

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

In the Matter of	)	
	)	
K G	)	OAH No. 19-0019 SNA
<hr style="width: 45%; margin-left: 0;"/>	)	Agency No.

**DECISION**

**I. Introduction**

On January 2, 2019, K G applied for Food Stamp benefits.<sup>1</sup> The Division of Public Assistance (Division) sent a written denial on January 3, 2019, and Mr. G requested a hearing.

The hearing was conducted telephonically on January 18, 2019.<sup>2</sup> The record remained open until January 25, 2019, so Mr. G could provide supplemental documents.<sup>3</sup> However, Mr. G did not submit additional documents.

Because Mr. G is a full-time student who is not working, the Division’s decision to deny his application is affirmed.

**II. Facts<sup>4</sup>**

K G is a 27-year-old single man who resides in City A. He works seasonally in construction and uses the time off to pursue his education. On January 2, 2019, Mr. G applied for Food Stamps.<sup>5</sup> Mr. G was interviewed the same day. There was a dispute about what Mr. G said during the interview regarding the number of units he was taking. The interviewer recorded he was taking 15 units, but Mr. G testified he was taking 13 units.<sup>6</sup> For the purposes of this decision, Mr. G is a full-time student taking 13 units.<sup>7</sup>

Mr. G described his employment over the past year. He said he had had some wages in the summer months with Employer A. He was also self-employed but closed that business in November 2018. Mr. G testified he has a job offer to start work in March 2019 and while

---

<sup>1</sup> Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”) However, the program is still commonly referred to as the Food Stamp Program.

<sup>2</sup> All parties appeared telephonically. Jeff Miller, Public Assistance Analyst for the Division, testified for the Division; Mr. G testified on his own behalf.

<sup>3</sup> 2 AAC § 64.310.

<sup>4</sup> The facts are based on the exhibits and testimony by the parties. The Division’s exhibits were admitted over Mr. G’s objection.

<sup>5</sup> Exhibit 2-2.7.

<sup>6</sup> Division position statement at 2; Mr. G testimony.

<sup>7</sup> Mr. G testimony; Fair hearing request form submitted by Mr. G.

he has applied for a job at the school bookstore, he has not heard back from them. At the time the hearing concluded, Mr. G was not receiving a weekly paycheck.

### III. Discussion

Food Stamps is a federal program which is administered by the states.<sup>8</sup> The Code of Federal Regulations contains the rules for determining when a student qualifies for Food Stamps benefits.<sup>9</sup> A student who is enrolled at least half time in an institution of higher learning is ineligible for Food Stamps unless that student qualifies for one of the exceptions.<sup>10</sup> It is undisputed that College A is an institution of higher learning. It is undisputed 13 units is more than half time enrollment, and, as Mr. G testified, he is a student who is taking 13 units. As such, for Mr. G to qualify for Food Stamps, he must demonstrate he meets one of the 11 eligibility exceptions for students.<sup>11</sup>

Under 7 CFR 273.5 (a), a student must meet at least one of the 11 exceptions set forth in 7 CFR 273(b). Mr. G asserts he meets the exception under 7 CFR 273.5 (b) (5), which requires the student to, “[b]e employed for a minimum of 20 hours per week and paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.” Mr. G asserts that because he worked full time most of the prior year, on average he worked a minimum of 20 hours a week. But the federal regulations do not contemplate an annual average in order to be subject to the exception. It requires weekly employment and weekly pay.<sup>12</sup>

The federal regulations allow that:

“[t]he State agency may choose to determine compliance with this requirement by calculating whether the student worked an average of 20 hours per week over the period of a month, quarter, trimester or semester. State agencies may choose to exclude hours accrued during academic breaks that do not exceed one month. A State agency that chooses to average student work hours must specify this choice and specify the time period over which the work hours will be averaged in its State plan of operation.”<sup>13</sup>

While the Federal regulations leaves that decision to the individual states, Alaska’s manual does not allow any student average calculations. While the manual is not binding law, it is evidence of the Division’s historical approach to implementation of the student work

---

<sup>8</sup> 7 CFR § 271.4.

<sup>9</sup> 7 CFR § 273.5 (a) and (b).

<sup>10</sup> 7 CFR § 273.5 (a).

<sup>11</sup> 7 CFR § 273.5 (a) defines an institution of higher education as “. . . a regular curriculum at a college or university that offers degree program.”

<sup>12</sup> 7 CFR § 273.5 (b) (5).

<sup>13</sup> Id.

requirement.<sup>14</sup> While the Federal regulations leaves that decision to the individual states, Alaska is not a state that “choose[s] to determine compliance with this requirement by calculating whether the student worked an average of 2 hours per week” or has ‘specif[ied] this choice and specif[ied] the time period over which the work hours will be averaged in its state plan of operation.’<sup>15</sup> The Division requires the student to be “employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed be employed a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20.”<sup>16</sup> Mr. G does not qualify for the student exception because he is not currently receiving pay for 20 hours a week or more; he is not currently employed.<sup>17</sup>

Mr. G does not qualify for a work exception. He did not argue he qualified for any other exception, nor did any of the others appear to be applicable.

#### **IV. Conclusion**

Mr. G did not demonstrate any legal authority which would qualify him for Food Stamps. Absent legal authority, no exceptions can be made. The Division’s decision is affirmed.

Dated: February 8,2019

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

---

<sup>14</sup> 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.

<sup>15</sup> 7 CFR § 273.5 (b) (5). *See also* 7 AAC 46.021 for the list of federal food stamp options adopted by Alaska.

<sup>16</sup> 7 CFR § 273.5 (b) (5).

<sup>17</sup> His employment is based on the testimony at the time of the hearing. If his circumstances have changed, it does not change this decision, but may be a basis for a reapplication.

**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 27<sup>th</sup> day of February, 2019.

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.]