

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

In the Matter of	)	
	)	
E.N	)	OAH No. 21-2586-SNA
_____	)	

DECISION

I. Introduction

E.N was notified by the Division of Public Assistance (Division) that she was not approved for Supplemental Nutrition Assistance Program (SNAP or Food Stamp) benefits. Ms. N appealed that decision. A hearing was held January 10, 2022. Ms. N appeared and testified on her own behalf, with the assistance of A. G., her case manager at a City A treatment facility where she currently resides. The Division was represented by a lay advocate, Jessica Hartley. Because the Division did not establish that Ms. N should be considered a “fleeing felon” under applicable regulations, the Division’s determination denying her eligibility to receive Food Stamps is reversed.

II. Facts¹

Ms. N was convicted of a felony identity theft charge in State A in 2007. While on probation for that conviction, she left State A and moved to Alaska after notifying her probation officer of her intentions. Since arriving in Alaska, Ms. N has not reported to the State A probation officer. Probation authorities in that state consider her to be in violation of her probation conditions, and based on her alleged violation, there is an State A warrant for her arrest which is still outstanding.

Ms. N testified, credibly, that she has not been in State A since leaving in 2007. In 2010 she was incarcerated in Alaska for matters unrelated to her State A conviction. There appears to be no dispute that State A authorities have been aware of her location in Alaska since at least that time.

Ms. N applied for Food Stamps on or about September 1, 2021. A Division eligibility worker contacted State A probation authorities and recorded that she was told that Ms. N “had an active warrant for felony ID theft in State A.” Ms. N’s application was denied based on her being a “fleeing felon.” During the months of September and October 2021, she was not

¹ These facts were established by a preponderance of evidence at the hearing.

contacted by State A law enforcement authorities regarding the State A arrest warrant. She then applied for Food Stamps again on November 5, 2021. A Division eligibility worker again contacted State A probation authorities and recorded that she received essentially the same information regarding an “active warrant” for Ms. N based on her felony identity theft conviction there. The Division worker reviewed State A court records and an “Instant Eligibility Verification Report” and concluded again that Ms. N was a “fleeing felon” and therefore was ineligible for Food Stamp benefits.² Accordingly, her application was denied by written notice dated November 7, 2021. Ms. N timely appealed that determination.

III. Discussion

The SNAP or Food Stamp program is administered by the Alaska Department of Health and Social Services, Division of Public Assistance, but is primarily governed by Federal regulations. Under the applicable regulations, persons who meet the definition of “fleeing felon” are ineligible to receive Food Stamp benefits. Pertinent sections of the Federal regulations at 7 CFR §273.11(n) provide as follows:

(n)(1) *Fleeing felon.* An individual determined to be a fleeing felon shall be an ineligible household member [for purposes of Food Stamp eligibility]. To establish an individual as a fleeing felon, a State agency must verify that an individual is a fleeing felon as provided in paragraph (n)(1)(i) of this section

(n)(1)(i) *Four-part test to establish fleeing felon status.* To establish that a person is a fleeing felon, the State agency must verify that:

- (A) There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency, and the underlying cause for the warrant is for committing or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing ... ;
- (B) The individual is aware of, or should reasonably have been able to expect that, the felony warrant has already or would have been issued;
- (C) The individual has taken some action to avoid being arrested or jailed; and
- (D) The Federal, State, or local law enforcement agency is actively seeking the individual as provided in paragraph (n)(3) of this section.

....

(n)(3) *Actively seeking.* For the purposes of this paragraph (n), actively seeking is defined as follows:

² Ms. N disputed the Division’s factual allegations, based on the Instant Eligibility Verification Report, regarding her alleged presence in State A in 2021. Although Ms. N’s testimony that she has not been in State A since 2007 was credible, it was unclear whether these allegations were material to the Division’s fleeing felon determination, and resolution of these issues is unnecessary to this decision.

- (i) A Federal, State, or local law enforcement agency informs a State agency that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 20 days of submitting a request for information about the individual to the State agency;
- (ii) A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in paragraph (n)(1)(ii) of this section; or
- (iii) A Federal, State, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 30 days of the date of a request from a State agency about a specific outstanding felony warrant or probation or parole violation.

In its position statement submitted to the Office of Administrative Hearings (OAH) in response to Ms. N's appeal, the Division cites these requirements of 7 CFR §273.11(n) and concludes, without any analysis, that Ms. N "meets the criteria for the status of fleeing felon." During the hearing, Division representative Jessica Hartley elaborated on this conclusion, explaining that the Division's eligibility worker learned from State A probation authorities that there is an outstanding warrant for Ms. N's arrest, she confirmed that it is an "active warrant," and she understood that to mean that State A intended to enforce the warrant. Ms. Hartley contended that this met the requirements of subsections (n)(3)(i) or (n)(3)(iii) above, essentially interpreting the term "active warrant" to mean State A had stated an intention to enforce the warrant within 30 days of receiving the inquiry from the Division in Alaska. She testified that "for state purposes we do not go into when they would be collecting the client, we would just ask if it's an active warrant and leave it at that." She suggested that a person whose application has been denied due to fleeing felon status could just reapply if the warrant has not been enforced within 30 days of the inquiry from Alaska.

The problem with the Division taking this approach in this case is that it fails to take into account the actual sequence of events that took place regarding Ms. N's applications for Food Stamp benefits. She applied on September 1, 2021 and was denied due to a fleeing felon determination by the Division. About 65 days later, she applied again for Food Stamps on November 5, 2021. In the interim she was not contacted by any law enforcement authorities or otherwise received any indication that she was going to be arrested pursuant to the State A arrest warrant. In fact, there is no evidence in the record that State A has made any effort to enforce that warrant since Ms. N left State A in 2007. Notwithstanding this lack of evidence of any intention on the part of the State of State A to enforce its warrant against Ms. N, the Division

determined her to be a fleeing felon and denied her November 5, 2021 Food Stamp application. This result does not comport with the clear and explicit terms of 7 CFR §273.11(n).

The plain language of the fleeing felon regulations makes it clear that they are designed to apply to persons who actually are **actively being sought** by the jurisdiction that issued the arrest warrant in question. In this case, there is no evidence that State A is “actively seeking” to arrest Ms. N, other than a probation officer’s apparent characterization of the warrant as “active.” This is simply insufficient to meet the clear requirements of 7 CFR §273.11(n) that the agency that issued the warrant must be “actively seeking” the individual in question. This is especially true when one considers that State A probation authorities have been aware of Ms. N’s presence in Alaska since at least 2010, yet have made no apparent efforts to enforce the State A warrant. The unambiguous language of 7 CFR §273.11(n) requires the Division to determine that the agency that issued an arrest warrant against a Food Stamp applicant “intends to enforce [the] outstanding felony warrant ... within 30 days” of the Division’s inquiry about the applicant. Simply confirming that there is an active warrant against the applicant is insufficient to comply with the specific requirements of the regulation.³

IV. Conclusion

Because the Division did not confirm State A’s intention to enforce its warrant against Ms. N within 30 days of the Division’s inquiry, and there is no evidence that State A actually is actively seeking to enforce the arrest warrant against her, the Division’s fleeing felon determination against Ms. N is reversed. The Division shall find her eligible for Food Stamp benefits based on her November 5, 2021 application.

Dated: March 17, 2022

Signed

Andrew M. Lebo
Administrative Law Judge

³ Ms. N contended at the hearing that the fleeing felon regulations do not apply here because the State A warrant is only a misdemeanor warrant, but whether the warrant is a felony or misdemeanor warrant was not made clear on the record presented. In any event, assuming the warrant is a felony warrant, reversal of the Division’s fleeing felon determination on the basis described above is appropriate.

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 1st day of April, 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.]