

FINDINGS OF FACT

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

1. The Claimant was receiving Food Stamp benefits in February 2009. (Ex. 2.1) On March 9, 2009, the Claimant notified the Division there were a total of 5 persons living in his household, himself, his wife, and three children. (Ex. 2.3) On March 10, 2009, the Claimant requested that the Division add his wife to his Food Stamp case. (Ex. 2.2)
2. On June 6, 2009, the Division determined it had not added the Claimant's wife to his Food Stamp household, nor had it inquired into her income. (Ex. 3; ██████ testimony)
3. On June 10, 2009, the Division received information regarding the Claimant's wife's income.
4. The Claimant's gross monthly household income for the months of April, May, and June 2009 consists of the following:
 - a. Social Security Survivor's benefit payment of \$686. (Ex. 5.29)
 - b. His wife's monthly income fluctuates. She is only supposed to work parttime for 24 hours per week at an hourly wage of \$11.60. (Ex. 4.2) However, she has worked substantial overtime and her actual gross wages for the months of April, May, and June 2009 are as follows:

<u>Month</u>	<u>Wage Amount</u>
April 2009	\$2,682.31
May 2009	\$4,017.03 ¹
June 2009	\$2,838.28 ²

(Exs. 4.1, 4.6 – 4.9, B2 – B5)

- c. Adding on the \$686 in Social Security Survivor's benefits to the wife's gross monthly income, the total gross monthly household income for April, May, and June 2009 is as follows:

<u>Month</u>	<u>Total Household Income</u>
April 2009	\$3,368.31

¹ The Claimant received three paychecks in May 2009. (Exs. B2 – B4)

² This figure is taken from the Division's calculation of Food Stamp benefits that should have been received by the Claimant for the month of June 2009. (Ex. 5.22) The record only contains one paystub for June 2009, in the amount of \$1,380.36 issued on June 12, 2009. (Ex. B5) However, the Claimant did not dispute the pay information figures used by the Division for the month of June 2009.

May 2009	\$4,703.03
June 2009	\$3,524.28

5. The Division issued the Claimant's household Food Stamp benefits for his family as follows:

<u>Month</u>	<u>Food Stamp Amount</u>
April 2009	\$797
May 2009	\$797
June 2009	<u>\$797</u>
TOTAL	\$2,391

(Ex. 6.5)

6 On June 18, 2009, the Division reviewed the Claimant's wife's income and determined that the household was overpaid Food Stamp benefits for the months of April, May, and June 2009. (Ex. 5.0)

7. The April, May, and June 2009 Food Stamp overpayments were caused by the Division's error, and were not due to any fault on the Claimant's part. (██████ testimony; Ex. 6.1) Specifically, the Division did not review the household's income for eligibility after the Claimant informed the Division about his wife becoming part of the household. *Id.*

8. On August 20, 2009, the Division sent the Claimant notice that he had been overpaid a total of \$2,149 in Food Stamp benefits for the months of April, May, and June 2009 as follows:

<u>Month</u>	<u>Income</u>	<u>Benefit Paid</u>	<u>Benefit Entitled To</u>	<u>Amount Overpaid</u>
April 2009	\$3,157	\$797	\$242	\$555
May 2009	\$2,827	\$797	- 0 -	\$797
June 2009	\$2,827	<u>\$797</u>	<u>- 0 -</u>	<u>\$797</u>
	TOTALS	\$2,391	\$242	\$2,149

(Exs. 6.1 – 6.5)

9. The August 20, 2009 repayment notice contained an error. (██████ testimony) The Claimant was not entitled to any Food Stamp benefits in the month of April 2009. *Id.* Because of this, the Claimant actually was overpaid a total of \$2,391. *Id.* However, the Division is not requesting recovery of the total \$2,391, but is rather seeking recovery only of the amounts identified in the August 20, 2009 notice, being \$2,149. *Id.*

10. 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.

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to request that the Claimant repay \$2,149 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 calculating the amount of a recipient's monthly Food Stamp benefit. One of the rules is that if a five person household makes more than \$3,359 in gross income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(1)(ii); *See Ex. 5.8*, which contains the Food Stamp income standards for the months of April 2009 through August 2009.

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 \$2,149 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)*

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)

The basis for the Division's repayment action is that it did not act when the Claimant told it that his wife was now part of his household. Specifically, the Division did not review the household's income for eligibility after the Claimant informed the Division about his wife becoming part of the household. In other words, the Division did not take the wife's income into account when it provided the Claimant's household with Food Stamp benefits for the months of April, May, and June 2009. This resulted in the Division undercounting the household's gross monthly income.

The household's actual monthly income, taking the wife's gross monthly income and the Social Security survivor's benefits into account, was:

<u>Month</u>	<u>Total Household Income</u>
April 2009	\$3,368.31
May 2009	\$4,703.03
June 2009	\$3,524.28

See Finding of Fact 4(c) above.

However, the Food Stamp gross monthly income limit for the Claimant's five person household was \$3,359. Because the Claimant's household's monthly income was greater than \$3,359 during each of the three months in question, April, May, and June 2009, it was not eligible to receive any amount of Food Stamp benefits during the months of April, May, and June 2009.

Because the Claimant's household was not eligible to receive Food Stamp benefits during the months of April, May, and June 2009, even though the Claimant was not responsible for the Division's error in issuing the benefits, the Claimant is responsible for repayment of the Food Stamp benefits he received, which totaled \$2,391. *See* Finding of Fact 5 above.

However, because the Division's August 20, 2009 repayment notice incorrectly stated the amount of overpayment was \$2,149, the Division is only seeking repayment of \$2,149 rather than the total amount of the overpayment, \$2,391. *See* Findings of Fact 8 and 9 above.

In summary, the Division has met its burden of proof by a preponderance of the evidence. It has established that it failed to properly account for the Claimant's wife's income when the Claimant notified the Division that his wife was joining his household. The wife's income made the Claimant's household not eligible for Food Stamp benefits for the months of April, May, and June 2009. As a result, the Claimant's household received \$2,391 in Food Stamp benefits it should not have received. The Claimant is responsible to repay the Division for the overpaid Food Stamp benefits. However, the Claimant is not required to repay the entire \$2,391 but is only required to repay the amount stated in the Division's August 20, 2009 repayment notice: \$2,149.

The Division was therefore correct to require that the Claimant repay the Division \$2,149 in overpaid Food Stamp benefits, despite the fact that the overpayment was not caused by the Claimant.

CONCLUSIONS OF LAW

1. The Division erred when it provided the Claimant with Food Stamp benefits for the months of April, May, and June 2009 because it incorrectly calculated the Claimant's household's gross monthly income by failing to take the Claimant's wife's income into account.
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. 7 CFR 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)
3. The Division met its burden of proof and demonstrated that the Claimant was overpaid a total of \$2,391 in Food Stamp benefits for the months of April, May, and June 2009. However, because the Division only notified the Claimant that it was seeking recovery of \$2,149, its recovery is limited to the \$2,149 figure contained in its August 20, 2009 repayment notice, as was acknowledged by the Division at hearing.
4. The Division was therefore correct to request repayment of \$2,149 in overpaid Food Stamp benefits for the months of April, May, and June 2009.

DECISION

The Division was correct to request repayment of \$2,149 in overpaid Food Stamp benefits for the months of April, May, and 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 19th day of November, 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 19th day of November 2009, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

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

Larry Pederson