

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

In the Matter of)
)
S T) OAH No. 20-0750-SNA
) Agency No.
_____)

DECISION

I. Introduction

S T is a current Food Stamp recipient. On May 12, 2020, she contacted the Division of Public Assistance (Division), notifying it that she had joint 50/50 physical custody of her minor children and requested that they be added to her Food Stamp case effective with the month of April 2020. The Division denied her request for April. It also denied her request for May because the children were then receiving Food Stamp benefits through another household, and further denied her request for June and July because it determined that she would not have the children for over 50% of the time in June and July. The Division did not address August, effectively denying it.¹

Ms. T requested a hearing to challenge the Division’s denial of her request to add the children to her Food Stamp case. That hearing was held on October 14, 2020. Ms. T represented herself and testified on her own behalf. Jeff Miller, a Division Fair Hearing representative, represented the Division. Both he and Mena Lauvale, a Division Eligibility Technician (ET), testified for the Division.

There were multiple issues presented in this case, which all involve the central question of whether Ms. T’s children should have been added to her Food Stamp household. The first issue was whether the children should have been added to her household in April, the month predating her report to the Division that she had joint custody of her children. Because, the federal Food Stamp regulations do not allow for retroactive benefits, the answer to this question is no. The second issue is whether her children should have been added to her household in May, the month of her application. The answer is no because the children were already receiving benefits in May through their father’s household, and the federal regulations do not allow persons to receive benefits through multiple households at the same time. The third issue is whether the Division should have added the children to her household for the months of June and

¹ As discussed at hearing, eligibility for September 2020 and subsequent months is not an issue in this case.

July. The answer to this question is also no because the week on and week off physical custody arrangement placed the children in the father's home over 50% of the time during those months. The fourth and last issue is whether the Division should have added the children to Ms. T's household for August. The federal regulations that govern Food Stamp application processing do not provide the Division with the ability to look at applications to determine eligibility any longer than two months after the application. Because August was outside this time window, the Division did not err when it did not add the children to Ms. T's household for August. Consequently, the Division's determinations that the minor children should not be added to Ms. T's household during any of the months of April through August 2020 is AFFIRMED.

II. Facts²

Ms. T is a Food Stamp recipient. She was receiving those benefits in April 2020 as a one-person household. She has four minor children. She and the children's father have joint physical custody of the children, which began at the end of March 2020. They share that custody on a week by week basis, wherein they exchange the children on Fridays.³ The father had his own Food Stamp case, where he was receiving Food Stamp benefits for himself and the four children. He received those benefits starting in March 2020 through August 2020.⁴

On May 12, 2020, Ms. T telephoned the Division and told an ET that she now had 50/50 custody of her children and requested that they be added to her Food Stamp case. Ms. T told the ET that she wanted the children added to her Food Stamp case beginning in April. The ET told Ms. T that retroactive benefits were not available for April and that the children could not be added to her Food Stamp case for May because the children had already received benefits for May in their father's household. After finding out that the children were exchanged on a week on/off basis, with Ms. T's current week having begun on May 8, the ET determined that Ms. T would not have custody of the children over 50 percent the time in June or July and informed her that her children would not be added to her case. Ms. T requested a hearing to challenge the denial.⁵ The Division sent her a formal denial notice for June and July the following day, May

² The following facts were established by a preponderance of the evidence.

³ Ms. T's testimony.

⁴ Ex. 1.1.

⁵ Ms. Lauvale's testimony; Exs. 2 – 2.2, 4.

13, 2020. The notice did not address whether Ms. T’s children would be added to her case in August.⁶

III. Discussion

As an initial matter, it must be noted that Ms. T’s court system child custody case has resulted in a court order that Ms. T is entitled to claim two of the minor children as dependents for Food Stamp benefits. However, as acknowledged in that same court order, the Food Stamp program is required to utilize its normal policies and procedures and the trial court “does not have the authority to order that the [Food Stamp program] not comply with its policies and procedures.”⁷ Accordingly, the trial court order has no effect in this case and will not be discussed further.

The Food Stamp program is a federal program which is administered by the State of Alaska.⁸ The Code of Federal Regulations contains the rules for determining if an applicant is eligible for Food Stamp benefits. There are four issues in this case: (A) whether the children should have been added to Ms. T’s household in April, the month predating her report to the Division that she had joint custody of her children; (B) whether her children should have been added to her household in May, the month she notified the Division of the change; (C) whether the Division should have added the children to her household for the months of June and July; and (D) whether the Division should have added the children to Ms. T’s household for August.

A. Retroactive Coverage for April 2020

Ms. T notified the Division in May 2020 that she had joint physical custody of her children. Because she had had joint physical custody in April, she requested that the children be added to her case effective with the month of April. This is a request for retroactive benefits. However, the federal regulations provide that when a change is reported to the Division that would result in an increase in benefits due to the addition of a household member, that benefit increase starts “no later than the first allotment issued 10 days after the date the change was reported to the State agency.”⁹ Consequently, if Ms. T was eligible to add the children to her household, it would not take place retroactively.

⁶ Ex. 5.

⁷ See Trial Court Order dated August 28, 2020, p. 2, filed by Ms. T.

⁸ 7 C.F.R. § 271.4(a).

⁹ 7 C.F.R. § 273.12(c)(1)(ii).

B. Coverage for May 2020

Coverage for May 2020 is also at issue. The pertinent fact that governs this issue is that the children had already received Food Stamp benefits for May as part of their father’s Food Stamp household. The federal Food Stamp regulations do not allow a person to be part of two Food Stamp households simultaneously. “No individual may participate as a member of more than one household ... in any month.”¹⁰ These means that because the children had received benefits in May 2020 as part of their father’s household, they could not be added to Ms. T’s household in that same month.

C. Coverage for June and July 2020

The standard rule is that the children must be considered as part of their custodial parent’s household for Food Stamp eligibility purposes.¹¹ The federal regulations do not squarely address the issue of when parents share physical custody of minor children. It leaves these unregulated situations to the individual states to determine and apply their policies.¹² Alaska has established a policy whereby a person is considered to be a member of the household where they spend more than 50 percent of their time during a given month.¹³ What this means is that where custody fluctuates, the child would be a member of the household where they spend more than 50 percent of their time. If the custody arrangement resulted in a complete 50/50 split of time, then the Food Stamp household membership would be with the household that applied first.¹⁴

The ET reviewed a calendar to determine if the children would be in Ms. T’s household over 50 percent of the time during either June or July 2020, based upon Ms. T’s report that she exchanged the children on Fridays, with her having the children on a week on and week off basis, with her current week beginning on Friday May 8, 2020. After that review, the ET calculated that the children’s father would have the children more than 50 percent of the time during both June and July 2020. Ms. T did not dispute the ET’s calculation of the number of days that the children would spend with their father during those months. It therefore follows that because the children were already part of their father’s Food Stamp household and they

¹⁰ 7 C.F.R. § 273.3(a).

¹¹ 7 C.F.R. § 273.1(b)(1)(ii).

¹² 7 C.F.R. § 273.1(c).

¹³ *Alaska Food Stamp Manual* § 602-1.

¹⁴ *Alaska Food Stamp Manual* § 602-1.

would be spending more than 50 percent of the time in his home during the months of June and July 2020, Ms. T was not eligible to have them as part of her Food Stamp household during those months.

D. August 2020

The month of August presents a slightly different factual posture. After reviewing the calendar for August, based upon Ms. T's reporting of when she exchanged the children, she would have had the children more days during that month than the children's father.¹⁵ However, the Division only looks at the initial month of eligibility, which would have been June (because Ms. T did not report the change until after May benefits had already been issued), and the month thereafter, which would have been July. And the Division is required, unless additional information is required, to approve or deny an application (or change) within 30 days of the filing date.¹⁶ The Division acted promptly and consistent with its regulatory authority when it did not add the children to Ms. T's household for August because August was outside the time window for it to determine eligibility.

IV. Conclusion

Ms. T was not eligible to add her minor children to her Food Stamp household during the months of May through July 2020. In addition, because of the timing of her notification to the Division regarding her joint physical custody of the children, the Division was correct to not add her children to the household for August. The denial of her request to add the minor children to her household is AFFIRMED.

Dated: October 26, 2020

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁵ Extrapolating from the May 8, 2020 Friday exchange date, Ms. T would have the children August 1 (Saturday) – August 6 (Thursday), August 14 (Friday) – August 20 (Thursday), and August 28 (Friday) – August 31 (Monday), a total of the 17 days in this 31 day month.

¹⁶ 7 C.F.R. § 273.10(b)(3); 7 C.F.R. § 273.12(c); *Alaska Food Stamp Manual* § 601-5D.

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 10th day of November, 2020.

By: *Signed*
Name: Lawrence A. Pederson
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.]