's application was misplaced. However, because Ms. Q must prove she submitted it timely, looking at surrounding circumstances could corroborate her testimony.

Ms. Q said she filed the application in the drop box because the office was closed and had a sign posted that read "closed until further notice." There is no evidence the office was closed on February 13, 2019. However, Ms. Holden found the office was unexpectedly closed, and had a sign posted, on February 22, 2019 until February 25, 2019. What is more likely is that Ms. Q did not submit her paperwork by February 15, 2019, as the notice required, but rather she submitted it on February 22, 2019. And while it is outside the date in the notice, 7 C.F.R. § 273.14(e) gives a Food Stamps recipient until the end of the month to submit a recertification application and receive uninterrupted benefits.

If Ms. Q had been required to submit the reapplication by February 15, 2019, she did not provide evidence that she did. However, because the sign she identified was posted on February

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<sup>10</sup> *In re K.W.*, (No. OAH -14-0003 SNA, (Dep't of Health and Soc. Servs., January 2014), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6082>.

<sup>11</sup> *See United States v. De Georgia*, 420 F.2d 889, 892-93 (9th Cir.1969); Fed.R.Evid. 803(7)

22-25, and she would not have known about the sign of the office closure without visiting the office, her testimony that she submitted her Food Stamps application before February 28, 2019 is credible.

**IV. Conclusion**

Ms. Q met her burden of showing it is more likely than not, that she submitted her recertification of food stamps application before the end of February 2019. As such, the Division’s decision to begin her benefits on March 11, 2019 is reversed; the Division should have provided her Food Stamps beginning March 1, 2019.

Dated: April 16, 2019

Signed  
\_\_\_\_\_  
Hanna Sebold  
Administrative Law Judge

**Adoption**

The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, adopts this Decision and Order 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. 602(a)(2) within 30 days after the date of this decision.

DATED this 1<sup>st</sup> day of May, 2019.

By: Signed  
\_\_\_\_\_  
Signature  
Hanna Sebold  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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