

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
 [REDACTED],) OHA Case No. 09-FH-462
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) has been receiving Food Stamp benefits continuously since December 2008. (Ex. 3.30) On August 20, 2009, the Division of Public Assistance (Division) sent the Claimant written notification that he had been overpaid \$861 in Food Stamp benefits for the months of December 2008 through June 2009. (Ex. 4.0) Claimant requested a fair hearing on August 24, 2009. (Ex. 4.5) 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 September 17, 2009. The Claimant attended the hearing in person, represented himself, and testified on his own behalf. The Claimant's wife, [REDACTED], also attended the hearing in person and testified on the Claimant's behalf. [REDACTED], a Public Assistance Analyst with the Division, attended in person, represented the Division and testified on its behalf.

The record was left open after the hearing until October 5, 2009 for the parties to submit additional evidence with regard to the Claimant's rent and child support payments. The Division submitted additional documentation, which was marked as Exhibit 13. The Claimant did not submit any additional evidence.

STATEMENT OF ISSUES

Was the Division correct to request the Claimant to repay \$861 in Food Stamp benefit payments it overpaid to the Claimant when the overpayment was caused by the Division's error?

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits on December 2, 2008. (Exs. 3.2 – 3.3) The Food Stamp application stated there were then 4 people in the household: the Claimant, his wife, and two children. *Id.* The application informed the Division that the Claimant's wife had been convicted of a drug related felony in 2005. *Id.* In addition, the Claimant's wife informed the Division she was a convicted drug felon during the Food Stamp interview. (Claimant's wife's testimony)
2. The Division issued the Claimant's household Food Stamp benefits for a 4 person household in the months of December 2008 through February 2009. (Ex. 3.30)
3. In March 2009, the Claimant's household increased to a total of 5 people, the Claimant, his wife, and three children. (Claimant testimony)
4. The Division issued the Claimant's household Food Stamp benefits for a 5 person household in the months of March 2009 through May 2009. (Ex. 3.30)
5. On May 6, 2009, the Claimant reapplied for Food Stamp benefits. (Ex. 13, pp. 2 – 7). The Food Stamp application stated there were then 5 people in the household, the Claimant, his wife, and three children. (Ex. 13, p. 2) The application informed the Division that the Claimant's wife had been convicted of a drug related felony in 2005. *Id.* That Food Stamp application also stated the Claimant's monthly rent was \$825. (Ex. 13, p. 4)
6. The Division issued the Claimant's household Food Stamp benefits for a 4 person household in the month of June 2009 based upon gross family income of \$1,790. (Ex. 3.30)
7. On July 15, 2009, the Claimant's wife spoke to a Division Eligibility Technician questioning why she was required to participate in a Food Stamp employment and training program when she was not eligible to receive Food Stamp benefits due to her status as a drug felon. (Ex.3.0, ██████ testimony, Claimant's wife's testimony)
8. After the Claimant's wife's July 2009 contact, the Division reviewed the Claimant's Food Stamp issuance history and determined that the Claimant had properly informed the Division that his wife was a convicted drug felon, but that it had failed to act upon the notification and erroneously included the Claimant's wife as a part of the household for Food Stamp benefit calculation purposes, when she was required to be excluded from the household due to her felony drug conviction. (Ex. 3.0, ██████ testimony)
9. The Division reviewed the Claimant's Food Stamp issuance history and determined that it should not have counted his wife as a household member based upon her felony drug conviction. The Division then recalculated his household Food Stamp benefits, based upon his income and expenses and a household that did not count his wife as a member, and determined the Claimant had received \$842 more in Food Stamp benefits than he was entitled to receive in the months of December 2008 through May 2009:

<u>Month</u>	<u>No. Persons with Wife</u>	<u>Amount Paid</u>	<u>No. Persons without Wife</u>	<u>Correct Amount</u>	<u>Amount Overpaid</u>
December 2008	4	\$425	3	\$276	\$149
January 2009	4	\$425	3	\$272	\$153
February 2009	4	\$425	3	\$276	\$149
March 2009	5	\$544	4	\$425	\$119
April 2009	5	\$657	4	\$521	\$136
May 2009	5	<u>\$657</u>	4	<u>\$521</u>	<u>\$136</u>
TOTALS		\$3,133		\$2,291	\$842

(Exs. 3.0, 3.30, 4.4)

10. The Division also determined the Claimant had been overpaid a total of \$19 in Food Stamp benefits for June 2009. (Ex. 3.30, 4.4) However, this overpayment was not due to the Division miscounting the number of eligible Food Stamp members in the Claimant's household because the notice shows that benefits were issued in June 2009 for a household of 4 persons when 4 persons were eligible, but the overpayment was instead caused by an increase in the Claimant's gross monthly income from \$1,790 to \$1,870. (Exs. 3.30, 4.4)

11. On August 20, 2009, the Division sent the Claimant notice that he had been overpaid a total of \$861 in Food Stamp benefits for the months of December 2008 through June 2009. (Ex. 4.0) The Division's notice stated the overpayment was due to the Division's error and that "[t]he reason for this overpayment was: Your spouse is a convicted drug felon." *Id.* The notice contains a summary of the Division's financial calculations, which include the household income, household size, and deductions. (Ex. 4.4)

12. The Claimant did not disagree with the Division's calculations or with his family's income and expense figures used by the Division to determine his family's monthly Food Stamp benefit amount, with the exception of the following:

- a. The Claimant asserted that he should receive a deduction from his income for child support payments, and that his entire tax refund had been garnished for child support. (Claimant testimony; Ex. 3.0)
- b. The Division's calculations count the Claimant's rent as being \$700 per month for the months of December 2008 through May 2009, and as \$825 for the month of June 2009. (Exs. 3.8, 3.13, 3.18, 3.13¹, 3.18², 3.23, 3.28) The Claimant

¹ There are 2 exhibits marked 3.13. This is the second exhibit.

asserted that the family moved and the rent went up in March 2009, and that was reported to the Division. (Claimant and Claimant's wife's testimony)

13. The Claimant's pay stubs for April 24, 2009, May 8, 2009, and May 22, 2009 did not contain any deductions showing that child support payments were being taken out of his check. (Exs. 13, pp. 10 – 12)

14. The Division does not have any records containing any verification or information regarding either the Claimant's rental increase, or child support payments. (Ex. 13, p. 1)

15. The record was left open until October 5, 2009, for the Claimant to submit additional evidence, which he did not do.

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to request that the Claimant repay \$861 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 proof³ by a preponderance of the evidence.⁴

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 determining whether individuals qualify for Food Stamp benefits. "Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction" may not receive Food Stamp benefits. 7 CFR 273.1(b)(7)(vii). 7 CFR 273.11(m) details the specific Food Stamp rules relating to drug felons:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation.

7 CFR 273.11(m) (emphasis in original).

² There are 2 exhibits marked 3.18. This is the second exhibit.

³ "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)

⁴ 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)

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)

A repayment notice sent to a Food Stamp recipient must “provide sufficient information to allow recipients to detect and challenge mistakes.” *Allen* at 1168. The Division may not pursue repayment based upon an inadequate notice; it must properly renotice a recipient. *Id.* at 1169.

ANALYSIS

The general issue in this case is whether the Division was correct to request the Claimant to repay \$861 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.

The grounds for the Division’s repayment action is that it improperly counted the Claimant’s wife as part of the family’s Food Stamp household, when she was not eligible for Food Stamp benefits because she has a felony drug conviction. This caused the Division to issue the Claimant a larger Food Stamp benefit than the family was entitled to receive, e.g. Food Stamp benefits for a family of 4 when it should have only issued Food Stamp benefits for a family of three.

It is undisputed that the Claimant and his wife informed the Division of her convicted drug felon status on the Claimant’s Food Stamp applications and during the Food Stamp application interview. *See* Findings of Fact 1 and 5 above. It is also undisputed that the Claimant’s wife was counted as a Food Stamp household member when she was not eligible to receive Food Stamp benefits. This caused the Claimant to receive a larger amount of Food Stamp benefits for the months of December 2008 through May 2009 than he was entitled to receive. This was through the Division’s error, and was not caused by any fault on the Claimant’s part. The Claimant also did not disagree with the Division’s calculation of his gross monthly income.

The undisputed facts, the Claimant’s testimony and that of his wife, and the admitted exhibits present three issues:

1. Can the Division legally seek repayment from the Claimant when the Food Stamp benefit overpayment is due entirely to the Division’s own error?
2. Should the Division have provided the Claimant with deductions for child support payments, and counted the Claimant’s rent as \$825 before the month of June 2009?
3. Did the Division’s August 20, 2009 repayment notice comply with minimum procedural due process requirements?

Each of these issues will be discussed separately below.

1. Can the Division legally seek repayment from the Claimant when the Food Stamp benefit overpayment is due entirely to the Division's own error?

The federal Food Stamp regulations are quite clear on this issue. The Division “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). The Alaska Supreme Court also dealt recently with this issue and found that the Division was allowed to seek repayment for overpaid Food Stamp benefits, even when the overpayment was due to agency error. *See Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).*

Because the applicable law, as stated above, demonstrates the Division is legally allowed (and indeed required) to collect Food Stamp benefits which were incorrectly issued due to the Division's own error, the Division was correct to seek repayment of overpaid Food Stamp benefits from the Claimant.

2. Should the Division have provided the Claimant with deductions for child support payments, and counted the Claimant's rent as \$825 before the month of June 2009?

The Division calculated that the Claimant was overpaid Food Stamp benefits for the months of December 2008 through May 2009 in the amount of \$842. *See Finding of Fact 9 above.* The Division also calculated that the Claimant was overpaid Food Stamp benefits in the amount of \$19 for the month of June 2009. *See Finding of Fact 10 above.*

The Claimant did not dispute the Division's calculations or the income information used. *See Finding of Fact 12 above.* Instead, the Claimant and his wife's testimony state an argument he was entitled to deductions due to child support payments (tax refund garnishment) and that his rent deduction should have increased to \$825 per month before June 2009, the first month the Division allowed him a rent deduction of \$825. *Id.*

The Division presented evidence that it had received no information from the Claimant regarding any child support payments made by the Claimant, or any child support garnishments. *See Finding of Fact 14 above.* The Claimant's paystubs do not show any child support payments taken from his pay. *See Finding 13 above.* The Division presented evidence that it had not received information about a rental increase to \$825 before the Claimant's May 6, 2009 Food Stamp application. *See Findings of Fact 5 and 14 above.*

The Claimant's evidence on these points (Child Support payments and rent) was limited to the Claimant and his wife's testimony. *See Finding of Fact 12 above.* The Claimant was provided an opportunity to provide documentary evidence and did not do so. *See Finding of Fact 15 above.*

Even though the Division had the burden of proof on this issue, once it presented its initial evidence, the Claimant needed to present some evidence to rebut the Division's case. The only evidence presented by the Claimant was his and his wife's testimony. The weight of the evidence, including the fact the Claimant is not having child support payments taken from his

check, no documentation of a tax refund garnishment, and the lack of any documentation showing the exact date the Claimant's rent increased, favors the Division on this issue.

The Division met its burden of proof by a preponderance of the evidence. The Division was correct to not provide the Claimant with an income deduction for child support. The Division was also correct to count the Claimant's rent as \$825 beginning with the month of June 2009, because the only documentation in the record shows that the Division was not advised of the rent increase until the Claimant had submitted his May 6, 2009 Food Stamp application, which was after May 2009 benefits had already been issued.

The Division therefore established that it had overpaid the Claimant with \$842 in Food Stamp benefits for the months of December 2008 through May 2009.⁵

3. Did the Division's August 20, 2009 repayment notice comply with minimum procedural due process requirements?

The Division's August 20, 2009 notice in this case requests repayment of \$861 in Food Stamp benefits that were overpaid for the months of December 2008 through June 2009. (Ex. 4.0) The Division's August 20, 2009 repayment notice stated the overpayment was due to the Division's error and that "[t]he reason for this overpayment was: Your spouse is a convicted drug felon." *Id.*

The Division's August 20, 2009 repayment contains a summary of the Division's financial calculations. (Ex. 4.4) It is clear from the notice that the Division's error consisted in over counting the household size by one person, due to the erroneous inclusion of the wife in the household, for the months of December 2008 through May 2009. *Id.* This is consistent with the statement at the beginning of the notice that "[t]he reason for this overpayment was: Your spouse is a convicted drug felon." (Ex. 4.0) The August 20, 2009 repayment notice gave the Claimant financial information sufficient to evaluate the Division's claim, and gave the Claimant notice of the reasoning underlying the Division's claim. It satisfied minimum procedural due process requirements because it "provide[d] sufficient information to allow recipients to detect and challenge mistakes." *Allen* at 1168.

However, a review of the August 20, 2009 repayment notice shows that in June 2009, the Division issued Food Stamp benefits for a household of 4 persons, when 4 persons were entitled to receive those benefits. *See* Finding of Fact 9 above. The claimed overpayment of \$19 for June 2009 was not due to the Division's error in miscounting the household members, but instead was caused by an increase in the Claimant's gross monthly income, which should have decreased his June 2009 Food Stamp benefit amount. *Id.* This is inconsistent with the statement at the beginning of the August 20, 2009 repayment notice: "[t]he reason for this overpayment was: Your spouse is a convicted drug felon." (Ex. 4.0)

That portion of the August 20, 2009 repayment notice dealing only with the June 2009 claimed overpayment misstates the reason why the Division sought to recover \$19 from the June 2009 Food Stamp benefit payment. The real reason for the alleged overpayment was that the

⁵ The alleged \$19 overpayment for the month of June 2009 is not addressed in this conclusion, because as discussed below, the Division did not properly notice the Claimant with regard to this month only.

Claimant's income increased in June 2009. This is entirely different from the reason for the other months: the Division miscounting the number of eligible household members. This misstatement of the reason for recovery of the alleged June 2009 overpayment does not "provide sufficient information to allow recipients to detect and challenge mistakes." *Allen* at 1168. It therefore fails to comply with minimum procedural due process notice requirements.

As a consequence of the defective August 20, 2009 repayment notice, the Division may not recover the alleged June 2009 \$19 Food Stamp benefit overpayment from the Claimant. The Division must properly renounce the Claimant if it seeks to recover the claimed June 2009 Food Stamp overpayment. *Id. at 1169.*

Regardless of the fact the August 20, 2009 repayment notice was defective with regard to the alleged overpayment for the month of June 2009, the notice was proper for the months of December 2008 through May 2009.

CONCLUSIONS OF LAW

1. The Division erred when it provided the Claimant with Food Stamp benefits for a household that included the Claimant's wife, when she was not eligible to be included in the household due to her felony drug conviction.
2. The Division is legally entitled to recover 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 December 2008 through May 2009 at a total of \$842.
4. The Division's August 20, 2009 repayment notice satisfied minimum procedural due process requirements with regard to its repayment request for the months of December 2008 through May 2009. It did not satisfy minimum procedural due process requirements with regard to its repayment request for the month of June 2009.
5. The Division was therefore correct to request repayment of \$842 in overpaid Food Stamp benefits for the months of December 2008 through May 2009. It was not correct to request repayment of \$19 in allegedly overpaid Food Stamp benefits for the month of June 2009.

DECISION

The Division was correct to request repayment of \$842 in overpaid Food Stamp benefits for the months of December 2008 through May 2009. It was not correct to request repayment of \$19 in allegedly overpaid Food Stamp benefits for the month of June 2009.

If the Division wishes to pursue a repayment request for the month of June 2009, it must renounce the Claimant.

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.


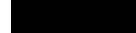
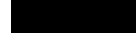
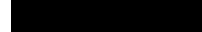
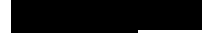
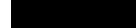
/Signed/

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 9th 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

J. Albert Levitre, Jr.
Law Office Assistant I