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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-445
) Division Case No. [REDACTED]
)
 Claimant.)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED], (Claimant), was receiving Food Stamp benefits provided by the Division of Public Assistance (Division). (Ex. 1) On January 29, 2009, the Division learned of an increase in the household income, but failed to act on this increase until March 9, 2009. (Ex. 3). As a result, the Division determined it issued excess Food Stamp benefits to Claimant in March 2009. (Ex. 3.1) On June 15, 2009, the Division notified Claimant of a \$283.00 overpayment and of its intention to recover the excess from Claimant. (Ex. 4.0)

On July 28, 2009, Claimant requested a Fair Hearing asserting she should not have to make repayment of the overpaid March 2009 Food Stamp Program benefits. (Ex. 5) This Office has jurisdiction under authority of 7 AAC 49.010 and 7 CFR § 273.15.

Pursuant to Claimant's request, a Fair Hearing was held on October 1, 2009.¹ The Claimant appeared telephonically and testified. [REDACTED], the Division's Fair Hearing Representative, appeared in person and represented the Division. She also testified on behalf of the Division.

¹ Hearing Officer Jay Durych presided over the hearing. Patricia Huna-Jines made the final determination after a review of all the evidence, including the hearing recording.

ISSUE

The Division is requesting the Claimant repay Food Stamp benefits overpaid for March of 2009. The Division based its Food Stamp benefit rate on information it had available in January 2009.

Claimant argued that her household's income was unexpectedly substantially reduced in March 2009 and her expenses increased. If the Division used calculations based on information known in January 2009, the result would not be fair. Therefore, she should not be required to reimburse the Division for the overpayment.

The Division argues that benefits are calculated based on anticipated income. Therefore, the actual income and expenses, known only after the amount of Food Stamp benefits are determined, are irrelevant.

The actual issue is:

Was the Division correct to seek reimbursement of \$283.00 from Claimant of Food Stamp benefits overpaid for March 2009?

FINDINGS OF FACT

1. Claimant's household had been receiving Food Stamp Benefits since November 2008. On January 29, 2009, Claimant's spouse participated in an intake interview for the Medicaid program. Before that time, the Division understood that the household income consisted only of Claimant's spouse's unemployment benefits. (Ex. 2) During the intake interview, Claimant's spouse reported the Claimant recently retained employment. (Id.).
2. After the interview, the Division personnel verified with Claimant's employer that Claimant had been working for a week. She was scheduled to work 25 hours a week at \$7.50 an hour. (Id.).
3. The Division made no changes to Claimant's Food Stamp benefits and continued to send her benefits in the amount of \$364.00 for the months of February and March. (Ex. 3).
4. On March 9, 2009, Division personnel realized there had been no action on Claimant's employment. (Id.) Based on the information provided during the January 2009 interview, the Division added the Claimant's income from employment to her spouse's unemployment benefits to determine the household income. At the October 1, 2009 hearing, Claimant did not dispute this was the household's expected income as of January 29, 2009.

5. Based on the Claimant's household income, the Division calculated Claimant was entitled to \$81.00 in benefits for the month of March, and therefore, the Division overpaid benefits in the amount of \$283.00. (Ex. 3.1 & 3.2).

6. On June 15, 2009, the Division sent Claimant a letter stating due to agency error, she was overpaid Food Stamp benefits in the amount of \$283.00. The letter further stated the Claimant must repay this amount. (Ex. 4).

7. On July 28, 2009, Claimant requested a Fair Hearing. (Ex. 5).

8. At the October 1, 2009 hearing, Claimant testified her spouse obtained employment and therefore, the family moved to Anchorage on March 11, 2009. This move required Claimant to terminate her employment. Claimant provided evidence that while the household income was reduced during the month of March, expenses increased, as the family stayed in a hotel for one and a half weeks, paying \$90.00 per day.

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. "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true." Robinson v. Municipality of Anchorage, 69, P.3d 489, 493 (Alaska 2003).

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)

Federal Regulations give the States guidance on calculating a household's income:

For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. . . . If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income.

7 CFR 273.10(c)(1)(i).

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.”

The Division is required to give written notice to a Claimant at least 10 days before the Division intends to take action in reducing any assistance. 7 AAC 49.060

ANALYSIS

I. Issue

Was the Division correct to seek reimbursement from Claimant of Food Stamp benefits overpaid for March 2009?

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 March 2009 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 March 2009 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. See Findings of Fact. The issue was whether the Division was correct to seek Claimant's reimbursement to the State of Food Stamp benefits overpaid for March 2009.

7 CFR 210(c) states the Division must calculate benefits based on anticipated income. Pursuant to 7 CFR 210(c), in January 2009, the Division should have calculated the Claimant's benefits based on the anticipated income from Claimant's employment and Claimant's spouse's unemployment income. However, the Division failed to properly calculate Claimant's anticipated income in January 2009. Had the Division properly calculated the anticipated income, it would have determined that in the future, Claimant's household was only eligible for \$81.00 in Food Stamp benefits, a reduction of \$283.00.

Claimant argues that since her income was actually reduced in March of 2009 and her expenses increased, she should not have to repay the overpaid benefits. As already stated, 7 CFR 210(c) states the Division must calculate benefits based on anticipated income. Therefore, Claimant's actual income, known only *after* the time the Division calculated and determined benefits, is irrelevant. Moreover, as a practical matter, it would be impossible for the Division to determine a benefit amount based on anticipated income, and then review the actual income of all Food Stamp recipients after the payment of benefits. Therefore, the Division acted properly in basing the benefit amount on the anticipated income back in late January 2009, regardless of what the income actually was in March.

Pursuant to 7 AAC 49.060, the Division was required to give Claimant at least 10 days notice before the Division intended to reduce assistance. The Division only learned of Claimant's employment on January 29, 2009. Therefore, the Division could not reduce the benefits paid for the month of February. However, based on the Division's understanding of Claimant's anticipated income, the Division should have reduced the Claimant's benefits commencing the month of March 2009.

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 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 \$283.00 of Food Stamps overpaid in March 2009.

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 March 2009 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 March 2009.

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 22nd day of October, 2009.





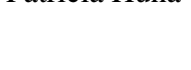

/s/
Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 22nd day of October, 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

_____/s/_____
Patricia Huna-Jines