

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

In the Matter of)	
)	
N. Z.)	OAH No. 24-0544-SNA
_____)	

DECISION

I. Introduction

N. Z. is a Supplemental Nutrition Assistance Program (SNAP) recipient.¹ In July of 2024, she discovered that benefits were missing from her SNAP electronic benefits (EBT) card. She requested that the Division of Public Assistance (Division) replace those missing benefits. The Division denied her request.

Ms. Z. requested a hearing to challenge the denial of her replacement request. Her telephonic hearing was held on September 10, 2024. Ms. Z. testified on her own behalf. Sally Dial, a Fair Hearing Representative for the Division, represented the Division and testified on its behalf. Britney Thompson, with the Division's Benefit Issuance Recovery unit, also testified for the Division.

The evidence in this case shows that Ms. Z. was issued a replacement EBT card, which was mailed to her. She, however, did not receive it. Another person intercepted her physical card, was somehow able to activate it, and used her benefits. The Division is only able to replace stolen SNAP EBT benefits when those benefits are stolen using electronic means, meaning by card skimming, card cloning, or other electronic fraudulent means. Ms. Z.'s benefits were not stolen electronically: the person that stole her benefits used her physical EBT card. Because the benefits were not stolen using electronic means, but instead by theft of her physical EBT card, Ms. Z. was not eligible for replacement of her stolen benefits. The Division's denial of Ms. Z.'s request for replacement of the benefits is therefore AFFIRMED.

II. Facts

Ms. Z. is a very recent widow. She and her husband had been receiving SNAP benefits under his name. After his death, she contacted the Division, and a new EBT card² was issued

¹ The Supplemental Nutrition Assistance Program (SNAP) is also commonly referred to as "Food Stamps." This decision will use the term "SNAP."

² Card number ending in 7.

and mailed to her on June 18, 2024.³ Ms. Z. left Anchorage, her home city, on June 21, 2024 and returned the night of July 6, 2024. She did not receive that substitute EBT card that was mailed on June 18, 2024.⁴

On July 1, 2024, the EBT card had a balance of \$374.00. On July 6, 2024, the EBT card had a balance of \$2.11.⁵

When Ms. Z. returned to Anchorage on July 6, 2024, she had not received the EBT card issued on June 18, 2024.⁶ The Division issued her another replacement EBT card on July 8, 2024.⁷ She checked the balance on the EBT card on July 16, 2024 and it only had a balance of \$2.11 on it, when it should have had a balance of approximately \$374. She had not used the EBT card and had not incurred any charges on it.⁸ Ms. Z. filed a report of theft on July 17, 2024, requesting that the Division replace the stolen benefits.⁹

The Division investigated and determined that Ms. Z.'s June 18, 2024 replacement EBT card¹⁰ was used in Anchorage between July 1 and July 6, 2024. Purchases were made at several convenience stores (Chevron and Holiday), Walmart, and Carrs. All those transactions were manual transactions, which meant that the user had the physical card in their possession and manually swiped it at the point-of-sale terminal.¹¹ Ms. Z., however, historically did not use her EBT card at convenience stores. Her EBT card history prior to July 1, 2024 reflected instead that she used her EBT card at Walmart only.¹²

The Division denied Ms. Z.'s request for replacement of the EBT funds because there was insufficient evidence to show her EBT benefits were accessed using electronic means.¹³

III. Discussion

The facts of this case show that it is more likely true than not true that an unknown person obtained physical possession of Ms. Z.'s EBT card¹⁴, mailed to her by the Division on or

³ Ms. Z.'s testimony; Ms. Thompson's testimony.

⁴ See emails sent on September 10, 2024 showing Ms. Z.'s boarding passes for her trip leaving Anchorage on June 21 and returning on July 6 on Alaska Airlines flight 000; Ms. Z.'s testimony.

⁵ Exs. 4 – 4.1.

⁶ Ms. Z.'s testimony.

⁷ Card number ending in 2; Ex. 3.3.

⁸ Ms. Z.'s testimony; Ex. 2.2.

⁹ Exs. 2 – 2.3.

¹⁰ Card number ending in 7.

¹¹ Exs. 4 – 4.21; Ms. Thompson's testimony.

¹² Ms. Thompson's testimony.

¹³ Ex. 3.1.

¹⁴ Card number ending in 7.

about June 18, 2024, while she was gone from Anchorage between June 21 and July 6, 2024. That unknown person activated the card and used its benefits in Anchorage between July 1 and July 6, 2024, during the time when Ms. Z. was gone from Anchorage.¹⁵ All of the transactions that occurred during July 1 and July 6, 2024 were manual in nature: they required the physical use of the EBT card by swiping it through the point of sale terminal.

SNAP is a federal program administered by individual states, with the state agency responsible for adhering to the federal program requirements.¹⁶ Accordingly, the Division's replacement of stolen benefits and the decision in Ms. Z.'s case are governed by the federal SNAP requirements.

As part of a larger effort to detect, prevent, and mitigate the impact of theft of benefits, particularly relating to electronic benefits fraud, a 2022 federal statute requires states to develop and implement a plan for the replacement of benefits "stolen through card skimming, card cloning, or similar fraudulent methods."¹⁷ It is through this statute that the Division is able to replace any stolen SNAP benefits. However, what is notable about this is that the replacement of stolen SNAP benefits is limited to theft by electronic means, where the EBT card information is captured through skimming devices on point of sale terminals, or by fraudulent phone calls, text messaging, emails, phishing etc.¹⁸ The federal statute authorizing replacement of stolen SNAP benefits does not authorize replacement when the loss occurred through the physical theft of the EBT card, which is what happened in Ms. Z.'s case. The Division emphasizes this point in its "State Plan for the Replacement of Stolen EBT Benefits, 2023" which states, in pertinent part, that a request for replacement will be denied when "[a] household member's physical EBT card has been lost or stolen."¹⁹

As a result, because the evidence shows that Ms. Z.'s SNAP benefits were stolen, not by electronic means, but rather because her physical EBT card was stolen, she is not eligible to have those stolen benefits replaced.

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¹⁵ As noted by Ms. Dial, whoever activated the card had to have had access to Ms. Z.'s personally identifiable information.

¹⁶ 7 C.F.R. § 271.4(a).

¹⁷ 7 USC § 2016a ("EBT benefit fraud prevention").

¹⁸ See USDA Food and Nutrition Service Guidance dated January 32, 2023 – Exs. 6 – 6.1.

¹⁹ Ex. 6.8.

IV. Conclusion

The Division's denial of Ms. Z.'s request that the Division replace SNAP benefits that were stolen from her on July 1 – July 6, 2024 is AFFIRMED.

Dated: September 12, 2024

By: Signed
Signature
Larry Pederson
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.]

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 October, 2024.

By: Signed
Signature
Daniel R. Phelps II
Name
Process Improvement Manager
Title