

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

In the Matter of	)	
	)	
D.J	)	OAH No. 22-0141-SNA
	)	

DECISION

I. Introduction

D.J applied for Supplemental Nutrition Assistance Program (SNAP) benefits, commonly referred to as Food Stamps. The Division of Public Assistance (DPA or Division) denied his application, because Mr. J had been convicted of a drug-related felony, and he did not meet any of the exceptions to the general exclusion of convicted drug felons from Food Stamp eligibility. Mr. J appealed the denial. A telephonic hearing was held on his appeal on February 28, 2022. Mr. J appeared and testified under oath on his own behalf. DPA was represented by lay advocate Sally Dial, who also testified under oath and presented the Division’s case.

The Division established that Mr. J did not meet any of exceptions that would allow him to qualify for Food Stamps, notwithstanding his felony drug conviction. Therefore, the Division’s denial of his application is affirmed.

II. Facts

Mr. J submitted his application for Food Stamp benefits on December 22, 2021. On the application form, in the section entitled “Felony Convictions,” responding to the question “[h]ave you or any member of your household been convicted of possession, use, or distribution of a controlled substance after August 22, 1996?” he answered “yes.” Responding to the next question on the form “[a]re they satisfactorily serving or successfully completed a period of probation or parole?” Mr. J answered “yes.”

Mr. J was previously convicted on a guilty plea to a drug felony - misconduct involving a controlled substance in the fourth degree (MISC4). In June 2012 he was sentenced on that conviction to “24 months to serve with 24 months suspended and 3 years probation.”¹ At the hearing in this appeal, Mr. J testified that he was “in a really bad way” at that time, and as a result he did not complete his three-year probationary term. Instead he ended up “flat-timing” his sentence - i.e., serving his full sentence in prison. Although the record is unclear as to the amount of time that Mr. J was on probation, information available on the Alaska Court System’s CourtView

¹ Exh. 6 (Judgment, case no. 3AN-11-12425-CR, June 25, 2012).

website indicates that he was out of prison and on probation for four to five months in 2012 and 2013.

After his release, Mr. J applied for Food Stamps in October 2016. As part of the process of evaluating his application, a DPA employee contacted State of Alaska probation officials and was informed that Mr. J had “completed parole for his drug felony.”² Accordingly Mr. J’s application was approved and he received Food Stamps at that time.³

Subsequently Mr. J served time on a bank robbery conviction in federal prison. While incarcerated, he participated in a medically assisted treatment (MAT) program for drug addiction. He was released from federal incarceration in November 2021. He testified that as of the February 28, 2022 hearing in this case, he had been clean and sober for three years.

When Mr. J submitted the December 2021 application for Food Stamps that is the subject of this appeal, the Division again contacted State of Alaska probation officials to confirm his responses to the above-quoted questions concerning his drug-related criminal conviction, characterized by DPA as his “drug felony conviction compliance.”⁴ On this occasion, however, probation officials informed Division staff that Mr. J “did not complete parole, but flat timed his sentence.”⁵ DPA then denied the application, and Mr. J submitted his appeal on February 1, 2022. On his appeal form, he stated that he was requesting a hearing “due to being below the poverty limit, and extenuating financial circumstances, in addition to the fact that the Class C felony would be a misdemeanor currently, he needs food support.”⁶

III. Discussion

The issue in this case is whether Mr. J’s application for Food Stamps should have been approved, notwithstanding his 2012 felony drug conviction. As noted above, his application was denied because the Division found that he had not demonstrated “drug felony conviction compliance,” i.e., he had not shown that he qualified for any of the exceptions to the general exclusion of drug felons from Food Stamp eligibility. Mr. J bears the burden of proof to show by a preponderance of the evidence that the Division erred in denying his application.⁷

² Exh. 6.

³ *Id.*

⁴ Exhs. 3-3.1.

⁵ Exh. 5.

⁶ Exh. 7.

⁷ *Alcohol Beverage Control Bd. v. Decker*, 700 P.2d 483, 485 (Alaska 1985); 7 AAC 49.135. “Preponderance of the evidence” means that a disputed fact is shown to be more likely true than not true. See 2 AAC 64.290(e).

The Food Stamp or SNAP program is a federal program administered by the State.⁸ The applicable federal regulation, 7 C.F.R. § 273.11(m), excludes from the SNAP program any individual who is convicted of a drug related felony, and this exclusion takes effect at the moment of their conviction.⁹ States can “opt out” of or modify the ban by enacting laws that specifically reference the prohibition and demonstrate an intent to depart from the federal rule.¹⁰ Alaska has not opted out, but in 2016 it passed legislation that modified the federal disqualification of drug felons from receiving SNAP benefits. Under AS 47.27.015(i), individuals convicted of a felony committed after August 21, 1996 involving an element of possession, use, or distribution of an illegal drug who would otherwise be ineligible for SNAP, may establish eligibility by meeting any of four listed criteria. Persons convicted of drug felonies can gain eligibility if they: (1) are satisfactorily serving or have successfully completed a period of probation or parole; (2) are in the process of serving or have successfully completed mandatory participation in a drug or alcohol treatment program; (3) have taken action toward rehabilitation, including participation in a drug or alcohol treatment program; or (4) are successfully complying with terms of the person’s re-entry plan.

Mr. J acknowledged his felony drug conviction on his Food Stamp application form, but he then gave an inaccurate answer to the question as to whether he was satisfactorily serving or had successfully completed a period of probation. As he later acknowledged at the hearing, he only served a few months of probation before committing several violations and ultimately flat timing his full sentence. Mr. J apparently answered “yes” to this question due to the fact that he had previously been approved for Food Stamps in 2016, and he thought this meant he had somehow met the Division’s requirements for completing probation. Regardless of his answers on the application form, however, it is clear that Mr. J did not successfully complete the period of probation contemplated by his sentence on the 2012 felony drug conviction. Therefore, he does not meet the criteria for the first exception quoted above under AS 47.27.015(i).

As for the other exceptions set out in AS 47.27.015(i), Mr. J testified that he has been clean and sober for three years; he took part in a portion of a MAT program in federal prison (but was

⁸ 7 C.F.R. § 271.4(a)

⁹ *In the Matter of W.J.*, OAH No. 15-0994-SNA (Commissioner of Health and Social Services, September 17, 2015) (available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=6132>).

¹⁰ 7 C.F.R. § 273.11(m) (“An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion.”)

released before completing it); he is in the process of enrolling in a treatment program at Treatment Center A in Anchorage; he is residing in a “sober living house,” is doing regular urinalysis testing, and is going to Narcotics Anonymous meetings every week; he is complying with “re-entry” requirements for his federal probation; and he has a job and is generally trying to “reintegrate” into society. Mr. J testified credibly on these facts, and they would tend to support eligibility under exception (3) above. But he also acknowledged that he did not currently possess documentation regarding these activities that he could submit in support of his argument that he should qualify for one of the AS 47.27.015(i) exceptions.

Mr. J also argued that the felony he was convicted of in 2012, a MISC4 under AS 11.71.040, is now considered a misdemeanor under Alaska law. However, as mentioned above, the felony drug exclusion takes effect at the moment of a person’s conviction.¹¹ Thus, a later reclassification of the crime, in and of itself, would not remove him from the exclusion.¹² .

This decision finds that Mr. J did not meet his burden of establishing that the Division’s denial of his Food Stamps application was incorrect. He did not complete his required period of probation on his felony drug conviction, so he does not qualify for exception (1) under AS 47.27.015(i). As to exception (3), he was unable to document the actions he has taken toward rehabilitation. If Mr. J can obtain documentation of his rehabilitation efforts, he should reapply for Food Stamps and submit the documentation to the Division with his new application.¹³

IV. Conclusion

The Division’s denial of Mr. J’s Food Stamps application is affirmed.

Dated: April 20, 2022

Signed

Andrew M. Lebo
Administrative Law Judge

¹¹ *In the Matter of W.J.*, OAH No. 15-0994-SNA (Commissioner of Health and Social Services, September 17, 2015) (available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=6132>).

¹² In addition, the administrative law judge’s review of the latest version of AS 11.71.040 shows MISC4 is still classified as a class C felony.

¹³ In the alternative, if Mr. J has such documentation now, he can respond to this Decision by submitting a Proposal for Action to OAH and ask that this case be remanded to allow additional evidence to be presented.

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 5th day of May, 2022.

By: Signed

Name: Andrew M. Lebo

Title: Administrative Law Judge

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