

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES  
DIVISION OF PUBLIC ASSISTANCE

SARAH PALIN, GOVERNOR

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July 13, 2009

[REDACTED]

Re: Director's Appeal  
OHA Case #09-FH-37  
Food Stamps  
Agency Case # [REDACTED]

Dear [REDACTED]:

This letter is in response to your request for a Director's review of your April 29, 2009 fair hearing decision regarding repayment of food stamp benefits. Your appeal was received in my office on May 21, 2009.

In your appeal, you asked for reconsideration of the Hearing Authority's decision to uphold our agency's action to seek repayment of the \$857.00 in food stamp benefits that were incorrectly paid to your household for the month of October 2008.

As stated in the Hearing Authority's decision, Federal Food Stamp Program rules require our agency to establish and collect any food stamp overpayment. The Federal law requires repayment of benefits paid in error irrespective of who is at fault for the overpayment. Therefore, I am upholding the Hearing Authority's decision that our agency was correct to request you repay the \$857.00 in food stamp benefits that were incorrectly paid for the month of October 2008.

This decision has been reached based upon a review of the hearing record, fair hearing exhibits, the Hearing Authority's decision, and applicable laws and regulations. If for any reason you are not satisfied with this decision, you may appeal to the Superior

Court within 30 days.

Sincerely,

Ellie Fitzjarrald  
Director of Public Assistance

cc: Claire Steffens, Hearing Authority  
[REDACTED], Chief of Policy & Program Development  
[REDACTED], Staff Development and Training  
[REDACTED], DPA Fair Hearing Representative  
[REDACTED], Benefit Recovery Unit

Office of Hearings and Appeals  
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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], )  
 )  
 )  
 )  
 Claimant. ) OHA Case No. 09-FH-37  
 ) Division Case No. [REDACTED]  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED], (Claimant), was re-certified for Food Stamp Program benefits on May 1, 2008 and continued to receive Food Stamp benefits based on the information that he provided to the Division of Public Assistance (Division). (Ex. 2.10) On December 18, 2008, the Division processed proof that Claimant was employed between August 2008 and October 2008. (Ex. 2.5) As a result, the Division of Public Assistance (Division) determined it issued excess Food Stamp benefits to Claimant in October 2008. (Ex. 2.1) On January 20, 2009, the Division notified Claimant of the overpayment and of its intention to recover the excess from Claimant. (Ex. 2.0)

On January 23, 2009, Claimant requested a Fair Hearing asserting that he should not have to make repayment of the overpaid October 2008 Food Stamp Program benefits. (Ex. 3) This Office has jurisdiction under authority of 7 AAC 49.010 and 7 CFR § 273.15.

Pursuant to Claimant's request, a Fair Hearing commenced on February 12, 2009.<sup>1</sup> The Claimant appeared telephonically. [REDACTED], the Division's Fair Hearing Representative, appeared in person on behalf of the Division. No testimony was given. Claimant requested a re-scheduling of the hearing so that he might have time to contact legal counsel and decide if he should proceed with an attorney. The Division did not object.

<sup>1</sup> Hearing Officer Jay Durych presided over the hearing.

The hearing was continued to March 19, 2009.<sup>2</sup> At this time Claimant appeared telephonically, without an attorney, and testified [REDACTED], the Division's Public Assistance Analyst, appeared in person and testified on behalf of the Division.

## ISSUE

Was the Division correct to seek Claimant's reimbursement to the State of Food Stamp benefits overpaid for October 2008?

## FINDINGS OF FACT

1. Claimant was recertified for Food Stamp Program benefits on May 27, 2008 and received benefits continuously from May 2008 through November 2008. (Ex. 2.9; Ex. 2.10) The Division notified Claimant his household's food stamp benefit was based on a household of three with zero income. (Ex. 2.10) The Division also notified Claimant he had to report whenever his household's gross monthly income exceeded \$2,326.00 and that his report should be made within 10 days of knowing of the change. (Ex. 2.10)
2. Claimant earned gross income in October 2008 of \$3,597.00. (Ex. 2.4)
3. Claimant testified that he reported his October 2008 income to a Division caseworker and she told him not to "worry about it" because he had reported it. Claimant also sent copies of his October 2008 paystubs to the Division. (Ex. 2.1; Ex. 2.2) The record does not clearly indicate the dates Claimant made these reports to the Division.
4. The Division received Claimant's October 2008 paystubs on December 4, 2008 at the same time as it received a late application for Claimant's recertification for Food Stamp benefits. (Ex. 2.1-2.2)
5. The Division attributed the late receipt of the paystubs to Claimant but also noted that "[REDACTED] Post Office has been losing mail so ET cannot say for sure that the clients did not report their income." (Ex. 2.1) Additionally, the recertification Eligibility Technician wrote "they mailed pay stubs to this office but this office did not receive pay stubs from them. Since the [REDACTED] area has been experiencing multiple problems with the Postal Service ET believes that they sent the pay stubs and we never received them. Many items mailed to this office in the last 6 months have never gotten here." (Ex. 2.2)
6. On December 18, 2008, as part of the eligibility process pertaining to Claimant's recertification application of December 4, 2008, the Division learned Claimant's October 2008 gross household income of \$3,597 exceeded the Food Stamp Program gross household income limit of \$2,326.00. (Ex. 2.2; Ex. 2.4; Ex. 2.5)

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<sup>2</sup> Hearing Officer Patricia Huna-Jines presided over this 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.

7. Based on the pay stub information, the Division determined it had overpaid Claimant Food Stamp benefits by \$857 for October 2008. (Ex. 2.1)

8. On January 20, 2008, the Division sent Claimant a notice requesting repayment of \$857.00 of overpaid Food Stamp Program benefits for October 2008. (Ex. 2.0)

9. On January 23, 2009, Claimant requested a Fair Hearing on grounds that because Claimant reported income as required to the Division, Claimant should not have to repay the October 2008 overpaid Food Stamp benefits.

## PRINCIPLES OF LAW

### I. 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).

### II. Standard of Proof

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 (5<sup>th</sup> Ed. 1979)

### II. The Food Stamp Program.

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 CFR § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations of 7 CFR § 271 – 274.

Eligibility and the amount of Food Stamp benefits a household receives are based upon the countable income of all the household members. 7 CFR § 273.10(e)(1)(i)(A)

A household must report when its monthly gross income exceeds the monthly gross income limit set by law for that household. 7 CFR § 273.12(a)(2)(vii) and 7 CFR § 273.9(a)(1)(ii).

When Food Stamp benefits are paid to a Claimant in excess of the amount which should have been paid, a Federal claim arises for the overpayment. 7 CFR § 273.18. Subsection (b) of 7 CFR § 273.18 identifies three types of Federal claims: 1) Intentional Program Violations; 2) Inadvertent household error; and 3) Agency error. An inadvertent household error is “any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.” 7 CFR § 273.18(b). 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(b)(2) and (3), whether the overpayment of benefits resulted due to agency error or inadvertent household member error makes no difference in consequence. The benefit overpayment is a Federal debt which the state must collect as a claim against the recipient. 7 CFR § 273.18(a)(1) states: “[a] recipient claim is an amount owed because of: (i) [b]enefits that are overpaid ...” 7 CFR § 273.18(a)(2) states: “[t]his 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.”

Federal regulation requires the State to collect Federal Food Stamp benefit claims from each person who was an adult member of the household when the overpayment occurred. 7 CFR § 273.18(a)(4)(i). This regulation states, in relevant part: “[t]he following are responsible for paying a claim: (i) Each person who was an adult member of the household when the overpayment ... occurred.”

## ANALYSIS

### I. Issue

Was the Division correct to seek repayment from Claimant of overpaid Food Stamp Program benefits issued for October 2008?

### II. Burden of Proof and Standard of Proof

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 seeks to change the status quo by requiring Claimant to reimburse the State for the October 2008 Food Stamp benefits which the Claimant’s household received as an overpayment. Accordingly, the Division has the burden of proof.

To prevail, the Division must prove it is entitled to collect the benefits overpaid to Claimant’s household in October 2008 by supplying the preponderance of relevant evidence. That is, the Division must prove its right to reimbursement by evidence that is more convincing or of greater weight than Claimant’s evidence.

III. Repayment of overpaid Food Stamp benefits is required by law irrespective of fault.

In this case, all the relevant facts are undisputed.<sup>3</sup> See Findings of Fact. Claimant's household's monthly gross income limit for Food Stamp Program benefits set by law is \$2,326.00. (Ex. 2.0 - 2.10) Claimant's gross household income for October 2008 was \$3,597, which exceeded the \$2,326.00 limit. (Ex. 2.0 - 2.10) The Division determined that Claimant received an overpayment of Food Stamp Program benefits for October 2008 in the amount of \$857.00. Claimant does not dispute these facts.

The dispute in this case is whether Claimant is required to repay the \$857.00 of over paid Food Stamp benefits for October 2008. Claimant asserts he should not have to repay because he did nothing wrong, he did report his income to the Division, and the Division made a mistake in sending him benefits to which he was not entitled.<sup>4</sup> (Claimant's testimony; Ex. 3)

The Division agrees that the Claimant reported his income and cannot explain why it did not have the information in time to adjust the October 2008 payment and prevent overpayment of October 2008 benefits. (Ex. 2.1; Ex. 2.2) The Division's Eligibility Technician notes that the [REDACTED] postal system was having substantial problems with mail delivery during the period relevant to Claimant's mailing of his pay stubs and suggests this caused the delay in the Division's learning of Claimant's October income. (Ex. 2.1; Ex. 2.2)

The positions of the Division and of the Claimant are only slightly different because both agree that Claimant reported the change in his income. The slight difference is the time of the report of change. However, whether the report of change was received when Claimant states he gave it or when the Division alleges it received the report is of little consequence in this case. This is because Federal law requires repayment irrespective of who is at fault for the overpayment.

Federal law regarding overpaid Food Stamp Program benefits is clear and inflexible. See 7 CFR § 273.18. Once overpayment is found to have occurred, regardless of whether overpayment occurred due to Claimant's error or the Division's error, a Federal debt arises. 7 CFR § 273.18(a). This Federal debt is a claim the State must seek to recover from the overpaid household. 7 CFR § 273.18(a)(2). Repayment must be pursued by the State, irrespective of why the overpayment occurred. 7 CFR § 273.18.

Moreover, the Federal debt arising from overpaid benefits must be repaid by collection from each person who was an adult member of the household when the overpayment occurred. 7 CFR § 273.18(a)(4)(i). Subsection (a)(4)(i) provides that "[e]ach person who

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<sup>3</sup> The Division's delayed receipt of Claimant's October pay stubs is immaterial, as is the reason why delay occurred. The Division did receive the information of Claimant's October 2008 income and was able to make its determination.

<sup>4</sup> Claimant seems concerned with the Division's claim that the overpayment was "client caused." (Ex. 3; Ex. 2.1) As discussed above, the relatively brief delay in receipt of Claimant's pay stubs and report of change is harmless. It is important that Claimant did make the report.

was an adult member of the household when the overpayment ... occurred" is responsible for paying a claim.

Therefore, the Division is required by Federal regulation to seek repayment of overpaid benefits. In this case, the Division is correct to seek repayment from Claimant's household of \$857.00 of Food Stamps overpaid in October 2008.

### **CONCLUSION OF LAW**

The Division has met its burden of proof by a preponderance of the evidence that the Food Stamp Program benefits overpaid in October 2008 to Claimant's household is a Federal claim which must be repaid by Claimant's household.

### **DECISION**

The Division was correct to seek repayment of the Food Stamp Program benefits it overpaid to Claimant's household for October 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 April, 2009.

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Claire Steffens  
Hearing Authority


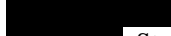
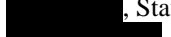
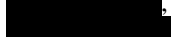
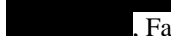



CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of April, 2009, true and correct copies of the foregoing were sent by U.S.P.S., by Certified Mail, Return Receipt Requested to:

Claimant

and to other listed persons by e-mail:

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

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Al Levitre  
Law Office Assistant I