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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-504
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) receives Food Stamp benefits (Ex. 1). On or about September 1, 2009 the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division), sent the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of March 2009 and requesting repayment in the amount of \$586.00 (Ex. 7.0). The Claimant requested a fair hearing with regard to the DPA's recoupment claim on or about September 9, 2009 (Exs. 8.0, 8.1). This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

A hearing was held on November 4, 2009 before Hearing Officer Jay Durych. The Claimant appeared by telephone, represented herself, and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent and testify on behalf of the Division. [REDACTED], an Eligibility Technician II with the Division, was called as a witness by the Claimant and testified telephonically on the Claimant's behalf. All testimony and exhibits offered by the parties were admitted into evidence. At the conclusion of the hearing the record was closed and the case was submitted for decision.

ISSUE

Was the Division correct to seek recoupment from the Claimant of overpaid Food Stamp benefits for the month of March 2009 in the amount of \$586.00?

FINDINGS OF FACT

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

1. On January 9, 2009 the Claimant applied for Food Stamp Program benefits (Ex. 2.0). On her application the Claimant indicated that, at that time, she was the only member of her household currently receiving income (Ex. 2.2).
2. The Claimant attended an eligibility interview with DPA employee [REDACTED] on January 15, 2009 (Exs. 3.0 – 3.1). During that interview the Claimant confirmed that she was currently the only member of her household receiving employment income, but she also stated that her husband would soon be resuming his seasonal employment at the local electric utility. *Id.*
3. On January 28, 2009 the Division received a Change Report Form (form Gen 55) from the Claimant's household (Exs. 4.0 – 4.2). The form advised the Division that the Claimant's husband had returned to work on January 20, 2009; that it was anticipated that he would be working 40 hours per week at a pay rate of \$17.00 per hour; and that he expected to receive his first paycheck on February 9, 2009. *Id.*
4. On March 3, 2009 the Division received a completed Employment Statement (form Gen-155) from the Claimant's husband's employer (Ex. 5). The Division processed the information contained on this form on March 4, 2009 (Ex. 6.0). On that same date the Division contacted the Claimant's husband's employer and confirmed this information by phone (Ex. 6.0).
5. The amount of the Claimant's household's Food Stamp benefits was originally calculated based on the information obtained from the Claimant's written application (submitted January 9, 2009) and her eligibility interview (conducted January 15, 2009) (Exs. 6.0, 6.7; DPA Hearing Representative testimony). When the Division received the Claimant's Change Report Form on January 28, 2009 it was too late to change the amount of the Claimant's household's Food Stamp benefits for the month of February 2009 (Exs. 6.0, 6.7; DPA Hearing Representative testimony).
6. The Division could have, and should have, reduced the amount of the Claimant's household's March 2009 Food Stamp benefits based on the Change Report Form received from the Claimant's household on January 28, 2009 (Exs. 6.0, 6.7; DPA Hearing Representative testimony). However, the Eligibility Technician who was working the Claimant's Food Stamp case failed to reduce the Claimant's household's Food Stamp benefits for March 2009, as should have been done, based on the Claimant's husband's additional income (Exs. 6.7, 7.0, and 7.2; DPA Hearing Representative testimony). This resulted in an overpayment of Food Stamp benefits to the Claimant's household for the month of March 2009 (Exs. 6.7, 7.0, and 7.2; DPA Hearing Representative testimony).
7. The amount of Food Stamp benefits which the Claimant's household should have received for March 2009 was \$965.00 (Ex. 7.2). The amount of Food Stamp benefits which the Claimant's household actually received for March 2009 was \$1,551.00 (Ex. 7.2). The difference between these two amounts is \$586.00.
8. The Division discovered its error on or about March 4, 2009 (Ex. 6.7). On or about September 1, 2009 the Division mailed to the Claimant a notice stating that her Food Stamp benefits had been

overpaid for the month of March 2009 (Exs. 7.0 – 7.4). The notice also requested repayment of over-issued Food Stamp benefits in the amount of \$586.00 (Exs. 7.0 – 7.4).

9. The Claimant requested a fair hearing with regard to the DPA's recoupment claim on or about September 9, 2009 (Exs. 8.0, 8.1). On September 11, 2009 the Division mailed a notice to the Claimant informing her that her hearing had been scheduled for November 4, 2009 (Ex. 27).

10. At the hearing of November 4, 2009 [REDACTED], an Eligibility Technician II with the Division, testified that she formerly worked for the Division in [REDACTED], and that the Claimant always promptly reported to her any changes in her household's circumstances. The Division did not dispute this testimony.

11. At the hearing of November 4, 2009 the Division's hearing representative conceded that the DPA was in error and that the Claimant reported her husband's new employment and income on a timely basis (Division hearing representative testimony).

12. At the hearing, the Claimant did not dispute the DPA's assertion that the amount of Food Stamp benefits received by the Claimant's household for March 2009 was \$1,551.00 (Claimant testimony). The Claimant likewise did not dispute the Division's assertion that the amount of Food Stamp benefits which should have been paid to the Claimant's household for March 2009 was \$965.00. Rather, Claimant's position was essentially that she had complied with the requirements of the Food Stamp Program; that she had done nothing wrong; and that her household should not be penalized for the DPA's mistake (Claimant testimony).

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo normally bears the burden of proof.¹ The Division is attempting to change the status quo or existing state of affairs in this case by recouping overpaid Food Stamp benefits. Accordingly, the Division bears the burden of proof in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case.² This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.³

¹ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

² A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

³ *Black's Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979); *see also Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495-496 (Alaska 2003) ("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").

II. The Food Stamp Program – In General.

The Food Stamp Act of 1977 is a federal program. The statutes comprising the Act are codified at 7 U.S.C. 2011 – 2029. The federal regulations implementing the program are promulgated by the United States Department of Agriculture and are found primarily at 7 C.F.R. 271 – 274.

The Food Stamp Program is administered by the states. 7 CFR 271.4(a). The State of Alaska has adopted regulations to implement the Food Stamp Program. Those regulations are found at 7 AAC 46.010 - 7 AAC 46.990.

III. Statutes, Regulations, And Court Decisions Regarding Recoupment of Overpaid Food Stamp Benefits.

The Food Stamp statute at issue in this case is 7 U.S.C.A. § 2022, titled "Disposition of claims." That statute provides in relevant part as follows:

* * * * *

(b) Collection of overissuances . . . (1) In general. Except as otherwise provided in this subsection, *a State agency shall collect any overissuance of benefits issued to a household . . .* [Emphasis added].

* * * * *

The Food Stamp regulation at issue in this case is 7 C.F.R. § 273.18, titled "Claims against households." That regulation provides in relevant part as follows:

(a)(1) A recipient claim is an amount owed because of: (i) Benefits that are overpaid or . . . [inapplicable].

(a)(2) This 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. [Emphasis added].

* * * * *

(b) Types of claims. There are three types of claims: (1) Intentional Program violation (IPV) claim (2) Inadvertent household error (IHE) claim (3) Agency error (AE) claim

* * * * *

(e)(1) Applicability. *State agencies must begin collection action on all claims unless . . . [not applicable] . . .* [Emphasis added].

7 CFR 271.4, titled “delegations to state agencies for administration,” provides as follows:

(b) Claims delegation. FNS delegates to the State agency, *subject to the standards in § 273.18*, [set forth above] the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households. [Emphasis added].

In *Ishler v. Commissioner of the Department of Public Welfare*, 518 A.2d 596 (Pa. 1986), the court was faced with the issue of whether to uphold a state agency’s administrative decision ordering the recoupment of Food Stamps overpaid to a recipient due to the state agency’s error. The court stated:

We acknowledge that it seems unfair for the Department to take action to recover overpayment when such overpayment is the result of the Department's own error. *This result, however, is mandated by the federal regulations.* [Emphasis added].

* * * * *

We conclude that where a participant in the food stamp program has received an overissuance of food stamps under applicable federal regulations due to the Department's administrative error, the Department is entitled to recoupment in view of the mandatory nature of the federal regulations, the possible jeopardy to the entire program in Pennsylvania if the Department fails to act in such circumstances and the likelihood that recoupment will be had, if at all, by a plan which must first be negotiated with the party against whom recoupment is sought.

In *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984), the United States Supreme Court found that no detrimental change in position had occurred, that the appellant had not lost any legal right (either vested or contingent), and that the appellant had not suffered any adverse change in its status, where the only harm suffered was the inability to retain money which should have never been received in the first place. 467 U.S. at 61, 104 S.Ct. at 2224.

On August 22, 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which amended the Food Stamp Act (Public Law No. 104-193, Aug. 22, 1996, 110 Statutes at Large 13321, 1996 U.S. Code Congressional & Administrative News § 844). Among other things, the PRWORA amended 7 United States Code section 2022(b) set forth above. The language of that statute now contains mandatory language (“*a State agency shall collect any overissuance of benefits issued to a household*” [Emphasis added]).

The United States Secretary of Agriculture has not delegated to state agencies the authority to waive Food Stamp overpayments. *Bliek v. Palmer*, 916 F.Supp. 1475 (N.D. Iowa 1996), *affirmed* 102 F.3d 1472 (8th Cir. 1997). While the Secretary has the statutory authority to do so, the federal regulation which delegates certain authority to state agencies does not include the authority to waive Food Stamp overpayments. *Id.*

In *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997), the California appellate court found that the 1996 amendments to the Food Stamp Act *required* state agencies to seek recoupment of *all* Food Stamp overpayments.

In 1998, the Secretary of the U.S. Department of Agriculture proposed revisions to the Food Stamp regulations, including 7 C.F.R. § 273.18. The Secretary's comments are set forth at 63 Fed. Reg. 29307 (May 28, 1998), and provide in relevant part as follows:

Some groups maintain that, since the reason for the overissuance resulting in [an agency error case] was an error by the State agency, the household should not be responsible for the overissuance under . . . equitable estoppel. The Department disagrees with this position. The [Food Stamp Program] is administered under Federal law and the Department provides 100 percent of the value of the benefits. . . . 7 U.S.C. 2022(a)(2), *which was unchanged by the [1996] PRWORA, clearly and unconditionally provides that adult members of a household that receive any overissuance shall be jointly and severally liable for the value of the overissuance. Thus, Federal law permits no exception for equitable estoppel in the case of an overissuance caused by State agency error.* (Emphasis added).

In *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3 Dist. 2002), the California appellate court found that the 1996 amendments to the Food Stamp Act *required* state agencies to seek recoupment of all Food Stamp overpayments, and that the doctrine of estoppel was not available as a defense in Food Stamp recoupment cases.

In *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009), the Alaska Supreme Court held that equitable estoppel is not available as a defense in "agency error" Food Stamp recoupment cases. The *Allen* court held that the federal Food Stamp statutes and regulations intend that Food Stamp Program overpayments made due to state agency error be recouped *even from innocent recipient households*. The *Allen* court also held that applying the doctrine of equitable estoppel to prohibit the recoupment of Food Stamp Program overpayments made due to agency error would create an inescapable conflict with federal law. Accordingly, the *Allen* court found that federal law preempts the state doctrine of equitable estoppel in the context of Food Stamp Program overpayment / recoupment cases.

ANALYSIS

I. Introduction.

The following facts are not disputed:

- a. The Claimant received Food Stamp benefits for the month of March 2009 in the amount of \$1,551.00. See Findings of Fact at Paragraphs 7 and 12, above.
- b. The amount of Food Stamp benefits which the Claimant should have received for the month of March 2009, based on the applicable regulations, was \$965.00. See Findings of Fact at Paragraphs 7 and 12, above.

c. During the month of March 2009, the Claimant's household received \$586.00 more in Food Stamp benefits than the Claimant's household should have received based on the applicable regulations. See Findings of Fact at Paragraphs 7 and 12, above.

d. The March 2009 Food Stamp overpayment to the Claimant's household was caused by an error on the part of the DPA and was not the fault of the Claimant. See Findings of Fact at Paragraphs 6 and 11, above.

Accordingly, the sole question in this case is whether the Division was correct to seek recoupment of Food Stamp benefits which were overpaid to the Claimant in March 2009 due to the Division's error. The resolution of this issue does not require the adjudication of any disputed factual matters. Rather, the issue presented for consideration is the purely legal issue of whether recoupment of the agency-caused Food Stamp overpayment is required by applicable law.

Because the DPA is seeking to alter the existing state of affairs by recouping overpaid benefits, the DPA bears the burden of proving its case by a preponderance of the evidence. See discussion in Principles of Law at page 3, above.

In order to resolve the legal issue posed in this case it is first necessary to examine the relevant federal statutes and regulations. It is then necessary to review the cases which have construed those statutes and regulations.

II. The Applicable Federal Statutes and Regulations Require That The DPA Seek Recoupment.

The federal statute pertaining to recoupment of Food Stamp benefits is 7 U.S.C.A. § 2022. Subsection (b)(1) of that statute provides in relevant part that the "state agency *shall* collect any overissuance of benefits issued to a household" [Emphasis added]. This statute requires, on its face, that the DPA attempt to recoup overpaid benefits.

The implementing federal regulation pertaining to recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. There are three subsections that are pertinent to this case. Subsection (a)(2) of that regulation provides in relevant part that "the State agency *must* establish and collect any claim . . . ". Subsection (e)(1) of that regulation also provides in relevant part that "state agencies *must* begin collection action *on all claims* unless the conditions under paragraph (g)(2) of this section apply."⁴ Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the "overpayment [is] caused by an action or failure to take action by the State agency." Thus, it is clear that 7 C.F.R. § 273.18 requires on its face that the DPA attempt to recoup overpaid benefits, *even when the overpayment is the result of the DPA's own error.*

III. Judicial Decisions Confirm That The DPA Is Required To Seek Recoupment of Overpaid Benefits Even In Cases of Agency Error.

Even when a statute or regulation appears clear on its face, it is often helpful to review judicial decisions which have interpreted the statute or regulation at issue. A review of the pertinent court

⁴ Paragraph (g)(2) concerns EBT accounts and does not apply to this case.

decisions indicates that the authority to waive Food Stamp overpayments has *not* been delegated from the United States Secretary of Agriculture (Secretary of Agriculture or Secretary) to the state agencies. *Bliek v. Palmer*, 916 F.Supp. 1475 (N.D. Iowa 1996), *affirmed* 102 F.3d 1472 (8th Cir. 1997). In this decision, the federal 8th Circuit court held that while the Secretary has the statutory authority to do so, the federal regulation which delegates certain authority to state agencies does not include the authority to waive Food Stamp overpayments. *Id.*

Some courts held, *prior to* the 1996 amendments to the Food Stamp statutes (discussed in the Principles of Law at pages 5-6, above), that state agencies such as the DPA might be prevented from seeking recoupment of overpaid Food Stamp benefits in certain cases involving agency error. See, for example, *Cudal v. Sunn*, 742 P.2d 352 (Hawaii 1987); *Mendez v. Department of Social Services*, 813 P.2d 1234 (Utah App. 1991); and *Lewis v. State, Dept. of Health and Rehabilitative Services*, 659 So.2d 1255 (Fla.App. 4th Dist. 1995).

However, *after* the 1996 amendments to the Food Stamp statutes, virtually all courts, including the Alaska Supreme Court, have held that, based on the language of the federal statute and regulation, defenses such as the doctrine of estoppel cannot be asserted against agencies such as the DPA in cases involving recoupment of overpaid Food Stamp benefits due to agency error. See, for example, *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997); *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3 Dist. 2002); and *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009) (discussed in the Principles of Law at page 6, above).

In conclusion, based on the law in effect prior to the 1996 amendments to the Food Stamp statutes, the innocence of the benefit recipient, and the unfairness of requiring recoupment in cases of agency error, were sometimes found by the courts to prevent recoupment in cases involving overpayment due to agency error. However, it is clear that, *after* the 1996 amendments to the Food Stamp statutes, federal law requires that state agencies such as DPA seek to recover Food Stamp Program benefits even where (as here) the overpayment was caused by agency error and the benefit recipient was innocent of any wrongdoing.

IV. Summary.

The applicable federal statute (7 U.S.C.A. § 2022) and federal regulation (7 C.F.R. § 273.18) require that the DPA attempt to recoup all overpaid Food Stamp benefits. On their face, the federal statute and regulation give the Division no discretion to waive recoupment, even where (as here) the Food Stamp overpayments resulted from agency error. The judicial decisions interpreting the federal statute and regulations, decided after the 1996, confirm that state agencies have no discretion to waive recoupment even where (as here) the Food Stamp overpayments resulted from agency error. Accordingly, in this case the DPA is required by federal law to seek recoupment of the \$586.00 in Food Stamp benefits overpaid to the Claimant for the month of March 2009.

CONCLUSIONS OF LAW

1. The applicable federal statutes and regulations, and the relevant court decisions (including a recent decision of the Alaska Supreme Court), all require the Division to seek recoupment of Food Stamp overpayments even in cases involving agency error.

2. The Division therefore met its burden of proof and proved, by a preponderance of the evidence, that it was correct to seek recoupment from the Claimant of overpaid Food Stamp benefits for the month of March 2009 in the amount of \$586.00.

3. The Claimant failed to prove, by a preponderance of the evidence, that any legal or factual defense barred the Division's recoupment claim.

DECISION

The Division was correct to seek recoupment from the Claimant of overpaid Food Stamp benefits for the month of March 2009 in the amount of \$586.00.

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 _____ day of November, 2009.

/Signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of November 2009 copies of the foregoing document were sent to the Claimant by U.S.P.S mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.
_____, Director, Division of Public Assistance
_____, Policy & Program Development
_____, Administrative Assistant II
_____, Eligibility Technician I
_____, Staff Development & Training
_____, DPA Fair Hearing Representative

J. Albert Levitre, Jr.
Law Office Assistant I