

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

In the Matter of	)	
	)	
K O-H	)	OAH No. 21-0753-SNA
_____	)	Agency No.

**DECISION**

**I. Introduction**

K O-H was a Supplemental Nutrition Assistance Program<sup>1</sup> (SNAP) benefit recipient. On March 12, 2021, the Division of Public Assistance (DPA) notified Ms. O-H that she received SNAP benefits in the amount of \$841 during November 2020 through February 2021 that she should not have received, and that she was required to repay those benefits.<sup>2</sup>

Ms. O-H disagreed with DPA’s repayment requirement and requested a hearing. Her hearing was held telephonically on June 3, 2021. Ms. O-H represented herself and testified on her own behalf. F O, Ms. O-H’s mother also testified for Ms. O-H. Sally Dial, a Fair Hearing Representative with DPA, represented DPA. Karen Mouton and Kyle Gray, both of whom are Eligibility Technicians with the Division, testified for the Division.

DPA had the burden of proof in this case. It did not meet it. The evidence does not show that Ms. O-H was living at her mother’s home. Instead, it shows that she was “couch-surfing” and staying at her mother’s home only about two days per week. As a result, DPA’s repayment requirement is therefore REVERSED.

**II. Facts<sup>3</sup>**

Ms. O-H originally applied for and received SNAP benefits based upon a March 31, 2020 application that showed her living with a friend.<sup>4</sup> She applied to renew those benefits on November 25, 2020. That application contains a different residence/ mailing address from her prior application.<sup>5</sup> Ms. O-H participated in a telephonic interview with a DPA Eligibility Technician on December 28, 2020. DPA’s casenote recording the details of that interview show

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<sup>1</sup> The Supplemental Nutrition Assistance Program was previously referred to as the Food Stamp program. It is still commonly referred to as “Food Stamps.”  
<sup>2</sup> DPA sent Ms. O-H a new notice on May 17, 2021, which replaced the prior notice of March 12, 2021.  
<sup>3</sup> The facts in this case were proven by a preponderance of the evidence.  
<sup>4</sup> Exs. 1 – 1.16.  
<sup>5</sup> Ex. 3.1.

that she stated that she was living with her mother and brother.<sup>6</sup> The address contained on the November 25, 2020 application as being Ms. O-H's residence and mailing address is the address of where her mother and brother live. Ms. O-H was 19 years old at the time of that application.<sup>7</sup> Ms. O-H was then approved for SNAP benefits based upon her statements during her December 28, 2020 interview that she shopped for and prepared food separately from her mother and brother.<sup>8</sup> Ms. O-H was not asked whether her stay at her mother's home was temporary or intended to be for a longer period.<sup>9</sup>

A Division employee reviewed Ms. O-H's SNAP case and determined that she should not have been approved for SNAP benefits for a one-person household. The basis for that determination was that because Ms. O-H was under the age of 22 and was living with her mother, she could not be approved in her own right for SNAP benefits, but rather as part of a SNAP household that included her mother.<sup>10</sup> The approval of Ms. O-H's November 2020 application resulted in her receiving SNAP benefits during November 2020 through February 2021 in the total amount of \$841.<sup>11</sup> The Division then sent Ms. O-H a notice that she was required to reimburse it for \$841.<sup>12</sup>

Ms. O-H and her mother, F H, both testified that Ms. O-H did not move into her mother's home. Instead, she would stay at her mother's home about two nights per week and spend the other nights at her sibling's or friends.<sup>13</sup> Ms. O-H provided her mother's address on the application as being both her residence and mailing address because she did not have a different address that she could provide.<sup>14</sup> Ms. H has a small two-bedroom home where she and another child live. She does not have room for Ms. O-H to move in with them. While Ms. O-H's belongings are stored in the basement, so are the belongings of other of her siblings who do not reside there.<sup>15</sup> Ms. O-H and Ms. H were both credible witnesses. Ms. O-H came across as particularly unsophisticated and overwhelmed by the entire process. Given her telephonic

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<sup>6</sup> Ex. 3; Ms. Mouton's testimony.

<sup>7</sup> Ex. 3.2.

<sup>8</sup> Ex. 3; Ms. Mouton's testimony.

<sup>9</sup> Ms. Mouton's testimony.

<sup>10</sup> Ex. 8.3; Ms. Mouton's testimony.

<sup>11</sup> Ex. 8.4

<sup>12</sup> See Exs. 8.1 – 8.2 and the replacement notice dated May 17, 2021.

<sup>13</sup> Ms. O-H and Ms. H's testimony.

<sup>14</sup> Ms. O-H's testimony.

<sup>15</sup> Ms. H's testimony.

demeanor, it was very probable that she did not understand the Division’s telephone interview questions.

### **III. Discussion**

The issue in this case is whether DPA was correct to require Ms. O-H to repay the \$841 in Food Stamp benefits that she received in November 2020 through February 2021.

SNAP is a federal program which is administered by the State of Alaska.<sup>16</sup> The Code of Federal Regulations contains the rules for determining if an applicant is eligible for SNAP benefits and if eligible, the amount of the applicant’s monthly benefit. One of those rules is that if a child, under the age of 22, is living in their parent(s) home, they have to be included in the parent’s household.<sup>17</sup> What this means in Ms. O-H’s case is that if she were living with her mother, she could not apply and be approved for SNAP benefits solely for herself, even if she purchased and prepared food solely for herself. Her mother’s three-person household (the mother, Ms. O-H, and the son) would have had to apply for and be approved for SNAP benefits. Because Ms. O-H was approved for benefits on her own, if those were improperly approved, she would have to reimburse the Division for the benefits she received.<sup>18</sup>

The Division has the burden of proof in this case because it is seeking to recover paid SNAP benefits from Ms. O-H.<sup>19</sup> In order to prevail, it must therefore show that it is more likely true than not true that Ms. O-H was living with her mother when she applied for and received the benefits. Because Ms. O-H and Ms. H were both credible witnesses, the evidence shows that Ms. O-H was sleeping at her mother’s home only parttime, generally two nights per week, and spending the other part of the week with others. This factual finding is not detracted by Ms. O-H’s signing of the application showing her mother’s address as her residence address nor by her interview statements. As found above, Ms. O-H is not sophisticated, overwhelmed by the process, and her signing and interview statements must be examined in that light.

The question then arises as to whether Ms. O-H’s less than half-time stay at her mother’s home constitutes “living” at her mother’s home. Given that she is only there two days a week, she does not live at her mother’s home. Indeed, she cannot be said to be living anywhere. Although she keeps her belongings at her mother’s home, she is more properly described as

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<sup>16</sup> 7 C.F.R. § 271.4(a).

<sup>17</sup> 7 C.F.R. § 273.1(b)(1)(ii).

<sup>18</sup> 7 C.F.R. § 273.18(a)(2) and (b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

<sup>19</sup> 7 AAC 49.135.

homeless and “couch-surfing.” The Division therefore did not meet its factual burden of proof to show that Ms. O-H was living at her mother’s home. As a result, the regulatory requirement that she only be eligible for SNAP benefits through her mother’s household does not apply. It follows that the Division’s determination that Ms. O-H is required to reimburse it for the SNAP benefits she received is not supported by the evidence.

**IV. Conclusion**

DPA’s decision to require Ms. O-H to repay it the \$841 in SNAP benefits which she received in November 2020 through February 2021 is REVERSED.

Dated: June 8, 2021

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
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 21<sup>st</sup> day of June, 2021.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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