

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

In the Matter of)
)
T. S.) OAH No. 23-0169-SNA
_____)

DECISION

I. Introduction

T. S. is a Supplemental Nutrition Assistance Program (SNAP)¹ recipient whose benefits were due to expire at the end of August 2022. The Division of Public Assistance (Division) closed her SNAP case at the end of August because it allegedly did not receive her SNAP benefit recertification application. T. S. maintained that she timely submitted her recertification application and requested a hearing on January 5, 2023 contesting the closure of her benefit case. The Division referred the case to the Office of Administrative Hearings on March 7, 2023.²

T. S.’s hearing was held on March 22, 2023. Sally Dial, a Division Fair Hearing representative represented the Division and testified on its behalf. T. S. represented herself and testified on her own behalf. M. N. testified for T. S.

The evidence at hearing showed that T. S. submitted her SNAP recertification application to the Division on August 11, 2022. As discussed below, this case is remanded to the Division to determine her eligibility for September 2022 through February 12, 2023.³

II. Facts

T. S. has been receiving SNAP benefits since late 2006, except for a two-year time period when she was not financially eligible.⁴ Division records show that during her long tenure as a SNAP recipient, she has consistently turned her recertification applications in to the Division before her benefits were due to expire.⁵ During the past several years, she did not have to turn in

¹ The Supplemental Nutrition Assistance Program is also known by its previous name of the Food Stamp Program. Congress changed the name of the program from the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP). The name SNAP will be used in this decision.

² T. S. requested a hearing on January 5, 2023. Per 7 AAC 49.080(2), the Division is to refer hearing requests to the Office of Administrative Hearings within 10 days of the hearing request, which would have been January 17, 2023 (January 15 was a Sunday and January 16 was a State holiday). Per 7 C.F.R. § 273.15(c)(1), her hearing was to be held and a decision issued by March 6, 2023 (60 days after her hearing request). The Division did not refer this case to the Office of Administrative Hearings for hearing until March 7, 2023.

³ T. S. reapplied for SNAP benefits in February 2023 and was found eligible for benefits effective February 13, 2023.

⁴ Ms. Dial’s testimony; T. S.’s testimony.

⁵ Ms. Dial’s testimony.

a recertification application because recertification requirements were suspended for a time due to Covid-19 pandemic emergency measures.⁶

T. S. was receiving SNAP benefits during the summer of 2022. The Division notified her on July 18, 2022, that her benefits would end on the last day of August 2022, and that to avoid any interruption in her receipt of benefits, it would need to receive her recertification application form no later than August 15, 2022.⁷

T. S. testified that she hand-delivered her completed recertification application form to the Division’s University Center office in Anchorage, Alaska on August 11, 2022 and put the application in the drop box there. T. S. testified that she was able to recall the exact date because she was in the process of moving that day and got a ride from her friend M. N.⁸ M. N. submitted a letter stating she gave T. S. a ride to public assistance that day.⁹ M. N.’s testimony was similar to her letter. When M. N. was asked about how she knew the exact day she gave T. S. a ride, she testified that she had looked at her old text messages where T. S. asked her for a ride.¹⁰

T. S.’s SNAP benefits ended at the end of August 2022. She became aware in December of 2022, through a Facebook Group, that she could request a hearing to challenge the termination of her benefits, which she did on January 5, 2023.

Ms. Dial testified that the Division did not have a record of T. S. submitting her recertification application and was unable to locate it after searching.

Ms. Dial, T. S., and M. N. were all credible witnesses.

III. Discussion

A. Timeliness of the Hearing Request

The federal SNAP regulations provide that a SNAP recipient generally has 90 days after “any action by the State agency or loss of benefits” on their case to request a hearing.¹¹ However, that same federal regulation also provides that “[a]ction by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request.”¹² T. S.’s benefits ended on the last day of August 2022. Under a strict

⁶ Ms. Dial’s testimony.

⁷ Ex. 4.

⁸ T. S.’s testimony.

⁹ Ex. 6.

¹⁰ M. N.’s testimony.

¹¹ 7 C.F.R. § 273.15(g).

¹² 7 C.F.R. § 273.15(g).

application of the 90-day rule, she had until November 30, 2022 to request a hearing. Her hearing request was made on January 5, 2023. However, her request for a hearing could arguably be construed as a request for restoration of her benefits that lapsed as of the end of August 2022, which would mean that her hearing request would have been timely. Regardless, the Division referred the case for hearing,¹³ and it did not seek to have the case dismissed for untimeliness. Accordingly, the Division is deemed to have waived any objection to T. S.'s hearing request based upon timeliness.

B. Did T. S. Submit Her Recertification Application?

This case involves the resolution of a factual issue: whether T. S. submitted her recertification application to the Division, and if so, when. T. S. has the burden of proof by a preponderance of the evidence because she was applying to renew her benefits.¹⁴

Ms. Dial testified credibly that the Division did not have any record of T. S. filing her recertification application. It is a well-established evidentiary rule that absence of documentation in regularly kept business records is admissible to prove the nonexistence or nonoccurrence of the matter.¹⁵ However, this is not dispositive and can be countered by other evidence.

T. S. and M. N. credibly testified that M. N. drove T. S. to drop off her recertification application on August 11, 2022. M. N. was able to verify the actual date by checking her text messages. T. S. testified that she put her application in the Division's office drop box. In addition, the evidence shows that T. S. has, over her long history of receiving SNAP benefits, a consistent pattern of submitting her recertification requests before those benefits were due to expire.

Ms. Dial's testimony is not at all doubted. However, given the credible testimony of T. S. and M. N., the preponderance of the evidence shows that T. S. provided the Division with her recertification application on August 11, 2022, consistent with her long pattern of timely submitting recertification applications, and the Division misplaced or overlooked it. Given the

¹³ The Division has 10 days after the date it receives a hearing request to either deny the hearing request or refer the case over to the Office of Administrative Hearings for hearing. 7 AAC 49.080.

¹⁴ Unlike other public assistance programs, SNAP does not have an expectation of continued eligibility. Therefore, each recertification application involves an independent and new eligibility determination. *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6th Cir. 1983). Applicants for new public assistance benefits have the burden of proof. 7 AAC 49.135.

¹⁵ *See United States v. De Georgia*, 420 F.2d 889, 892 -93 (9th Cir. 1969).

volume of cases that the Division handles, while this is unfortunate, it is not unforeseeable. The very late referral of this case for hearing is illustrative of the challenges the Division faces in administering its benefit caseload.

T. S. has therefore met her burden of proof and established that she submitted her recertification application on August 11, 2022, before the August 15, 2022 deadline for renewing her SNAP benefits without interruption.¹⁶ This does not completely resolve the issue. The Division has not located the application. T. S. did not submit a copy of it. It is therefore not possible to determine whether T. S. met the eligibility requirements for recertification for September 2022 forward. This case is therefore remanded to the Division for determination of T. S.'s eligibility for the month of September 2022 onward. T. S. may need to submit a "new" application, complete with her income, expense, and household composition information as of that time period. The Division is directed to notify T. S. of what information it requires within 10 calendar days of the date this decision becomes effective.¹⁷ T. S. must comply with the Division's requests for information, including its determination as to whether she needs to complete a "new" application. If T. S.'s application is denied, or she disagrees with the benefit start date or the benefit amount, she can request a new hearing on those issues.

IV. Conclusion

The evidence in this case shows that T. S. timely submitted her recertification application for SNAP benefits. Consequently, this case is remanded to the Division to determine her eligibility for September 2022 through February 12, 2023 as discussed above.

DATED: March 24, 2023.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁶ See Ex. 4.

¹⁷ Although not strictly on point, 7 C.F.R. § 273.15(c)(1) provides a guideline on time frames inasmuch as it instructs the State agency to act within 10 days of the hearing decision date on "[d]ecisions that result in an increase in household benefits."

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 April, 2023.

By: *Signed* _____
Lawrence A. Pederson
Administrative Law Judge

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