

C. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

To be eligible for SNAP, the applicant must be physically present within the State of Alaska. Households must remain in Alaska to continue to be entitled to SNAP from Alaska. One of the approved interfaces used to determine residency is the PFD which indicated Ms. T. was ineligible for SNAP. Households that leave the state will have their cases closed for not meeting the residency requirement (<http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>). The record indicates that Ms. T. said she was in Alaska on March 27, 2019. Ms. T. later admitted this was false and stated that she left Alaska in January 2019. Based on the timeline and evidence presented regarding the use of her SNAP benefit card in early April 2019, in Nebraska; her IP address on March 27, in Nebraska; the address discrepancies between her PFD and SNAP benefits applications, submitted within 5 days of each other and on which she reported her mailing address as being in Nebraska; and the State's food stamp manual which indicates "physical" presence as a requirement for eligibility, the decision is reversed.

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 5<sup>th</sup> day of March, 2020.

By: Signed \_\_\_\_\_  
Name: Doniel Wolfe  
Title: Regulations and Policy Analyst  
Agency: Department of Health and Social Services

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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

In the Matter of )  
 )  
K.T. ) OAH No. 19-1015-ADQ  
\_\_\_\_\_ )

**[REJECTED PROPOSED] DECISION AFTER REMAND**

**I. Introduction**

On October 28, 2019, the Alaska Division of Public Assistance (Division) initiated an Administrative Disqualification case against K.T. alleging that she had committed a first Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program (commonly referred to as food stamps) by (1) intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding facts, and (2) doing so for the purpose of establishing or maintaining her eligibility for benefits.<sup>1</sup>

After the hearing a proposed decision issued on January 2, 2020 finding that the record showed that Ms. T., having previously been approved to receive food stamps, spoke with a Division representative after submitting her application for continued benefits and stated that she was residing in Alaska. No clear and convincing evidence was offered to show this was not the case. Furthermore, the comment could not be characterized as having been made for the purpose of maintaining her eligibility for food stamps, as there was no requirement that a recipient be living in Alaska at the time of reapplication. The Division’s request that Ms. T. be found to have committed an IPV of the food stamp program was denied.

The Division filed a Proposal for Action (PFA) on January 14, 2020. On January 24, 2020 the Commissioner’s Delegate remanded the case to the administrative law judge to take additional evidence about:

- (1) Ms. T.’s departure date from Alaska;
- (2) [the] recipient’s physical residence during [the] benefits window, and
- (3) [the] discrepancy in physical location/departure date between the Permanent Fund Dividend (PFD) application and the Alaska Temporary Assistance for Needy Families (TANF) application.<sup>2</sup>

<sup>1</sup> Exhibit (“Ex.”) 1, 7 C.F.R. § 273.16(c), 7 AAC 45.580(n).

<sup>2</sup> Remand Order dated January 24, 2020. Note: the TANF block grant funds the Alaska Temporary Assistance Program (ATAP). However, neither TANF nor ATAP are implicated in this matter. It is presumed that the remand order is referring to food stamps, also known as the Supplemental Nutrition Assistance Program (SNAP).

On February 5, 2020 a subsequent hearing was held, and additional information was presented regarding the questions posed by the remand order. However, as the additional information had no impact on the legal analysis discussed in the proposed decision, the outcome of the decision remains the same.

## II. Facts

The following facts were established by clear and convincing evidence.<sup>3</sup>

The application form for the Division’s food stamp program is comprehensive.<sup>4</sup> It solicits a significant amount of information regarding the applicant’s household and includes a four-page document entitled “Your Rights and Responsibilities” that includes information regarding reporting requirements, penalties for IPVs, and general program information.<sup>5</sup> Applicants must also attend a mandatory interview with a Division representative.<sup>6</sup> Before approving an applicant, the Division must verify, among other things, that the individual is a resident of Alaska.<sup>7</sup> At some point prior to March of 2019, Ms. T. was approved by the Division to receive food stamp benefits.<sup>8</sup>

Applicants who are approved to receive food stamps must periodically submit a recertification (on an “Eligibility Review Form”) to ensure uninterrupted benefits.<sup>9</sup> Ms. T. submitted an Eligibility Review Form in March 2019 listing her address as an apartment in Anchorage as “c/o of Q.Q. and noted that she was “couch surfing.”<sup>10</sup> She stated that she had no current income, but that her application for Supplemental Security Income based on a disability was pending.<sup>11</sup> She signed the Statement of Truth at the end of the form, verifying the veracity of the information in the form and acknowledging having understood her rights and responsibilities.<sup>12</sup>

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<sup>3</sup> The facts are based on the exhibits referenced, as well as testimony given under oath by Mr. Kenneth Cramer, the DPA investigator assigned to this case who testified at the hearing.

<sup>4</sup> See Application for Services, Alaska Department of Health and Social Services, Division of Public Assistance, SNAP application, available at [http://dpaweb.hss.state.ak.us/e-forms/pdf/GEN%2050C%20\(06-3860\)%20rev%2009.19.pdf](http://dpaweb.hss.state.ak.us/e-forms/pdf/GEN%2050C%20(06-3860)%20rev%2009.19.pdf).

<sup>5</sup> Ex. 7, pp. 1-4.

<sup>6</sup> *Id.*

<sup>7</sup> Alaska Department of Health and Social Services, Division of Public Assistance, Requirement for Eligibility, available at <http://dhss.alaska.gov/dpa/Pages/SNAP/default.aspx>.

<sup>8</sup> There is no mention in the record of when Ms. T. originally applied for, or when she was approved to receive, food stamps.

<sup>9</sup> Ex. 8, testimony by Mr. Cramer.

<sup>10</sup> Ex. 8, p. 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Ms. T. also participated in a telephonic interview with an Eligibility Technician (ET) with the Division on April 2, 2019.<sup>13</sup> She was asked if she had any questions about her rights and responsibilities, and she stated no, that she understood.<sup>14</sup> Regarding her address she said she was homeless and staying with friends in Alaska, where she intended to remain.<sup>15</sup> She was approved to continue receiving food stamps from April through September 2019.<sup>16</sup>

The Division submitted voluminous records of withdrawals charged to Ms. T.'s food stamp debit card indicating it was being used for purchases in both Nebraska and Colorado from January through September of 2019.<sup>17</sup> Investigators from the Department of Revenue provided the Division with a letter that the Permanent Fund Dividend (PFD) Division received from Ms. T. on August 23, 2019.<sup>18</sup> In the letter, she explained that she was currently in Nebraska taking care of an elderly parent and was not sure when she would be returning to Alaska.<sup>19</sup> She provided her current address in Nebraska and a new phone number.<sup>20</sup>

On October 28, 2019 the Division sent Ms. T. packets of information via certified, first class mail to both her Alaska and Nebraska addresses notifying her that she was being charged with an IPV, and putting her on notice of the details of the Administrative Disqualification Hearing scheduled before the Office of Administrative hearings.<sup>21</sup> Neither packets could be delivered; in Anchorage the addressee "moved or left no forwarding address," and in Nebraska "there was no authorized recipient."<sup>22</sup>

On November 27, 2019 a telephonic hearing was held; Ken Cramer represented the Division and testified on its behalf, as did Eligibility Technician Gerly Billaro and Eligibility Technician III Amanda Holton. Attempts were made to contact Ms. T. at both the numbers she provided to the Division and the PFD Division. The first number was out of service. The second number went straight to voicemail, which was full, so no message could be left. The hearing proceeded without her participation.<sup>23</sup> Exhibits 1-11 were admitted into the record without objection. Following the hearing the record was held open for 30 days to allow Ms. T. to show

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<sup>13</sup> Ex. 9, p. 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Ex. 8, p. 88.

<sup>17</sup> Ex. 9, pp. 3-87.

<sup>18</sup> Ex. 10.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Ex. 1; Ex. 3 pp. 1-46.

<sup>22</sup> Ex. 4, pp. 1-2, 2A-2B.

<sup>23</sup> This procedure is provided for in 7 C.F.R. § 273.16(e)(4); 7 AAC 45.585(a)(1).

reasonable cause for failing to appear.<sup>24</sup> The record closed with no further contact from either party.

On February 5, 2020 an additional hearing was held to address the outstanding questions posed in the remand order. The Division was represented by Mr. Cramer. Attempts were made to contact Ms. T. at both the numbers she provided to the Division and the PFD Division. However, her numbers were either not in service, or a message was left for her to call in to participate in the hearing and she did not respond. Exhibits 12-15 were admitted into the record with no objections.

### III. Discussion

#### A. *Insufficient evidence was presented to show Ms. T. misrepresented her residency*

The first element of an IPV is establishing that an applicant misrepresented information in the course of seeking benefits.<sup>25</sup> Here, the Division asserts that Ms. T. lied about residing in Alaska when she spoke with a Division representative. The Division carries the burden of proving this allegation by clear and convincing evidence, which means “the truth of the asserted facts is highly probable.”<sup>26</sup> The Division did not meet its burden in this case.

Ms. T. applied for the food stamp program, presumably submitted all the necessary paperwork and adequate proof she was a resident of Alaska, and was approved as an appropriate recipient by the Division.<sup>27</sup> When she subsequently submitted a Recertification Form several months later to continue receiving food stamps, she noted she was “couch surfing.”<sup>28</sup> On April 2, 2019, in her conversation with an Eligibility Technician she reiterated that she was homeless, but residing in Alaska.<sup>29</sup>

The Division points to the records of the withdrawals made with her food stamp debit card on April 5 and April 21, 2019, in City A, Nebraska, as evidence that Ms. T. was not honest about where she was living during her conversation with the Technician.<sup>30</sup> On April 2, 2019, there is another entry of debit card activity, but nothing was purchased, so the activity was not linked to a

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<sup>24</sup> 7 C.F.R. § 273.16(e)(4).

<sup>25</sup> 7 C.F.R. § 273.16(c), 7 AAC 45.580(n).

<sup>26</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>27</sup> Again, no testimony was offered regarding Ms. T.’s initial application to the program. However, this case centers on her Eligibility Recertification; it is not disputed that she was previously, appropriately approved to receive food stamp benefits.

<sup>28</sup> Ex. 8, p. 1.

<sup>29</sup> Ex. 9, p. 1.

<sup>30</sup> Ex. 9, p. 64.

specific location.<sup>31</sup> The Division asserts that she was not in Alaska, as she represented, which would amount to intentionally making a false statement to the Division.

At the second hearing the Division submitted as an exhibit Ms. T.'s 2019 PFD application and noted that she listed a mailing address in Nebraska and a physical address in Anchorage. The addresses were different than those provided to the Division, although the food stamp Eligibility Review Form was signed on March 5, 2018, while the PFD application was submitted on March 27 of 2019.<sup>32</sup> She also noted on her PFD application that she was "in Alaska today," but the Division presented evidence that the application was traced to an IP address in City A, Nebraska. However, in subsequent communications with the PFD Division, Ms. T. acknowledged that she had ticked the "in Alaska" box in error, and that she was residing in Nebraska but returning to Alaska "as soon as legally possible."<sup>33</sup> She noted on her PFD application that "she left Alaska on January 15 of 2019." No evidence was presented regarding if or when she returned to Alaska.

The Division failed to meet its burden of proof for the following reasons.

The Division must prove that Ms. T. intentionally misrepresented her residence either on her Recertification form, in her conversation with the Eligibility Technician, or both. Ms. T. did not appear for the hearing, so the record lacks her testimony regarding her situation at the time. She acknowledged on her PFD application that she was in Nebraska on March 27, 2020. She told the Division that she was in Alaska on April 2. Her debit card was used in Nebraska on April 5, 2019. It is highly unlikely, yet possible, that she returned to Alaska briefly at the beginning of April. In the absence of definitive proof, however, while Ms. T. *may* have intentionally misrepresented being in Alaska during her conversation with the Technician, the Division has not proven this to be the case by clear and convincing evidence. Regardless, her representations regarding her physical location would not have been relevant due to the additional prong of an IPV, as discussed below.

*B. Ms. T.'s response would not have affected her eligibility for food stamps*

The second element of an IPV is providing misinformation to the Division *for the express purpose of establishing or maintaining benefits*. In the present case, the Division asserts that Ms.

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<sup>31</sup> *Id.*

<sup>32</sup> Ex. 8, p. 1, Ex. 12, p. 3. Note: the eligibility review form was dated March 3, 2018 by Ms. T. but was stamped as having been received by the Division on March 22, 2019.

<sup>33</sup> Ex. 12, p. 14.

T. lied about residing in Alaska during her April 2, 2019 conversation with the Division regarding recertification, with the specific intent to continue to be eligible for food stamps.”<sup>34</sup>

The food stamps program is a federal program administered by the individual states. The federal regulation regarding residency requirements states that initial applicants are *not required to have lived in the state where they are applying for any particular duration, nor have a fixed place of abode.*<sup>35</sup> Applicants need not even have the intent to remain in the state.<sup>36</sup> Even those who live in the state on a transient basis can be residents for purposes of the program.<sup>37</sup> *Regarding those applicants seeking recertification, there is nothing in the federal regulations that requires a food stamp recipient to be “physically present” in the state.*<sup>38</sup>

In sum, even presuming Ms. T. misrepresented where she was physically located during her recertification interview on April 2, 2019 with the Division, the statement cannot necessarily be construed as having been made for the purpose of continuing to be deemed eligible for food stamps by the Division. Ms. T. did not need to be physically present in Alaska to apply for continued benefits. There is no basis to conclude that she would not have continued to receive food stamps if she had informed the Division she was out of the state. Indeed, at that point the debit card withdrawal records showed purchases being made out of state consistently from January through March of 2019, and yet the Division still proceeded to approve her recertification.<sup>39</sup>

At the second hearing held on February 5, 2020, Mr. Cramer represented that when there is prolonged out of state activity on a food stamp debit card the agency protocol is to contact that individual to determine if the card was stolen, or if the recipient has traveled to the lower 48. If it is the latter the Division inquires if the person is travelling temporarily, or if the relocation is permanent. The Division treats temporary absences on a case by case basis, showing flexibility in situations where a recipient is attending a funeral, for example, or providing caring for a sick relative.<sup>40</sup>

Mr. Cramer attempted to contact Ms. T. by phone at some point between January 2019 and September 2019 to determine why her food stamp debit card was being used heavily in Nebraska

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<sup>34</sup> Ex. 1, p. 1.

<sup>35</sup> 7 C.F.R. § 273.16(a).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See 7 C.F.R. § 273.14 (addressing recertification).

<sup>39</sup> Ex. 9, pp. 68-88.

<sup>40</sup> Testimony Mr. Cramer. Testimony of Ms. Billaro.

and Wyoming, but the phone number was not accepting calls.<sup>41</sup> According to the Rights and Responsibilities advisement given to all food stamp applicants, an individual must report changes in the household within 10 days, including moving or getting a new mailing address.<sup>42</sup> It appears that Ms. T. failed to do this. As a result, the Division appropriately terminated her benefits in September of 2019.<sup>43</sup>

Mr. Cramer asserted that Ms. T.'s failure to remain in contact with the Division and seemingly relocating to Nebraska or Wyoming is tantamount to providing false, incorrect, or incomplete information to the Division, or hiding information, actions that could result in an IPV as defined in the Rights and Responsibilities document.<sup>44</sup> This is incorrect, because her recertification would not have been denied if correct information had been provided. Perhaps a regulation change could address the concerns of the Division regarding whether a failure to remain in contact with the Division could be grounds for an IPV, as opposed to an agency suspension of benefits. But this is an issue addressed by the legislature, not this tribunal.

#### **IV. Conclusion**

The Division did not meet its burden of proving that Ms. T. made a false statement regarding her residence to the Division during her recertification interview on April 2, 2019 *for the purpose of maintaining her food stamp benefits*. Therefore, the Division's request that Ms. T. be found to have committed an IPV of the food stamp program is DENIED.

DATED: February 14, 2020

By: Signed \_\_\_\_\_  
Danika B. Swanson  
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>41</sup> Ex. 2.  
<sup>42</sup> Ex. 7, p. 1.  
<sup>43</sup> Testimony of Mr. Cramer.  
<sup>44</sup> Ex. 7, p. 4.