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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-506
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) received Food Stamp benefits from November 21, 2008 through April 30, 2009 (Ex. 1). On or about August 17, 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 months of December 2008 through April 2009 and requesting repayment in the amount of \$1,864.00 (Ex. 5.1). The Claimant requested a fair hearing with regard to the DPA's repayment claim on or about September 1, 2009 (Hearing notice; Division representative's testimony). On September 11, 2009 the Division mailed a notice to the Claimant advising that her hearing had been scheduled for November 4, 2009 (Ex. 18).¹

¹ Pursuant to 7 AAC 49.080, the Division is generally required to issue a notice of hearing within 10 days of the date that the Division receives a claimant or recipient's hearing request. In this case the Division noticed the hearing 10 days after receiving the Claimant's hearing request.

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. However, this Office cannot prepare its decision until after the hearing is actually held. In this case, because the Division scheduled the Claimant's hearing 64 days after the day the Claimant's hearing request was received, the period within which this Office is required to issue its decision expired four (4) days prior to the hearing date. It was therefore not possible for this Office to issue its decision within the 60 day period specified by regulation. Accordingly, even though this decision was issued within 30 days of the hearing, and within 16 days of receipt of the parties' last post-hearing filing, the decision is technically late.

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. All testimony and exhibits offered by the parties were admitted into evidence. At the conclusion of the hearing the record was left open for the filing of an additional exhibit by the Division and for the Claimant's response thereto. Both the Division's additional exhibit and the Claimant's response were timely received. The record was then closed and the case was submitted for decision.

This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

ISSUE

Was the Division correct to seek to recover from the Claimant overpaid Food Stamp benefits for the months of December 2008 through April 2009 in the amount of \$1,864.00?

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp Program benefits on November 21, 2008 (Exs. 1.0, 2.0).
2. The Claimant participated by phone in an eligibility interview with a DPA employee on January 6, 2009 (Ex. 2.0). During that interview the Claimant confirmed that she was currently working two (2) part-time jobs (approximately 42 hours per week) to support herself and her young son. *Id.*
3. On January 26, 2009 a DPA employee calculated the Claimant's average gross monthly income (for Food Stamp Program purposes) received by Claimant from the Anchorage School District (Ex. 3.0). The DPA employee calculated this amount to be \$1,188.49. *Id.*
4. On January 26, 2009 the Division determined that the Claimant was eligible for Food Stamp benefits and issued her an electronic benefits (EBT) card (Ex. 3.0).
5. On June 23, 2009 a DPA employee discovered that the earnings information referenced in Paragraph 3, above had been mis-entered or mis-keyed at the time the information was entered by DPA back in January 2009 (Ex. 4.0).
6. Specifically, the DPA eligibility technician accidentally entered \$118.49, instead of \$1,188.49, when entering the Claimant's gross monthly income information (pertaining to her employment by the Anchorage School District) into the DPA's Eligibility Information System (EIS) (DPA representative's testimony). This caused the EIS system to understate the Claimant's actual income, and in turn caused DPA to authorize more Food Stamp benefits than should actually have been authorized. *Id.*

7. The Claimant's child support payments were not considered by DPA in making its income calculations for the Food Stamp Program in January 2009. (DPA representative's testimony). The only income considered by DPA was the income from the Claimant's two jobs. *Id.*
8. The amount of Food Stamp benefits which the Claimant's household should have received for the months of December 2008 through April 2009 was zero dollars (\$0.00) (Ex. 5.3). The amount of Food Stamp benefits which the Claimant's household actually received for the months of December 2008 through April 2009 was \$1,864.00 (Ex. 5.3; DPA representative's testimony).
9. On August 17, 2009 the Division mailed to the Claimant a notice stating that her Food Stamp benefits had been overpaid for the months of December 2008 through April 2009 (Exs. 5.1 – 5.4). The notice requested repayment of the over-issued Food Stamp benefits in the amount of \$1,864.00 (Exs. 5.1, 5.3).
10. The Claimant requested a fair hearing with regard to the DPA's Food Stamp Program repayment claim on or about September 1, 2009 (Ex. 6.0). 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. 18).
11. At the hearing of November 4, 2009 the Claimant testified in relevant part that:
 - a. She at all times believed that she was rightfully receiving her Food Stamp benefits; she was not aware of the DPA's error until she received DPA's repayment notice.
 - b. Because of DPA processing delays she does not believe that she actually received the Food Stamp benefits at issue until March or April 2009.
 - c. She is now working a full-time job, plus a second part-time job, in order to support herself and her child.
 - d. She is frustrated. She did not do anything wrong. She did not "work the system."
 - e. Had she been advised by DPA of the Food Stamp Program's income limits, she would have determined for herself whether she qualified for benefits and (if so) for what amount.
12. At the hearing of November 4, 2009 the Division's hearing representative conceded that the DPA was in error and that the Claimant had properly reported her income (DPA representative's testimony).
13. At the hearing, the Claimant did not dispute the DPA's assertion that the total amount of Food Stamp benefits received by the Claimant's household for the period December 2008 through April 2009 was \$1,864.00 (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 the period December 2008 through April 2009 was zero. 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.² In this case the Division is attempting to change the status quo or existing state of affairs by seeking repayment of Food Stamp benefits that were improperly issued. 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.³ 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.⁴

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 in the Code of Federal Regulations 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 (Repayment) 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].

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

³ 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).

⁴ *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”).

* * * * *

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 . . . 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 . . . 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 amendments to the Food Stamp Act which modified 7 United States Code section 2022(b) (set forth above).⁵ The language of that statute was changed to contain mandatory language (“*a State agency shall collect any overissuance of benefits issued to a household . . .*” [Emphasis added]). In addition, 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

⁵ These amendments were contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (Public Law No. 104-193, Aug. 22, 1996, 110 Statutes at Large 13321, 1996 U.S. Code Congressional & Administrative News § 844)

Stamp recoupment cases. The *Allen* court initially found 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 the federal law. The *Allen* court therefore found that federal law preempts the state law defense of equitable estoppel in the context of Food Stamp Program overpayment / recoupment cases. Accordingly, the *Allen* court ultimately held, based on the controlling federal Food Stamp statutes and regulations, that Food Stamp Program overpayments made due to state agency error must be recouped *even from innocent recipient households*.

ANALYSIS

I. Introduction.

The following facts are not disputed:

- a. The Claimant received Food Stamp benefits for the months of December 2008 through April 2009 in the amount of \$1,864.00. See Findings of Fact at Paragraphs 8, 9, and 13, above.
- b. The amount of Food Stamp benefits which the Claimant should have received for the months of December 2008 through April 2009, based on the applicable regulations, was zero dollars (\$0.00). See Findings of Fact at Paragraphs 8, 9, and 13, above.
- c. During the months of December 2008 through April 2009 the Claimant's household received \$1,864.00 more in Food Stamp benefits than the Claimant's household should have received based on the applicable regulations. See Findings of Fact at Paragraphs 8, 9, and 13, above.
- d. The Food Stamp Program overpayments to the Claimant's household during the months of December 2008 through April 2009 were caused by an error on the part of the DPA and were not the fault of the Claimant. See Findings of Fact at Paragraphs 5, 6, and 12, above.

Accordingly, the sole question in this case is whether the Division was correct to seek recoupment of the Food Stamp benefits which were overpaid to the Claimant for the months of December 2008 through April 2009, even though the overpayments were due to the Division's own 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 overpayments 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 pages 3-4, 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 recover overpaid benefits.

The federal implementing regulation pertaining to recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. That regulation has 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 recover 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 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 5-7, 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 have held, based on the clear language of the federal statute and regulation, that 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. The Alaska Supreme Court so held in the recent case of *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009).

The courts of other jurisdictions, such as California, have also confirmed the mandatory nature of Food Stamp recoupment. See, for example, *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd

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

Dist.1997) and *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3 Dist. 2002) (discussed in the Principles of Law at pages 6-7, above).

In conclusion, prior to the 1996 amendments to the Food Stamp statutes, courts sometimes held that the innocence of the benefit recipient, and the unfairness of requiring recoupment in cases of agency error, prevented 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 overpayments. This is true even where (as here) the overpayments were caused by agency error and the benefit recipient was completely innocent of any wrongdoing. The Alaska Supreme Court recently confirmed this in the case of *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009) (discussed in the Principles of Law at pages 6-7, above). That decision is binding on this Office.

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 current federal statute and regulations 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 to recover the \$1,864.00 in Food Stamp benefits overpaid to the Claimant for the months of December 2008 through April 2009.

CONCLUSIONS OF LAW

1. The applicable federal statutes and regulations, and the relevant court decisions (including the *Allen* decision that was recently issued by the Alaska Supreme Court), all require the Division to seek recoupment of Food Stamp overpayments, even in cases involving agency error.
2. The Claimant failed to prove, by a preponderance of the evidence, that any legal or factual defense barred the Division's recoupment claim.
3. 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 months of December 2008 through April 2009 in the amount of \$1,864.00.

DECISION

The Division was correct to seek recoupment from the Claimant of overpaid Food Stamp benefits for the months of December 2008 through April 2009 in the amount of \$1,864.00.

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 December, 2009.

/signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of December 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