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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)	
)	
██████████,)	OHA Case No. 08-FH-842
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a Food Stamp recipient (Ex. 1). On or about August 11, 2008 she began working at a new job (Ex. 2; Ex. 2.2; Claimant hearing testimony). On or about August 21, 2008 the Claimant reported her new employment to a contract agent of the Division of Public Assistance (DPA or Division) (admission in DPA Fair Hearing Position Statement; Charles Reed hearing testimony). However, this information was not communicated to DPA until August 25, 2008 (Ex. 2.2).

At some time on or before August 25, 2008 the DPA mailed to the Claimant her Food Stamp payment for September 2008 (Ex. 2.2). On or about September 5, 2008 the DPA sent the Claimant a notice stating that her Food Stamp case had been closed because she was over-income for the Food Stamp Program (Ex. 2.3). On or about November 17, 2008 the DPA sent the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of September 2008 and requesting repayment in the amount of \$406.00 (Ex. 2.5). The Claimant requested a fair hearing with regard to the DPA's recoupment claim on or about November 21, 2008 (Ex. 3). This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on December 23, 2008. The Claimant appeared in person and represented herself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division and also testified on behalf of the Division.

ISSUE

Was the Division correct to seek recoupment from the Claimant of overpaid Food Stamp benefits in the amount of \$406.00 for the month of September 2008?

FINDINGS OF FACT

1. The Claimant was a Food Stamp recipient (Ex. 1). On or about August 11, 2008 she began working at a new job (Ex. 2; Ex. 2.2; Claimant hearing testimony).
2. On or about August 21, 2008 the Claimant reported her new employment to a contract agent of the Division (admission in DPA Fair Hearing Position Statement; [REDACTED] hearing testimony). However, this information was not communicated to DPA until August 25, 2008 (Ex. 2.2).
3. At some time on or before August 25, 2008 the DPA mailed to the Claimant her Food Stamp payment for September 2008 (Ex. 2.2). On or about September 5, 2008 the DPA sent the Claimant a notice stating that her Food Stamp case had been closed because her new employment had made her over-income for the Food Stamp Program (Ex. 2.3).
4. On or about November 17, 2008 the DPA sent the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of September 2008 and requesting repayment in the amount of \$406.00 (Ex. 2.5).
5. At the hearing, the Claimant testified that she had become employed by [REDACTED] [REDACTED]. She stipulated that she received the September 2008 Food Stamp benefits at issue.
6. Although she could not remember the exact amount of the Food Stamp benefits she received for September 2008, the Claimant did not dispute the DPA's assertion that the amount of those benefits was \$406.00 (Claimant hearing testimony). The Claimant likewise did not dispute that the September 2008 Food Stamp issuance constituted an overpayment due to the earnings from her new job (Claimant hearing testimony).
7. At the hearing, Mr. [REDACTED] conceded that the DPA was in error and that the Claimant did report her new employment and income on a timely basis. He stated:

The Feds . . . they don't care who the mistake was made [by] . . . it could be fraud, it could be client error, or it could be agency error. In this case, the agency was in error in the fact that Ms. [REDACTED] did report timely . . . however the agency did not take action in a timely manner . . . which caused the September Food Stamps to go out in error. So the agency is fully accepting that we messed up . . . we did not act timely The agency was in error

The case should have been closed because the household did not meet the gross monthly income [limit].

* * * * *

Since the Food Stamp [program] is a federal program, we follow the Fed's rules and [regulations] . . . and in there . . . it states that the types of claims where they want their money back [includes] [1] intentional program violations, which is fraud . . . [2] a mistake by the household . . . and [3] agency error. So yes, the agency was in error – we should not have issued benefits for September because the household was over-income. The fact is that we did . . . so the agency recognizes that we messed-up, but the federal Food Stamps program doesn't care who messed-up; they just want their cash back We understand that it puts a hardship on you [the Claimant], but the reality is that we have to follow the federal [regulations], and that's where we're at.

8. The Claimant's position was stated by her as follows: "I shouldn't be penalized . . . [for the DPA's mistake]. If I had that large amount of money [sought to be recouped by DPA] I wouldn't be asking the State for assistance"

9. The Claimant did not present any evidence showing that she had reasonably relied on the DPA's Food Stamp overpayment, or that she had suffered any prejudice from the overpayment other than the potential obligation to repay it.

10. The Claimant's testimony was credible. Mr. [REDACTED]'s testimony was also credible.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's request to recoup excess Food Stamp benefits paid to the Claimant. Ordinarily, the party seeking a change in the status quo has the burden of proof. State of Alaska Alcoholic Beverage Control Board v. Decker, 700 P.2d 483, 485 (Alaska 1985). The Division is attempting to change the status quo or existing state of affairs by recouping overpaid Food Stamp benefits. Accordingly, the Division bears the burden of proof in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case.¹ This standard is met when the evidence, taken as a whole, shows that the fact

¹ A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission, 711 P.2d 1170 (Alaska 1986).

sought to be proved is more probable than not or more likely than not. Black's Law Dictionary at 1064 (West Publishing, 5th Edition, 1979).

II. The Food Stamp Program.

The Food Stamp Act of 1977 is a federal program. The statutes comprising the Act are codified at 7 U.S.C. 2011 – 2029. The federal regulations implementing the program are promulgated by the United States Department of Agriculture and are found primarily at 7 C.F.R. 271 – 274.

The Food Stamp Program is administered by the states. 7 CFR 271.4(a). The State of Alaska has adopted regulations to implement the Food Stamp Program. Those regulations are found at 7 AAC 46.010 - 7 AAC 46.990.

The Food Stamp statute at issue in this case is 7 U.S.C.A. § 2022, titled "Disposition of claims." That statute provides in relevant part as follows:

* * * * *

(b) Collection of overissuances . . . (1) In general. Except as otherwise provided in this subsection, *a State agency shall collect any overissuance of benefits issued to a household . . .* [Emphasis added].

* * * * *

The Food Stamp regulation at issue in this case is 7 C.F.R. § 273.18, titled "Claims against households." That regulation provides in relevant part as follows:

(a)(1) A recipient claim is an amount owed because of: (i) Benefits that are overpaid or . . . [inapplicable].

(a)(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. *The State agency must establish and collect any claim by following these regulations.* [Emphasis added].

* * * * *

(b) Types of claims. There are three types of claims: (1) Intentional Program violation (IPV) claim . . . (2) Inadvertent household error (IHE) claim . . . (3) Agency error (AE) claim . . .

* * * * *

(e)(1) Applicability. *State agencies must begin collection action on all claims unless the conditions under paragraph (g)(2) of this section apply*.²² [Emphasis added].

7 CFR 271.4, titled “delegations to state agencies for administration,” provides as follows:

(b) Claims delegation. FNS delegates to the State agency, subject to the standards in § 273.18, [set forth above] the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

The United States Secretary of Agriculture has not delegated to state agencies the authority to waive Food Stamp overpayments. Bliek v. Palmer, 916 F.Supp. 1475 (N.D. Iowa 1996), affirmed 102 F.3d 1472 (8th Cir. 1997). While the Secretary has the statutory authority to do so, the federal regulation which delegates certain authority to state agencies does not include the authority to waive Food Stamp overpayments. Id.

In Ishler v. Commissioner of the Department of Public Welfare, 518 A.2d 596 (Pa. 1986), the court was faced with the issue of whether to uphold a state agency’s administrative decision ordering the recoupment of Food Stamps overpaid to a recipient due to the state agency’s error. The court stated:

We acknowledge that it seems unfair for the Department to take action to recover overpayment when such overpayment is the result of the Department’s own error. This result, however, is mandated by the federal regulations.

* * * * *

We conclude that where a participant in the food stamp program has received an overissuance of food stamps under applicable federal regulations due to the Department’s administrative error, the Department is entitled to recoupment in view of the mandatory nature of the federal regulations, the possible jeopardy to the entire program in Pennsylvania if the Department fails to act in such circumstances and the likelihood that recoupment will be had, if at all, by a plan which must first be negotiated with the party against whom recoupment is sought.

In Cudal v. Sunn, 742 P.2d 352 (Hawaii 1987), the Hawaii court impliedly found that the state agency was required to pursue overpayments pursuant to the predecessor of 7 C.F.R. § 273.18. The court also impliedly found that the state doctrine of equitable estoppel³ was

² The conditions mentioned in paragraph (g)(2), which involves EBT benefit accounts, are not present in this case. Accordingly, paragraph (g)(2) is inapplicable here.

³ See discussion below regarding the elements of equitable estoppel and quasi-estoppel as stated by the Alaska Supreme Court.

available as a potential defense to a government claim for recoupment. However, the court expressly found that the Claimant had not satisfied the elements of estoppel on the facts of that case.

In Alaska, the doctrine of “quasi-estoppel” applies where “the existence of facts and circumstances makes the assertion of an inconsistent position unconscionable.” Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978).

In Alaska, the required elements of the doctrine of equitable estoppel are “the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice.” Maynard v. State Farm Mutual Automobile Insurance Company, 902 P.2d 1328, 1330 (Alaska 1995), quoting Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978).

In Mendez v. Department of Social Services, 813 P.2d 1234 (Utah App. 1991), the Utah Court of Appeals applied state equitable estoppel to bar recoupment of food stamp overissuances.

In Lewis v. State, Dept. of Health and Rehabilitative Services, 659 So.2d 1255 (Fla.App. 4th Dist. 1995), the Florida court found that estoppel was available as a defense against recoupment claims brought pursuant to 7 C.F.R. § 273.18. However, the Florida court found that the Claimant had not satisfied the elements of estoppel on the facts of that case.

On August 22, 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which amended the Food Stamp Act (Public Law No. 104-193, Aug. 22, 1996, 110 Statutes at Large 13321, 1996 U.S. Code Congressional & Administrative News § 844). Among other things, the PRWORA amended 7 United States Code section 2022(b) set forth above. The language of that statute now contains mandatory language (“*a State agency shall collect any overissuance of benefits issued to a household . . .*” [Emphasis added]).

In Aktar v. Anderson, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997), the California appellate court found that the 1996 amendments to the Food Stamp Act required state agencies to seek recoupment of all Food Stamp overpayments.

In 1998, the Secretary of the U.S. Department of Agriculture proposed revisions to the Food Stamp regulations, including 7 C.F.R. § 273.18. The Secretary’s comments are set forth at 63 Fed. Reg. 29307 (May 28, 1998), and provide in relevant part as follows:

Some groups maintain that, since the reason for the overissuance resulting in [an agency error case] was an error by the State agency, the household should not be responsible for the overissuance under . . . equitable estoppel. The Department disagrees with this position. The [Food Stamp Program] is administered under Federal law and the Department provides 100 percent of the value of the benefits. . . . 7 U.S.C. 2022(a)(2), which was unchanged by

the [1996] PRWORA, clearly and unconditionally provides that adult members of a household that receive any overissuance shall be jointly and severally liable for the value of the overissuance. Thus, Federal law permits no exception for equitable estoppel in the case of an overissuance caused by State agency error.(emphasis provided)

In Turner v. Chandler, 955 P.2d 1062 (Hawaii App. 1998), the Hawaii state appellate court found that the state law defense of estoppel was available to recipients in Food Stamp recoupment cases. The Hawaii court's decision appears to have been based primarily on 7 CFR 271.4(b),⁴ set forth above.

In Vang v. Saenz, 2002 WL 434733 (Cal. App. 3 Dist. 2002), the California appellate court found that the 1996 amendments to the Food Stamp Act required state agencies to seek recoupment of all Food Stamp overpayments, and that the doctrine of estoppel was not available as a defense in Food Stamp recoupment cases.

In McKinney v. State of Alaska Department of Health & Social Services, Anchorage Superior Court Case No. 3AN-01-11036 Civil, equitable estoppel was found not to be available as a defense in "agency error" Food Stamp recoupment cases. The basis for the decision in McKinney was the explicit statement, contained in the preamble to the proposed amendments to the Food Stamp regulations (quoted above), which specifically bars equitable estoppel as a defense in agency error cases. See McKinney, order dated January 28, 2003, at pages 3-4.

In Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984), the United States Supreme Court found that no detrimental change in position had occurred, that the appellant had not lost any legal right (either vested or contingent), and that the appellant had not suffered any adverse change in its status, where the only harm suffered was the inability to retain money which should have never been received in the first place. 467 U.S. at 61, 104 S.Ct. at 2224.

ANALYSIS

I. Introduction.

The following facts are not disputed:

The Claimant received Food Stamp benefits for September 2008. See Findings of Fact at Paragraph 5.

⁴ 7 CFR 271.4, titled "delegations to state agencies for administration", provides as follows:

(b) Claims delegation. FNS delegates to the State agency, *subject to the standards in § 273.18*, [set forth above] the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households. [Emphasis added].

The amount of Food Stamp benefits received by the Claimant for September 2008 was \$406.00. See Findings of Fact at Paragraph 6.

The September 2008 Food Stamp issuance constituted an overpayment due to the earnings from the Claimant's new job. See Findings of Fact at Paragraph 6.

The September 2008 Food Stamp overpayment was caused by an error on the part of the DPA or its private contractor / agent, and was not the fault of the Claimant. See Findings of Fact at Paragraph 7.

Accordingly, the sole question in this case is whether the Division was correct to seek recoupment of Food Stamp benefits which were overpaid to the Claimant in September 2008 due to the Division's error. The resolution of this issue does not require the adjudication of any disputed factual matters. Rather, the issue presented for consideration is a purely legal issue of whether recoupment of the Food Stamp overpayment is required by applicable law.

Because the DPA is seeking to alter the existing state of affairs by recouping overpaid benefits, the DPA bears the burden of proving its case by a preponderance of the evidence. See discussion in Principles of Law at page 3, above.

In order to resolve the legal issue posed in this case, it is first necessary to examine the relevant federal statutes and regulations. It is then necessary to review the cases which have construed those statutes and regulations.

II. The Applicable Federal Statutes and Regulations Require That The DPA Seek Recoupment.

The federal statute pertaining to recoupment of Food Stamp benefits is 7 U.S.C.A. § 2022. Subsection (b)(1) of that statute provides in relevant part that the "state agency *shall* collect any overissuance of benefits issued to a household" [Emphasis added]. This statute requires, on its face, that the DPA attempt to recoup overpaid benefits.

The implementing federal regulation pertaining to recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. There are three subsections that are pertinent to this case. Subsection (a)(2) of that regulation provides in relevant part that "the State agency *must* establish and collect any claim . . . ". Subsection (e)(1) of that regulation also provides in relevant part that "state agencies *must* begin collection action *on all claims* unless the conditions under paragraph (g)(2) of this section apply." ⁴ Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the "overpayment [is] caused by an action or failure to take action by the State agency." Thus, it is clear that 7 C.F.R. § 273.18 requires on its face that the DPA attempt to recoup overpaid benefits, even when the overpayment is the result of the DPA's own error.

⁴ Paragraph (g)(2) concerns EBT accounts and does not apply to this case.

Even when a statute or regulation appears clear on its face, it is often helpful to review judicial decisions which have interpreted the statute or regulation at issue. A review of the pertinent court decisions indicates that the authority to waive Food Stamp overpayments has not been delegated from the United States Secretary of Agriculture (Secretary of Agriculture or Secretary) to the state agencies. Bliek v. Palmer, 916 F.Supp. 1475 (N.D. Iowa 1996), affirmed 102 F.3d 1472 (8th Cir. 1997). In this decision, the federal 8th Circuit court held that while the Secretary has the statutory authority to do so, the federal regulation which delegates certain authority to state agencies does not include the authority to waive Food Stamp overpayments. Id.

In summary, the applicable federal statute and regulation facially require that the DPA attempt to recoup overpaid Food Stamp benefits, and do not give the Division any discretion to waive recoupment in agency error cases. This conclusion has been confirmed by the federal 8th Circuit court.

The next section discusses whether courts construing the federal recoupment statute and regulation have recognized any defense to the mandatory statutory recoupment requirement.

III. The Doctrine of Estoppel No Longer Applies to Food Stamp Recoupment Cases.

The Claimant's position is, in essence, that it is not fair or equitable that she be required to repay the Food Stamp benefits at issue because it was the DPA's fault that the benefits were overpaid. See Findings of Fact at Paragraph 8, above. The Claimant is essentially asserting that the DPA is estopped from recouping the overpaid benefits. See Principles of Law at pages 5-6, above.

Two forms of estoppel have been recognized in Alaska. The doctrine of "quasi-estoppel" applies where "the existence of facts and circumstances makes the assertion of an inconsistent position unconscionable." Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978). The doctrine of equitable estoppel applies where a party has asserted a position by conduct or words; the other party has reasonably relied on that position; and the first party later changes its position to the detriment of the second party. Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978).

Some courts held, *prior to* the 1996 amendments to the Food Stamp statutes (discussed in the Principles of Law at page 6, above), that state agencies such as the DPA may be estopped from seeking recoupment of overpaid Food Stamp benefits in cases involving agency error. See, for example, Cudal v. Sunn, 742 P.2d 352 (Hawaii 1987); Mendez v. Department of Social Services, 813 P.2d 1234 (Utah App. 1991); and Lewis v. State, Dept. of Health and Rehabilitative Services, 659 So.2d 1255 (Fla.App. 4th Dist. 1995) (discussed in the Principles of Law at pages 5-7, above).

However, *after* the 1996 amendments to the Food Stamp statutes, most courts, including the Alaska superior court, have held that, based on the language of the federal statute and regulation, the doctrine of estoppel cannot be asserted against agencies such as the DPA in cases involving recoupment of overpaid Food Stamp benefits due to agency error. See, for

example, Aktar v. Anderson, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997); Vang v. Saenz, 2002 WL 434733 (Cal. App. 3 Dist. 2002); and McKinney v. State of Alaska Department of Health & Social Services, Anchorage Superior Court Case No. 3AN-01-11036 Civil (discussed in the Principles of Law at pages 6-7, above).

In addition, the Secretary of Agriculture's 1998 comments regarding proposed revisions to the Food Stamp regulations (including 7 C.F.R. § 273.18), set forth above at page 6 of the Principles of Law, confirms that the intent of the federal regulations is that estoppel not be available as a defense in Food Stamp overpayment recoupment cases, even those involving agency error.

In conclusion, although estoppel may have been assertable as a defense in Food Stamp overpayment recoupment cases prior to 1996, the weight of authority clearly indicates that this is no longer the case. Accordingly, the doctrine of estoppel does not bar the DPA's recoupment claim in this case.

IV. Even Were the Doctrine of Estoppel Generally Available as a Defense in Food Stamp Recoupment Cases, The DPA is Not Estopped on the Facts of This Case.

The decision in McKinney v. State of Alaska Department of Health & Social Services, Anchorage Superior Court Case No. 3AN-01-11036 Civil (discussed above) is currently on appeal to the Alaska Supreme Court. Although considered unlikely, it is possible that the Alaska Supreme Court could decide that estoppel is still assertable as a defense in Food Stamp overpayment recoupment cases. Accordingly, it is appropriate to examine whether the Claimant has proven the elements of estoppel in this case.⁵ The Claimant bears the burden of proof with regard to her estoppel defense.

The Alaska Supreme Court has recognized two forms of estoppel: equitable estoppel and quasi-estoppel. The required elements of the doctrine of equitable estoppel are "the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice." Maynard v. State Farm Mutual Automobile Insurance Company, 902 P.2d 1328, 1330 (Alaska 1995), quoting Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978).

The doctrine of "quasi-estoppel" applies where "the existence of facts and circumstances makes the assertion of an inconsistent position unconscionable." Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978).

⁵ Estoppel is an affirmative defense, and the burden of proving an affirmative defense is on the party raising the defense. See Stormont v. Astoria Ltd., 889 P.2d 1059, 1063 (Alaska 1995); Morrow v. New Moon Homes, Inc., 548 P.2d 279, 294 (Alaska 1976) ("The party raising the affirmative defense generally bears the burden of proof as to that issue"). Accordingly, the Claimant bears the burden of proof with regard to her estoppel defense.

A. Equitable Estoppel Does Not Bar Recoupment on the Facts of This Case.

Is the DPA equitably estopped under Jamison from recouping its overpayment in this case? The DPA definitely “asserted a position” by conduct when it sent the Claimant the September 2008 Food Stamp overpayment. Thus, the first of the three required elements of equitable estoppel is satisfied. However, the Claimant did not present any evidence showing that she had reasonably relied on the DPA’s initial position (i.e. the Food Stamp overpayment). The Claimant also failed to present any evidence that she had suffered any prejudice from the overpayment, other than the potential obligation to repay it (Claimant hearing testimony).

In Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984), the United States Supreme Court found no detrimental change in position had occurred where the only harm was the inability to retain money which should never have been received in the first place. *Id.* at 61, 104 S.Ct. at 2224. Pursuant to Heckler, the Claimant cannot, as a matter of law, satisfy the second and third elements of the doctrine of estoppel (i.e. reasonable reliance and prejudice). Thus, the doctrine of equitable estoppel does not bar the DPA’s recoupment claim on the facts of this case.

B. Quasi-Estoppel Does Not Bar Recoupment on the Facts of This Case.

Does the doctrine of quasi-estoppel under Jamison bar the DPA from recouping its overpayment in this case? Certainly the DPA’s initial issuance of the overpayment is “inconsistent” with its current efforts to recoup that payment. The sole remaining issue is whether the DPA’s inconsistent position is “unconscionable”.

As noted in the preceding section, in Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984), the United States Supreme Court found no detrimental change in position had occurred where the only harm was the inability to retain money which should never have been received in the first place. *Id.* at 61, 104 S.Ct. at 2224. Because, pursuant to Heckler, recoupment would not constitute a detriment to the Claimant as a matter of law, requiring recoupment could likewise not be unconscionable. Accordingly, Heckler prohibits the application of the doctrine of quasi-estoppel applicable on the facts of this case.

In summary, the Claimant failed to provide evidence to support two of the three required elements of the doctrine of equitable estoppel. In addition, the Heckler decision prohibits a finding of equitable estoppel or quasi-estoppel where (as here) the only prejudice suffered by the Claimant is the inability to retain benefits which should not have been paid to her in the first place. Accordingly, even were the doctrine of equitable estoppel and/or the doctrine of quasi-estoppel available as defenses in Food Stamp overpayment recoupment cases, the DPA is not estopped from seeking the recoupment of overpaid Food Stamp benefits on the facts of this case.

V. Summary.

The Claimant stipulated that she received Food Stamp benefits for September 2008. Although she could not remember the exact amount of the Food Stamp benefits she received for September 2008, the Claimant did not dispute the DPA's assertion that the amount of those benefits was \$406.00. The Claimant likewise did not dispute that the September 2008 Food Stamp issuance constituted an overpayment due to the earnings from her new job. The DPA admitted that the September 2008 overpayment was caused by an error on the part of the DPA or its private contractor / agent, and was not the fault of the Claimant. Thus, there were no disputed factual issues in this case. The sole question was the legal issue of whether the Division was correct to seek recoupment of Food Stamp benefits which were overpaid to the Claimant due to the Division's error.

The applicable federal statute (7 U.S.C.A. § 2022) and federal regulation (7 C.F.R. § 273.18) require that the DPA attempt to recoup all overpaid Food Stamp benefits. On their face, the statute and regulation give the Division no discretion to waive recoupment, and at least one federal Court of Appeals decision has confirmed that state agencies do not have the authority to waive Food Stamp overpayments.

The Claimant asserted what amounts to an estoppel defense. Some courts held, prior to certain 1996 amendments to the Food Stamp statutes, that a state agency can be estopped from collecting Food Stamp overpayments which resulted from agency error. However, the weight of current legal authority (court decisions) is that estoppel is no longer available as a defense in Food Stamp overpayment recoupment cases, even those involving agency error.

Finally, even assuming that the defense of estoppel were a valid defense to Food Stamp recoupment cases in the State of Alaska, the Claimant failed to satisfy the required elements of the defenses of equitable estoppel and quasi-estoppel. Accordingly, the DPA is entitled and required to seek recoupment of the \$406.00 in Food Stamp benefits paid to the Claimant for the month of September 2008.

CONCLUSIONS OF LAW

1. The Division met its burden of proof and proved, by a preponderance of the evidence, that it was correct to seek recoupment from the Claimant of overpaid Food Stamp benefits in the amount of \$406.00 for the month of September 2008.
2. The Claimant failed to prove, by a preponderance of the evidence, that estoppel or any other legal defense barred the Division's recoupment claim.

DECISION

The Division was correct to seek recoupment from the Claimant of overpaid Food Stamp benefits in the amount of \$406.00 for the month of September 2008.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this _____ day of February, 2009.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of February, 2009 true and correct copies of the foregoing document were sent by U.S.P.S mail or by e-mail to the following:

Claimant – Certified Mail, Return Receipt Requested.

- _____, Director, Division of Public Assistance
- _____, Policy & Program Development
- _____, Eligibility Technician I
- _____, Staff Development & Training
- _____, Fair Hearing Representative

Al Levitre
Law Office Assistant I