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

In the Matter of)
)
 [REDACTED],)
) OHA Case No. 09-FH-32
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) completed and signed an Application for Food Stamp Program (Application) benefits on June 1, 2008 for himself and his two minor children. (Ex. 2.0-2.7; Ex. 4) The Division received this Application on July 1, 2008. (Ex. 2) Based on this Application, the Division of Public Assistance (Division) issued the household Food Stamp Program benefits beginning July 1, 2008. ([REDACTED] testimony; Ex. 1; Ex. 3) Beginning October 2008, Food Stamp Program benefits were issued only for Claimant because Claimant reported to the Division that his children had left the household. (Ex. 4, Ex. 5)

On November 26, 2008, as a result of a quality assessment review, the Division learned that the two minor children had been issued Food Stamp benefits in [REDACTED] also for the months of July, August and September 2008. (Ex. 6) The Division deemed the issuance of Food Stamp benefits for the two minor children to be an overpayment of Food Stamps in Alaska. (Ex. 6.1) The Division notified Claimant of its determination on January 16, 2009 and requested reimbursement. (Ex. 7) Claimant requested a Fair Hearing on January 23, 2009. (Ex. 8) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010 and 7 CFR § 273.15.

The Fair Hearing was held on February 11, 2009¹. Claimant appeared telephonically and testified. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division.

ISSUE

The Division identified the issue as “Was the agency correct to request the repayment of benefits paid in error? (See Fair Hearing Position Statement, page 2)

After reviewing the evidence and applicable regulations, the issue is more correctly stated as: Was the Division correct to deem Food Stamp benefits issued to Claimant’s children during the months of July, August and September 2008 to have been issued in error and hence be subject to repayment by Claimant?²

FINDINGS OF FACT

None of the facts of this case are disputed. The following are the undisputed relevant facts.

1. Claimant completed and signed an Application for Food Stamp Program (Application) benefits based on a household consisting of himself and two minor children (children) on June 1, 2008. (Ex. 2) The Division received this application on July 1, 2008. (Ex. 2) Claimant sought benefits for his children only for the summer months of July through September 2008, while they were living with him in Alaska during his custodial visitation period with them. (Ex. 2; Ex. 4; Ex. 5; Claimant testimony)

2. On a June 25, 2008 case note referenced on Exhibit 6.1 but not supplied as a separate exhibit, the Division staff wrote “that the client reported that his children had moved in with him for the summer and were not receiving FS on a case in another state.” (Ex. 6.1) At the Fair Hearing, Claimant testified that he asked the children’s mother, his ex-wife, if the children were receiving Food Stamps benefits and that the mother had stated that they were not receiving any.

¹ Hearing Officer Patricia Huna-Jines presided over the hearing. Subsequently, this case was re-assigned to Hearing Officer Claire Steffens, who reviewed the entire file and listened to the entire electronic recording before issuing this Decision.

² The issue as worded in the Fair Hearing Position Statement, page 2, “Issue(s) in dispute” concludes that the benefits sought to be reimbursed have been paid in error. This presents the Division’s conclusion that Claimant received benefits issued in error. However, there is a question whether the benefits actually were paid in error.

A determination of whether benefits were issued in error is a necessary pre-requisite to reimbursement of overpaid benefits. Once benefits are determined to have been overpaid, i.e., paid in error, the federal law is clear that all overpaid benefits shall be recovered. 7 CFR § 273.18(a). It does not matter why the benefits have been overpaid. the excess benefits must be recovered. 7 CFR § 273.18(b) Thus, the issue is not whether the Division was correct to seek repayment of overpaid benefits, which is required by law, but rather whether the benefits were paid in error.

3. On July 3, 2008, the Division approved Claimant's Application for Food Stamp Program benefits for himself and his two minor children. (Ex. 3)

4. Based on this Application, Claimant and his children received Food Stamp Program benefits in July 2008 of \$403.00; in August 2008 of \$403.00; and in September 2008 of \$510.00. (Ex. 6.1) Claimant reported³ to the Division when the children left his household to "move back East." (Ex. 4; Ex. 5; Claimant testimony; ██████ testimony) Thereafter, Claimant received Food Stamp benefits for only himself. (Ex. 5)

5. The Division and Claimant agree Claimant was unaware Food Stamp benefits had been issued in his children's names other than in Alaska. (Claimant testimony; ██████ testimony; Ex. 6.1 referencing CANO dated June 25, 2008)

6. On November 26, 2008, approximately two months after the children ceased receiving Food Stamp benefits, the Division's quality assurance process revealed the Claimant's children also had been issued Food Stamp Program benefits by the state of ██████ during July, August, and September 2008. (Ex. 6; ██████ testimony) The Report of Claim Determination states, in part, "[d]oes not appear agency verified this" information that the children were receiving Food Stamps in another state. (Ex. 6.1)

7. Staff from the Alaska Division of Public Assistance contacted ██████ Food Stamp Program personnel, who affirmed but did not provide details concerning the July, August, and September 2008 issuance of Food Stamp Program benefits by ██████ to the two minor children. (Ex. 6; Ex. 6.1, ██████ testimony)

8. The Division alleges it erred in issuing Food Stamp Program benefits to the two minor children while they resided in Alaska because ██████ also issued benefits in their names during July, August and September 2008. (Ex. 6; 6.1)

9. Claimant requested a Fair Hearing claiming that the Food Stamp Program benefits issued to his children by the State of Alaska during July, August, and September 2008 were not paid in error because the children were living with him in Alaska during that time and the household was eligible for the benefits in all other respects. (Ex. 8; Claimant testimony)

PRINCIPLES OF LAW

I. Burden of Proof

This case involves the Division's request to collect alleged overpaid Food Stamp benefits. Ordinarily, the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

II. Standard of Proof

³ The report of the change in household composition is noted in the Division's case note, but the exact date of the report is unclear. The date of the report is not material to this Decision.

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

III. Food Stamp Program

The Food Stamp Program is a federal program administered by the states. 7 CFR 271.4(a). The State of Alaska has adopted regulations to implement the federal Food Stamp Program. Those regulations are found at 7 AAC 46.010-990.

A household is defined, in relevant part, at 7 CFR § 273.1(a)(3) as “[a] group of individuals who live together and customarily purchase food and prepare meals together for home consumption.”

Title 7 CFR § 273.1(b) provides that dependent children are included within the household concept when they are physically present in the household and purchase food and prepare meals with their adult caregivers. 7 CFR § 273.1(b)(1) states, in relevant part:

[t]he following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified. (Emphasis added)

....

(ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s). (Emphasis added)

Thus, the law requires that children who are under 22 years old and living with a parent must be considered as part of parent’s household and must be considered as customarily purchasing food and preparing meals with the household, even if they do not do so. 7 CFR § 273.1(b)(1) and (1)(ii).

Subsection (b) of 7 CFR § 273.18 identifies three types of Federal claims which arise upon a determination that benefits have been overpaid and for which the state must seek

reimbursement: 1) Intentional Program Violations; 2) Inadvertent household error; and 3) Agency error. An agency error is “any claim for an overpayment caused by an action or failure to take action by the State agency.” 7 CFR §273.18(b).

Under 7 CFR § 273.18, it does not matter why the overpayment occurred, fault is immaterial. Thus, 7 CFR § 273.18(a)(1) states: “[a] recipient claim is an amount owed because of: (i) [b]enefits that are overpaid or”

Food Stamp Program benefits that are overpaid are Federal claims that the State must collect as restitution from each person who was an adult member of the household when the overpayment occurred. 7 CFR § 273.18(a).

ANALYSIS

I. Issue

Was the Division correct to deem Food Stamp benefits issued to Claimant’s children by the Division of Public Assistance, State of Alaska, during the months of July, August and September 2008 to have been issued in error, because [REDACTED] also issued Food Stamp benefits to the children during the same months, and hence subject to reimbursement as a federal claim? (See Footnote 2)

II. Burden of Proof

Ordinarily, the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The Division is attempting to change the status quo by seeking reimbursement of Food Stamp benefits it alleges have been overpaid. Accordingly, the Division bears the burden of proof in this case.

Because the burden of proof in this case is on the Division, in order to be able to seek reimbursement for benefits issued to Claimant’s children while living in his household in Alaska, the Division must prove it is more probable than not that it issued Food Stamp Program benefits to Claimant’s household in error.

III. Were Food Stamp Benefits Issued in Error by Alaska Division of Public Assistance?

During the Fair Hearing, Claimant contested the Division’s decision to seek reimbursement of Food Stamp benefits paid to his children during July, August and September 2008 on grounds that the benefits were not paid in error because the children were living with him and the household was otherwise eligible to receive the benefits issued. (Ex. 8; Claimant testimony)

Determination whether benefits were issued in error is a necessary pre-requisite to asserting a claim for reimbursement of overpaid benefits. 7 CFR § 273.18(b) However, once benefits have been determined to be overpaid, i.e., paid in error, the federal law is clear that all benefits shall be reimbursed as a Federal claim which the state must collect

as a debt. 7 CFR § 273.18(a). It does not matter why the benefits have been overpaid, the excess benefits must be recovered. 7 CFR § 273.18(b) Therefore, once it has been determined if the benefits in question were or were not paid in error, the matter of reimbursement is also settled. For this reason, the Division's wording of the issue in dispute has been re-phrased to identify the actual legal issue in this case.

All relevant facts are undisputed in this case: see Finding of Facts numbers 1 through 9. In particular it is undisputed that:

- a) Claimant received Food Stamp benefits for July, August, and September 2008 for his household consisting of himself and his two minor children;⁴
- b) The children were physically present and resided with him in Alaska for these three summer months;
- c) Claimant and his children were eligible for Food Stamp Program benefits in Alaska and they were paid the appropriate amount for household size and composition;
- d) Alaska Division of Public Assistance relied on the correct information that Claimant's two minor children were living with him in Alaska and that he did not know that another state, ██████████, had issued Food Stamp benefits for his children during July, August and September 2008;⁵
- e) The sole basis on which the Division deems it should seek reimbursement from Claimant is that Connecticut also issued Food Stamp benefits to Claimant's two children during July, August and September 2008.⁶

⁴ The Food Stamp benefit paid July 2008 totaled \$510.00, of which the Division alleges \$316.00 was attributed to the two minor children and hence overpaid. In each of August and September 2008, the Food Stamp benefit was \$403.00 of which the Division alleges \$316.00 was attributed to the children and hence overpaid. The total alleged overpayment is \$948.00 (Ex. 7)

⁵ At some point, Claimant contacted the children's caregiver (mother) in ██████████ and asked if the children were getting Food Stamps. (Claimant testimony) The mother said they were not receiving Food Stamps and she had not applied for Food Stamps. Moreover, the mother stated that her household had sufficient income as to neither need Food Stamps nor qualify for them. (Claimant testimony)

⁶ Approximately two months later, the Division learned that these same children had been issued Food Stamp benefits in ██████████ during the time the children had been in Alaska, i.e., July, August and September 2008. Upon discovering this, the Division attempted to verify this fact with ██████████. (Ex. 6) The ██████████ caseworker did affirm that the named children were issued Food Stamp benefits in that state for July, August and September 2008. However, the ██████████ caseworker refused to provide additional information. (██████████ testimony) Details such as the date the benefits were first issued, the name of the adult applicant receiving the benefits on behalf of the children, and on what basis ██████████ had deemed the children eligible for benefits would have been helpful to Alaska in determining which state issued the children Food Stamp benefits in error for the three months in question.

A. Were Claimant's Children Entitled to Food Stamp Program Benefits in Alaska?

It is undisputed that but for the fact that ██████ issued Food Stamps for the same two children during the same three months in question (July, August and September 2008), the Division would not be alleging error in providing Food Stamps to Claimant. The question arises whether benefit issuance by another state makes an otherwise valid issuance of Food Stamp Program benefits erroneous. Therefore, to determine if the Food Stamp benefits for these months were issued in error, the facts of this case must be applied to the law.

First, to be eligible for Food Stamps, a dependent child must be physically present in the household and be deemed to purchase food and prepare meals with their adult caregivers. Title 7 CFR §273.18(b). There is no dispute that Claimant met this eligibility criteria.

Claimant's children were physically present in Alaska and not present in ██████ during July, August and September 2008.⁷ In order for a child to receive Food Stamp benefits, the child must be "living with" the adult caregiver. 7 CFR § 273.1(a) and (b)(iii). Hence the Claimant's children could not qualify to receive Food Stamp benefits from ██████ during these three summer months. 7 CFR § 273.1(a). For this reason it appears that ██████ issued Food Stamp Program benefits in error in this case.⁸

In fact, under the undisputed facts presented in this case, the Alaska issued Food Stamp benefits could not have been issued to Claimant's children in error. 7 CFR §273.1.

B. Food Stamp Program Benefits are a Property Interest.

As an eligible applicant,⁹ Claimant was entitled to public welfare benefits from Alaska while his children were living with him and the household otherwise qualified for benefits. The Ninth Circuit Court has ruled that an applicant for public welfare benefits has a property interest in those benefits. *Gonzalez v. Sullivan*, 914 F.2d 1197, 1203 (9th

⁷ Instead, the Division would have been required to notify the other state of the apparent fraud under its Food Stamp Program. In this case, ██████ appears to have issued Food Stamp benefits in error, not Alaska.

⁸ As discussed above, all states, including the state of ██████ must apply the federal Food Stamp Program regulations and hence if reimbursement is required, it would appropriately be required from the ██████ adult applicant(s) who appear to have either claimed to have the children living in the household when in fact they were living in Alaska or to have failed to report their departure from the household.

⁹ It is unclear whether Claimant already was receiving Food Stamp Program benefits before he applied in July 2008 for his household including his children. Recipients of public welfare benefits certainly have a property interest in the continued receipt of benefits, and that property interest cannot be denied or terminated absent due process of law. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

Cir. 1990)¹⁰ Because Alaska falls within the jurisdiction of the Ninth Circuit, the *Gonzalez* decision applies, especially as regards federal welfare benefits such as Food Stamps. Consequently, once Claimant established eligibility for Food Stamp Program benefits, the Division was required to issue them.¹¹ In this case, it is undisputed that Claimant's household was eligible for Food Stamp Program benefits and hence the Claimant's household was entitled to receive them.

Once the Division had ascertained that the children were physically present in Alaska, living with Claimant, and the household met the other Food Stamp Program eligibility requirements, Claimant acquired a protected property interest in the Food Stamp benefits appropriate for his household. Simultaneously, it became irrelevant to the Division's obligation to issue Food Stamp benefits for the children (while they remained eligible) whether ██████ issued Food Stamps to them as well. The State of Alaska cannot control the actions of ██████ or its residents.¹²

Therefore, even if the Division had discovered during the period July 2008 through September 2008, that another state had issued Food Stamp benefits in the children's names, the Alaska Division would not have erred to issue Food Stamp benefits to the children: it would have been obligated to do so.

C. The Division Verified All Relevant Facts

The Division asserts the benefits were overpaid because of "agency error" as contemplated by 7 CFR § 273.18(b). The particular error it alleges is that it "does not appear that the agency verified" the information that "the children were not receiving F(ood) S(tamps) in another state" and consequently, the Division issued Food Stamp benefits to Claimant's household in error. (Ex. 6.1)

However, this is contrary to the undisputed fact that the Division did ascertain that Claimant's children were living in Alaska with him and that he believed they were not

¹⁰ In *Gonzalez*, the public welfare benefits were social security benefits.

¹¹ Based upon Claimant's Application, the Division correctly determined Claimant's household was eligible for Food Stamp Program benefits. Claimant correctly reported the children's departure from the household. On September 12, 2008, the Division correctly terminated Food Stamp Program benefits for the children based on their absence from the household. (Ex. 5) There is no dispute that the amount of benefits issued to Claimant's household was appropriate based on the household composition of one adult and two children.

¹² Both ██████ and Alaska must follow the same federal Food Stamp laws. When a child leaves a household, the fact of their departure must be reported promptly so that food stamp benefits can be paid to them at their new household, if they are eligible there. See 7 CFR § 273.12(a)(1)(ii) and (a)(2). "The state agency is required to take prompt action on all changes to determine if the change affects the household's eligibility or allotment." 7 CFR § 273.12(c). If ██████ had received a report that the children were no longer living in the ██████ household and had taken the required prompt action, this case would not have arisen.

receiving Food Stamp benefits in another state. (Ex. 6.1) The question then arises: what more could the Division Eligibility Technician do to verify this information?

Assuming arguendo, that the Division had contacted [REDACTED] at the time of Application between July 1 to 3, 2008¹³ it could learn only: a) that an application for the children had been submitted in [REDACTED] or b) that the children already were receiving Food Stamp benefits in [REDACTED]; or c) that no application had been submitted for the children. In each of a), b), or c), the Division in Alaska would still have been required to issue Food Stamp Program benefits to the children because they fully met the criteria for eligibility in Alaska.¹⁴ 7 CFR § 273.1; see also Subsection B herein. Otherwise stated, the children could not be eligible in [REDACTED] for the same months they were eligible in Alaska because they were not then living in a household in [REDACTED]. Therefore, the Division did not commit an error when it issued Food Stamp Program benefits to Claimant's household during July, August, and September 2008.

IV. Reimbursement

The Division alleges that the benefits paid to Claimant's household in the amount of \$948.00 should be repaid to extinguish a federal debt created by erroneously issued benefits under 7 CFR § 273.18. However, because the Division did not issue the July, August and September 2008 Food Stamp Program benefits to Claimant's children in error, no benefits have been overpaid by the State of Alaska and there is no legal basis for the Division to seek reimbursement from Claimant. Accordingly, the Claimant is not required to make restitution for Food Stamp Program benefits issued in July, August, and September 2008.

CONCLUSIONS OF LAW

1. The Division did not meet its burden of proving by a preponderance of the evidence that it erred by overpaying Food Stamp Program benefits to Claimant's children while they resided with Claimant in Alaska during July, August and September 2008.
2. The Division did not meet its burden of proving that it had a federal claim for overpayment of Food Stamp Program benefits paid to Claimant's two minor children during the months of July 2008, August 2008 and September 2008.

¹³ The Division received the Application on July 1 and approved it on July 3, 2008. (Ex. 3)

¹⁴ Based on the undisputed facts, there are no other grounds on which basis the children might be deemed ineligible.

DECISION

The Division was not correct to deem Food Stamp benefits issued by the State of Alaska to Claimant's children during the months of July, August and September 2008 to have been issued in error. Hence the Division was not correct to seek reimbursement from Claimant of the Food Stamp benefits provided to Claimant's household in July 2008, August 2008 and 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
P.O. 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 April _____, 2009

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of April , 2009 true and correct copies of the foregoing were sent to Claimant (via U.S.P.S.):
Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

_____, Director
_____, Administrative Assistant II
_____, Policy & Program Development
_____, Eligibility Technician I
_____, Staff Development & Training
_____, Fair Hearing Representative

Al Levitre, Law Office Assistant I