

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

In the Matter of:)	
)	
H.S.)	OAH No. 18-0512-SNA
_____)	Agency No. 05924329

DECISION

I. Introduction

On April 18, 2018, the Division of Public Assistance (Division) closed H.S.’s Food Stamps case because it found he no longer lived in Alaska at the time he applied to renew his benefits. H.S. requested a hearing on the matter. Following a brief continuance at his request, the matter was heard on July 17, 2018 to address whether the Division correctly closed H.S.’s recertification Food Stamps case.

The evidence presented at hearing demonstrated that H.S. was temporarily absent from Alaska for several months, but that he did not move from the State of Alaska. Even though he failed to renew his Food Stamp benefits during his temporary absence, the applicable regulations do not require a physical presence in the State, but merely that the recipient “live” in the State. Because H.S.’s absence was only temporary, and he continued to “live” in the State, he therefore continued to be eligible for Food Stamps. Accordingly, the termination of his Food Stamp benefits is reversed.

II. Facts

H.S. has been an Alaska resident since 1984.¹ He originally applied for Food Stamps in September 2017. H.S. lives “off the grid” on property owned by his brother.² In exchange for living on his brother’s property, he performs watchman services for his brother.³

At some point in January 2018, H.S. went Nebraska to care for his ill sister at her request.⁴ He packed a suitcase and his laptop, leaving behind other household items in his home

¹ H.S.’s Hearing Brief; H.S.’s testimony.
² H.S.’s testimony.
³ *Id.*
⁴ *Id.*

in Alaska.⁵ While in Nebraska, he maintained the same phone number and mailing address.⁶ He had his mail forwarded temporarily to Nebraska.⁷

H.S. filed to renew his Food Stamps in January 2018 and the Division granted the renewal. He filed again for recertification on March 23, 2018.⁸ This too was granted.

However, on April 17, 2018, the Division sent H.S. a closure notice ending his benefits.⁹ The Division concluded he no longer lived in Alaska because, for the period of at least a month, he had only used the EBT in Nebraska, and as such he no longer lived in Alaska.¹⁰ The Division did not contact H.S. prior to making its decision.

On April 30, 2018, H.S. requested a hearing, asserting he still lived in Alaska and was simply visiting family. In May 2018, H.S. provided proof he was back in Alaska.¹¹ He requested his benefits continue until a hearing decision was made.

III. Discussion

The Food Stamps program is a federal program administered by the state in which an applicant applies for benefits. To administer the program in Alaska, the Alaska Division of Health and Social Services has adopted the federal regulations governing the program.¹² The specific regulation applicable to this case requires that, to be eligible, one “shall live in the State in which [he/she] files an application”¹³ The Alaska Food Stamps manual, on the other hand, states a Food Stamps recipient must be physically present in Alaska to be eligible for benefits, and “must remain in Alaska to continue to be” eligible, while also suggesting various manners in which residency can be documented.¹⁴ The Food Stamp manual is instructive, but it is not a regulation or statute, and does not have the force of law. Accordingly, this decision only relies upon the applicable Food Stamp regulations.

Alaska’s statutes and regulations relating to Food Stamps do not have a “physical presence” requirement for households at the time a recertification application is filed.¹⁵

⁵ *Id.*
⁶ H.S.’s testimony; Ex 2.
⁷ H.S.’s testimony.
⁸ H.S.’s testimony; Ex 2.
⁹ Ex 4.
¹⁰ H.S.’s testimony; Ms. Dial’s testimony; Ms. Gosda’s testimony.
¹¹ Ms. Dial’s testimony; Ex 6.
¹² 7 AAC 46.010.
¹³ 7 C.F.R. § 273.3.
¹⁴ Exhibit 9 (Alaska Food Stamp manual 602-1B).
¹⁵ *See AS 47.25.975 - 47.25.990; 7 AAC 46.010 - 46.990.*

Similarly, the federal Food Stamps regulations do not address what effect, if any, a temporary absence has on a household's eligibility for Food Stamps.¹⁶

Meghan Gosda, a Division fraud investigator, testified that, as a matter of course, the Division receives information on all EBT transactions occurring outside of Alaska where, during the course of a month, there was no use in Alaska.¹⁷ Upon further inquiry, she confirmed that the Division's practice was to reach the individual and determine what that individual's plans were regarding returning to Alaska. Ms. Gosda said she had not contacted H.S.,¹⁸ but had he told her he was visiting his sister with plans to return, he would not have lost his benefits.

One can continue to maintain a residence and live in Alaska while travelling. There is no time frame articulated in the Food Stamp regulations that defines when residency would be lost for out of state travel. Nor is there either an explicit or implicit requirement that says a recipient must be physically present in the State when he or she applies to renew Food Stamp benefits. In this case, the surrounding circumstances confirm that H.S.'s absence was indeed temporary and that he continued to "live" in Alaska throughout the months he was caring for his sister in Nebraska.

IV. Conclusion

The conclusion that H.S.'s use of the EBT card exclusively in Nebraska disestablished his eligibility for Food Stamps benefits is incorrect. The fact that a person is travelling or visiting family outside of Alaska does not, in and of itself, mean that the person no longer "lives in Alaska" for purposes of complying with 7 C.F.R. § 273.3. While there may be instances when extended travel or lack of intent to return to Alaska can result in a loss of residency, the facts in this case do not support the conclusion that H.S. was no longer living in Alaska. The Division's determination to close H.S.'s Food Stamp case is overturned.

Dated: July 18, 2018.

Signed _____

Hanna Sebold
Administrative Law Judge

¹⁶ By contrast, the regulations pertaining to Adult Public Assistance specifically define a "temporary absence" as an absence of less than 30 days. *See* 7 AAC 40.110(b).

¹⁷ Ms. Gosda's testimony.

¹⁸ Ms. Gosda testified there was no phone number listed on the information she received, but conceded the system was older, and that this could have been an input error. The documents throughout the case contain the same phone number, which was the one H.S. was reached at to participate in this hearing.

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 7th day of August, 2018.

By: Signed _____
Name: Hannah Sebold
Title: Administrative Law Judge

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