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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. 09-FH-452
	)	
Claimant.	)	Division Case No. 05443410
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) received Food Stamp benefits from October 2008 through June 2009. (Ex. 1) On July 24, 2009, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting overpayment of \$3,261 in Food Stamp benefits that she had allegedly improperly received during the months of October 2008 through June 2009. (Ex. 4.0) Claimant requested a fair hearing on August 11, 2009. (Ex. 10.0) This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 CFR 273.15.

Pursuant to the Claimant’s request, a hearing was held on October 8 and November 3, 2009.<sup>1</sup> The Claimant attended the hearing telephonically, represented herself and testified on her own behalf. ██████████, a Public Assistance Analyst with the Division, attended in person, testified on behalf of and represented the Division.

The record was left open after the hearing until November 9 2009 for the Claimant to submit additional evidence regarding her husband’s pay, which was received and marked as Exhibit A.

**STATEMENT OF ISSUES**

Was the Division correct to request the Claimant to repay \$3,261 in Food Stamp benefit payments it overpaid to the Claimant during the months of October 2008 through June 2009, when the overpayment was caused by the Division’s error?

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<sup>1</sup> Pursuant to 7 CFR 273.15, this Office (the Office of Hearings and Appeals) is required to issue a decision in Food Stamp cases no later than 60 days after the date that the Division receives a claimant or recipient’s request for a hearing. This Office cannot prepare its decision until after the hearing is actually held. In this case, because the Division did not schedule the initial hearing until October 8, 2009, this case was not ripe for decision until two days before the decision due date.

## FINDINGS OF FACT

The following facts are proven by a preponderance of the evidence:

1. The Claimant applied for Food Stamp benefits on October 24, 2008. (Exs. 2.0 – 2.5) The Food Stamp application stated there were then 5 people in the household: the Claimant, her military husband, who was not living at home due to being deployed to Iraq, and three children. *Id.* The application informed the Division the Claimant was not employed, and the only source of household income came from the Claimant's husband. (Ex. 2.1)
2. The Claimant provided the Division with a computer printout copy of her husband's Leave and Earning Statement for the entire month of October 2008. (Ex. 2.6) The Leave and Earning Statement for October 2008 showed the following:
  - a. The husband's pay was deposited in their joint account. *Id.*
  - b. The husband's had gross monthly income of \$3,845. The pay included a base housing allowance of \$102.20 and a cost of living allowance of \$941.20. *Id.*
  - c. The husband had taken a "casual pay" draw of \$200. *Id.* The Claimant explained that this was money withdrawn by her husband at his deployment station, i.e. it was not money that was available to her. (Claimant testimony)
  - d. The husband was paid twice a month. There was a net midmonth payment of \$1,343.44 and a net end of month payment of \$1,943.23. *Id.*
3. The October 2008 base housing allowance of \$102.20 was discontinued after October 2008 because the Claimant had moved onto base housing. (Claimant testimony; Ex. 3.1) The Claimant did not have any rent or utility payment due to living in base housing. (Exs. 3.1, 4.2)
4. The October 2008 cost of living allowance of \$941.20 was abnormally high because it included retroactive cost of living allowance payments. (Claimant testimony) The normal monthly cost of living allowance payment was \$488. (Ex. 3.1)
5. The Division determined that the amount of the husband's income that was deposited in the household's account counted as income to the Claimant, and determined the household's gross monthly income was \$1,387.83, which made the 4 person household eligible for Food Stamp benefits, because the gross monthly household income limit for a 4 person household was then \$2,871. (Exs. 3.1, Addendum A<sup>2</sup>)
6. The Division arrived at the gross monthly household income of \$1,387.83 by subtracting the base housing allowance of \$102.20 and subtracting the cost of living allowance of \$941.20 (because the Claimant was no longer receiving the base housing allowance and the \$941.20 cost of living allowance was abnormally high) from the husband's end of month payment of

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<sup>2</sup> Addendum A to this Decision is the listing of the Food Stamp program's income limits for the time period October 1, 2008 through September 30, 2009. It is taken from the *Alaska Food Stamp Program Manual*. The Division did not submit this into evidence; it submitted the Food Stamp program's income limits for the time period October 1, 2009 through September 30, 2010. (Ex. 14.0)

\$1,943.23. (Ex. 3.1) The result was \$899.83. *Id.* The Division then added back in the normal cost of living allowance payment of \$488 to arrive at a gross monthly income of \$1,387.83. *Id.*

7. The Claimant's Food Stamp application was approved. (Ex. 3.1)

8 The Division issued the Claimant's household Food Stamp benefits for her family as follows:

<u>Month</u>	<u>Food Stamp Amount</u>
October 2008	\$ 49
November 2008	\$358
December 2008	\$358
January 2009	\$358
February 2009	\$358
March 2009	\$358
April 2009	\$474
May 2009	\$474
June 2009	<u>\$474</u>
TOTAL	\$3,261

(Exs. 8.2 – 8.3)

9. On May 11, 2009, the Division reviewed the Claimant's Food Stamp case and determined that it had miscalculated her household income, because it had counted only the husband's end of month pay deposit and had overlooked his midmonth pay deposit. (Ex. 6.0)

10. On June 16, 2009, after reviewing the Claimant's Food Stamp case and additional income information supplied by the Claimant, the Division determined that the Claimant was not financially eligible for Food Stamp benefits because the household income was larger than allowed for a 4 person household. (Ex. 8.0) The Division then closed the Claimant's Food Stamp case. *Id.*

11. On July 10, 2009, the Division determined that the Claimant had not been financially eligible for Food Stamp benefits during the entire time period of October 2008 through June 2009 because the Division had failed to count both his midmonth pay deposit and his end of month pay deposit when calculating the Claimant's monthly Food Stamp benefit. (Ex. 8.2)

12. On July 24, 2009, the Division sent the Claimant notice that she had been overpaid a total of \$3,261 in Food Stamp benefits for the months of October 2008 through June 2009 because “[t]he agency did not count all of your income.”. (Ex. 9.0) The Division’s notice stated the overpayment was due to the Division’s error. *Id.* The notice contains a summary of the Division’s financial calculations, which include the household income deposited into the household bank account, household size, and deductions. (Exs. 9.2 – 9.6)

13. The Division determined the Claimant’s net income and Food Stamp eligibility for the months of October 2008 through June 2009 as follows:

<u>Month</u>	<u>Income</u>	<u>Deduction</u>	<u>Net Income</u>	<u>Eligible</u>	<u>Benefit Paid</u>
October 2008	\$3,286	\$246	\$3,040	No	\$ 49
November 2008	\$3,286	\$246	\$3,040	No	\$358
December 2008	\$3,286	\$246	\$3,040	No	\$358
January 2009	\$3,286	\$246	\$3,040	No	\$358
February 2009	\$3,286	\$246	\$3,040	No	\$358
March 2009	\$3,286	\$246	\$3,040	No	\$358
April 2009	\$2,827	\$246	\$2,581	No	\$474
May 2009	\$2,827	\$246	\$2,581	No	\$474
June 2009	\$2,827	\$246	\$2,581	No	<u>\$474</u>
Total Benefits Paid					\$3,261

(Exs. 9.2 – 9.6)

14. The Claimant did not disagree with the Division’s calculations or with her family’s income and expense figures used by the Division to determine her family’s month Food Stamp benefit amount. However, the Claimant stated that she would withdraw cash from the family bank account and send it to her husband overseas. (Claimant testimony) The Claimant stated the amounts she sent to her husband fluctuated. *Id.* The Claimant was given the opportunity to provide documentation in support of her statement, but she did not.

15. The parties only introduced some of the Claimant’s Leave and Earning Statements into the record. The admitted Leave and Earning Statements for the relevant time period (October 2008 through June 2009) are only for the months of October 2008, December 2008, April 2009 and May 2009. (Exs. 2.6, A, pp. 1, 4, 5)

- a. The total household income deposited into household’s bank account as shown by the Claimant’s husband’s Leave and Earning Statement (both mid month pay and

end of month pay) during those months varies from the Division's monthly income figures (*See* Finding of Fact 13 above) as follows:

<u>Month</u>	<u>Monthly Pay (Division Figure)</u>	<u>Monthly Pay (Leave and Earning Stmtnt)</u>
October 2008	\$3,286 (Ex. 9.2)	\$3,286 (Ex. 2.6)
December 2008	\$3,286 (Ex. 9.3)	\$2,501 (Ex. A, p. 1)
April 2009	\$2,827 (Ex. 9.5)	\$2,954 (Ex. A, p. 5)
May 2009	\$2,827 (Ex. 9.6)	\$3,463 (Ex. A, p. 4)

- b. While there is a significant variation between the Division's income figure for December 2008 and the income figure taken directly from the December 2008 Leave and Earning Statement (\$3,286 versus \$2,501), taking the lower figure of \$2,501 and subtracting the \$246 deduction (*See* Finding of Fact 13 above), the result is \$2,255. \$2,255 in net monthly income is greater than the Food Stamp program income limit for a family of 4 of \$2,209. *See* Addendum A.

### PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to request that the Claimant repay \$3,261 of Food Stamp benefits, when the alleged overpayment was due to the Division's error. Because this case involves the Division's request for repayment, the Division has the burden of proof<sup>3</sup> by a preponderance of the evidence.<sup>4</sup>

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for calculating the amount of a recipient's monthly Food Stamp benefit. One of the rules is that if a 4 person household makes more than \$2,209 in net income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(2)(ii); *See* Addendum A to this Decision (*Alaska Food Stamp Manual* Addendum 4 For the period effective October 1, 2008 through September 30, 2009).

The Food Stamp program uses a complicated mathematical formula that takes the recipient's household income and expenses into account. The household's monthly **gross** income is totaled and then allowable deductions are taken from it to arrive at the monthly net income. 7 CFR

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<sup>3</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)

<sup>4</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)

273.10(e)(1)(i). Only those deductions that are listed in the federal regulations are allowed. 7 CFR 273.10(d). Deductions are allowed for “certain dependent care, shelter, child support and medical costs as described in [7 CFR] § 273.9.” 7 CFR 273.10(d). The Food Stamp program regulations do not allow an income deduction for non child support payments made to another family member. *Id.*

The Food Stamp program distinguishes between earned and unearned income. 7 CFR 273.9(b). Earned income consists of household member wages. 7 CFR 273.9(b)(1). “[D]irect money payments from any source which can be construed to be a gain or benefit” that are not a household member’s wages are considered unearned income. 7 CFR 273.9(b)(2)(v) A household whose only income is unearned receives a standard deduction of \$246. 7 CFR 273.9(d)(1); *See* Addendum A to this Decision (*Alaska Food Stamp Manual* Addendum 4 For the period effective October 1, 2008 through September 30, 2009).

Food Stamp financial eligibility determinations are made by adding up a household’s monthly gross income and then subtracting allowable deductions to arrive at the household’s net monthly income. 7 CFR 273.10(e)(1)(i).

An agency “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); 7 CFR 273.18(b)(3). *Also see Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166* (Alaska, 2009) (The Division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is due to the Division’s error)

### ANALYSIS

The general issue in this case is whether the Division was correct to request the Claimant to repay \$3,261 in Food Stamp benefit payments it overpaid to the Claimant when the overpayment was caused by the Division’s error. Because this is an action taken by the Division against the Claimant, the Division has the burden of proof by a preponderance of the evidence.

It should first be noted that the applicable law is clear that the Division is allowed to recover overpaid Food Stamp benefits, even when the overpayment is caused by the Division’s error and not caused by any act on the part of a Food Stamp recipient. 7 CFR 273.18(a)(1)(i); 7 CFR 273.18(a)(2); 7 CFR 273.18(b)(3). *Also see Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166* (Alaska, 2009)

The basis for the Division’s repayment action is that it improperly calculated the Claimant’s monthly income. Specifically, when it reviewed the Claimant’s husband’s October 2008 Leave and Earning Statement, it failed to notice that the Claimant was paid twice a month as shown on the Leave and Earning Statement: there was a mid month payment of \$1,343.44 **and** an end of the month payment of \$1,943.23. The Division’s calculations only counted the \$1,943.23 end of the month payment and completely failed to include the \$1,342.44 mid month payment. *See* Finding of Fact 6 above. This resulted in the Division undercounting the Claimant’s October 2008 income by \$1,342.44, the entire amount of the mid month payment.

Using the exact same methodology as the Division did in October 2008, when it found the Claimant eligible for Food Stamp benefits and counting the mid month pay of \$1,342.44, results in a total monthly household income for October 2008 of \$2,731.27.<sup>5</sup>

Because the Claimant's husband did not live with her during the time in question, the Division was correct to exclude him from the household for Food Stamp benefit calculation purposes. This meant the household size was 4 people: the Claimant and her three children. The maximum net monthly income a household of 4 persons could have and still be eligible for Food Stamp benefits was then \$2,209. *See* Addendum A.

Because the Claimant's husband was not living in the household his pay was not earned income for the household. Instead, since his pay was deposited in the family joint account, it was a "direct money payments from any source which can be construed to be a gain or benefit" which was considered unearned income. 7 CFR 273.9(b)(2)(v). Because the household's only income was unearned income, the household was entitled to a standard deduction of \$246. 7 CFR 273.9(d)(1).

The Claimant asserted that she had sent money to her husband from their funds. However, she did not provide any documentation in support of her testimony. Regardless, the Food Stamp program regulations do not allow an income deduction for payments made to another family member, unless they are child support payments. *See* 7 CFR 273.9(d). The Claimant was therefore not entitled to a deduction for payments she sent to her husband. The Claimant was also not entitled to a shelter cost deduction, because she was living on base and did not have any rental or utility costs. *See* Finding of Fact 3 above.

Consequently, the only income deduction properly allowed the Claimant was the standard deduction of \$246. When the standard deduction of \$246 is subtracted from the household's October 2008 monthly unearned income of \$2,731.27, the result is \$2,485.27. Because this amount exceeds the \$2,209 Food Stamp income limit for a household of 4 persons, the Claimant was not eligible for Food Stamp benefits in the month of October 2008. The Division should not have approved her October 24, 2008 Food Stamp application.

The Claimant did not dispute the Division's income figures as shown in Exhibits 9.2 – 9.6. *See* Finding of Fact 14 above. A review of the limited income information supplied by the parties showed that the Claimant's lowest income month was December 2008 where the Claimant received a total of \$2,501. *See* Finding of Fact 15 above. Even though the Division overstated the Claimant's income for December 2008, that month's actual income, \$2,501, after subtracting the standard deduction of \$246, resulted in a net income of \$2,255. *See* Finding of Fact 15 above. Because this amount exceeded the \$2,209 Food Stamp income limit for a household of 4 persons, the Claimant was not eligible for Food Stamp benefits even during her lowest income month, December 2008.

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<sup>5</sup> Mid month pay (1,343.44) plus end month pay (\$1,943.23) totals \$3,286.67 actual income for October 2008. *See* Finding of Fact 15(a) above. Subtracting base housing allowance (\$102.20) and high cost of living allowance payment (\$941.20) totals \$2,243.27. Adding back in the normal cost of living allowance (\$488) results in a total of \$2,731.27. *See* Findings of Fact 2 and 6 above.

Because the Claimant did not qualify for Food Stamp benefits when she applied in October 2008, and because the evidence in this case shows that she did not qualify for Food Stamp benefits during the months in question, October 2008 through June 2009, the Claimant should not have received any Food Stamp benefits for the months of October 2008 through June 2009.

The Division met its burden of proof by a preponderance of the evidence. It has shown that the Claimant received a total of \$3,261 in Food Stamp benefits for the months of October 2008 through June 2009. *See* Finding of Fact 8 above. The Claimant was not eligible to receive Food Stamp benefits during that time period.

The Division therefore established that it had overpaid the Claimant with \$3,261 in Food Stamp benefits for the months of October 2008 through June 2009. The Division was therefore correct to require that the Claimant repay the Division \$3,261.

### **CONCLUSIONS OF LAW**

1. The Division erred when it provided the Claimant with Food Stamp benefits for the months of October 2008 through June 2009 because it had incorrectly calculated the Claimant's household's monthly income.
2. The Division is legally entitled to recover repayment of overpaid Food Stamp benefits, even when the overpayment is due to the Division's error and not due to any fault on the Claimant's part.
3. The Division met its burden of proof and demonstrated that it correctly calculated the overpayment made for the months of October 2008 through June 2009 at a total of \$3,261.
4. The Division was therefore correct to request repayment of \$3,261 in overpaid Food Stamp benefits for the months of October 2008 through June 2009.

### **DECISION**

The Division was correct to request repayment of \$3,261 in overpaid Food Stamp benefits for the months of October 2008 through June 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, 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.


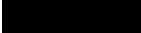
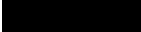
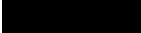
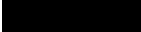
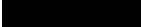
DATED this 9th day of November, 2009.

                        /Signed/                          
Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 9<sup>th</sup> day of November 2009, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

 Fair Hearing Representative - email  
 Director - email  
 Director's Office - email  
 Policy & Program Development - email  
 Policy & Program Development - email  
 Staff Development & Training - email

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J. Albert Levitre, Jr.  
Law Office Assistant I