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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-49  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) has been a Food Stamp recipient since January 2007. (Ex. 1) On December 19, 2008, the Division sent the Claimant written notice requesting repayment of \$2,008 in Food Stamp benefits that the Division had paid her in error. (Ex. 2) The Claimant requested a fair hearing on January 23, 2009. (Ex. 3) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on April 15, 2009 before Hearing Officer Patricia Huna-Jines. The Claimant attended the hearing telephonically and represented herself. [REDACTED], a Public Assistance Analyst with the Division, attended in person, represented the Division and testified on the Division's behalf.

This case was reassigned to Hearing Officer Larry Pederson, who reviewed the entire hearing record and listened to the entire hearing before issuing this Decision.

**ISSUE**

The initial issue presented is whether the Division was correct to require the Claimant to repay \$2,008 in Food Stamp benefits paid the Claimant because of Division error. However, a review of the entire record reveals that two issues are present in this case:

1. Does the Division's December 19, 2008 repayment notice comply with notice requirements contained in federal regulation 7 CFR 273.18(e)(3)(iv)?

2. Was the Division correct to require the Claimant to repay \$2,008 in Food Stamp benefits the Claimant received as a result of the Division's error?

### **FINDINGS OF FACT**

The following facts are established by a preponderance of the evidence.

1. The Claimant was receiving Food Stamp benefits for her two person (Claimant and her daughter) household in 2007. (Ex. 2.2)
2. The Claimant's daughter left her household in the beginning of 2007. (Ex. 2.2) The Claimant notified the Division her daughter had left the household. *Id.* The Claimant also informed the Division in her July 2007 Food Stamp recertification application and one subsequent Food Stamp recertification application that she was the only person residing in her household. *Id.*
3. The Division, however, continued to issue the Claimant Food Stamp benefits for a two person household, rather than a one person household.
4. In December 2008, the Claimant spoke to a Division representative about receiving heating assistance. (Ex. 2.2) The Division reviewed the Claimant's file and determined that the Claimant had notified the Division she was living by herself and that the Division should have only issued the Claimant Food Stamp benefits for a one person household. *Id.*
5. The Division sent the Claimant written notice, on December 19, 2008, that she was required to repay the portion of the benefits she had been overpaid, for the period from January 2008 through December 2008. (Ex. 2) The Division calculated the Claimant had received \$2,008 more in Food Stamp benefits than she was entitled to for the months of January 2008 through December 2008. *Id.* The Division agrees the overpayment was due to its own error ("Agency error") and was not the Claimant's fault. *Id.*
6. The Division's December 19, 2008 repayment notice informed the Claimant "[i]f you cannot make the payments you have agreed to make, or you disagree with this action and want to review our records of the claim, please contact me." (Ex. 2) The notice also contained a summary of the claimed overpayment. *Id.* The notice did not inform the Claimant that she could obtain a copy of her records. *Id.* The notice also did not contain the Division's calculations showing how it determined the amount the Claimant was allegedly overpaid. *Id.*

### **PRINCIPLES OF LAW**

This case involves the Division's action to collect alleged overpaid Food Stamp benefits from a Food Stamp recipient. The Division has the burden of proof<sup>1</sup> by a preponderance of the evidence.<sup>2</sup>

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<sup>1</sup> "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)

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the regulations which the State of Alaska is required to follow in administering the Food Stamp program.

A state agency that administers the federal Food Stamps program “must establish and collect any claim” including a claim for overpaid benefits issued due to agency error. 7 CFR 273.18(a)(1)(i); 7 CFR 273.18(a)(2). An “agency error” is defined as “any claim for an overpayment caused by an action or failure to take action by the State agency.” 7 CFR 273.18(b)(3).

The Food Stamp program regulations specify what notice the Division must give a Food Stamp recipient when it seeks to recover an alleged benefit overpayment:

- (iv) The initial demand letter or notice of adverse action must include language stating:
  - (A) The amount of the claim.
  - (B) The intent to collect from all adults in the household when the overpayment occurred.
  - (C) The type (IPV, IHE, AE or similar language) and reason for the claim.
  - (D) The time period associated with the claim.
  - (E) How the claim was calculated.
  - (F) The phone number to call for more information about the claim.
  - (G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
  - (H) The opportunity to inspect and copy records related to the claim.
  - (I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.
  - (J) That, if not paid, the claim will be referred to the Federal government for federal collection action.
  - (K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
  - (L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
  - (M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
  - (N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.

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<sup>2</sup> 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). Preponderance of the evidence is defined as “[e]vidence 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)

(O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

7 CFR 273.18(e)(3)(iv).

The Alaska Supreme Court recently held that Food Stamp repayment notices that (a) did not advise the Food Stamp recipients they could copy their Food Stamp records, and (b) did not contain the Division's detailed calculations of how it arrived at what benefits the recipients were entitled to receive, as compared to what benefits they actually received, were defective. *Allen v. State, Dep't of Health and Social Services*, 203 P.3d 1155, 1167 – 1169 (Alaska 2009) The Alaska Supreme Court then held the State could not pursue a Food Stamp repayment claim until it sent the Food Stamp recipients proper notice: "if the Agency wishes to pursue its recoupment claims against Allen and Wallis, it must issue them notices that comply with the federal regulation requirements." *Id.* at 1169.

### ANALYSIS

This case involved the Division's attempt to recover allegedly overpaid Food Stamp benefits from the Claimant. The Division has the burden of proof by a preponderance of the evidence.

There are two issues involved in this case. The first is whether the Division's repayment notice sent to the Claimant complies with the notice requirements contained in the applicable federal regulation, 7 CFR 273.18(e)(3)(iv). The second is whether the Division was correct to require the Claimant to repay \$2,008 in Food Stamp benefits the Claimant allegedly received as a result of the Division's error.

The first issue is purely legal. It involves a review of the Division's December 19, 2008 repayment notice, to determine if it complies with the notice requirements contained in 7 CFR 273.18(e)(iv). On its face, the repayment notice does not comply with the notice requirements contained in 7 CFR 273.18(e)(iv). *See* Ex. 2. It does not notify the Claimant that she can copy her Food Stamp records, merely that she can review them. 7 CFR 273.18(e)(iv)(H). Nor does it contain the detailed calculations of how the Division determined what Food Stamp benefits the Claimant was entitled to, versus the benefits she actually received. 7 CFR 273.18(e)(iv)(E).

In *Allen v. State, Dep't of Health and Social Services*, 203 P.3d 1155 (Alaska 2009), the Alaska Supreme Court held that the failure of the Division to send out a repayment notice that complied with the notice requirements contained in 7 CFR 273.18(e)(iv) precluded it from collecting an alleged Food Stamp overpayment: "if the Agency wishes to pursue its recoupment claims . . . it must issue . . . notices that comply with the federal regulation requirements." *Id.* at 1169. The repayment notice in this case contains the exact same deficiencies noted in the *Allen* case: the lack of detailed benefit calculations and the failure to notify the recipient that she could copy her Food Stamp records. The Alaska Supreme Court's ruling in *Allen* compels a decision in this case that the Division's notice is defective, and that the Division may not proceed further with its repayment claim against the Claimant unless the Division sends her a **new** repayment notice that complies with the federal regulation requirements.

Because this Decision has found in the Claimant's favor on the first issue, it is not necessary to address the second issue of whether the Division was correct to require the Claimant to repay \$2,008 in Food Stamp benefits the Claimant allegedly received as a result of the Division's error. If the Division reissues a repayment notice to the Claimant, the Claimant may then request a fair hearing to contest her repayment obligation.

### **CONCLUSIONS OF LAW**

1. The Division's December 19, 2008 repayment notice did not comply with the notice requirements contained in 7 CFR 273.18(e)(3)(iv) as explained in the recent Alaska Supreme Court decision *Allen v. State, Dep't of Health and Social Services*, 203 P.3d 1155 (Alaska 2009).
2. As a result, the Division is precluded from pursuing this action for repayment of allegedly overpaid Food Stamp benefits until such time as it complies with the notice requirements contained in 7 CFR 273.18(e)(iv).
3. The Division was therefore not correct, because of the lack of proper notice, to require the Claimant to repay it \$2,008 in allegedly overpaid Food Stamp benefits.

### **DECISION**

The Division was not correct, because of the lack of proper notice, to require the Claimant to repay it \$2,008 in allegedly overpaid Food Stamp benefits.

### **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, the Claimant must 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

An appeal 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 21st day of May 2009.

Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 21st day of May 2009,  
true and correct copies of the foregoing were  
sent to:

Claimant by First Class Mail, Certified, Return Receipt Requested.

And to the following by email:

[REDACTED], Fair Hearing Representative  
[REDACTED], Director  
[REDACTED], Director's Office  
[REDACTED], Policy & Program Development  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training

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Al Levitre, Law Office Assistant I