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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. 10-FH-07
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) began receiving Food Stamp benefits in April 2009 (Ex. 4). On February 8, 2010 the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division), mailed a notice to the Claimant (Ex. 12.1 – 12.15). This notice stated that the Claimant’s Food Stamp benefits had been overpaid for the months of April 2009 through September 2009 (Ex. 12.1). The notice requested that the Claimant repay the Division \$1,608.00 in overpaid Food Stamp benefits (Ex. 12.1). The Claimant requested a fair hearing with regard to the DPA’s repayment claim on January 15, 2010 (Ex. 10; Division Hearing Representative’s testimony).

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

Hearings were held on February 24, 2010 and March 2, 2010 before Hearing Examiner Patricia Huna.¹ The Claimant participated in the hearings by telephone, represented herself, and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearings 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 closed and the case was submitted for decision.

¹ Following the hearing this case was reassigned to Hearing Examiner Jay Durych. He reviewed this Office’s hardcopy case file, and listened to the digital recordings of the hearings held in this case, prior to preparing and issuing this decision.

ISSUE

Was the Division correct to seek to recover from the Claimant overpaid Food Stamp benefits for the months of April 2009 through September 2009 in the amount of \$1,608.00? ²

FINDINGS OF FACT

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

1. The Claimant completed and signed an application for Food Stamp benefits on February 27, 2009 (Ex. 2.0). This application was received by the Division on April 9, 2009 (Ex. 3).
2. On April 9, 2009, the Claimant attended an in-person eligibility interview with DPA (Ex. 3). The Claimant was approved to receive Food Stamp benefits, and her benefits were started effective April 9, 2009 (Exs. 3-4).
3. On October 9, 2009, the Claimant submitted a signed Food Stamp Eligibility Review Form to the Division (Exs. 6 – 6.3). On October 12, 2009, the Claimant participated by telephone in a Food Stamp recertification interview (Ex. 7).
4. On October 14, 2009, the DPA Eligibility Technician who had been working with the Claimant spoke with a representative of the Office of Children's Services (OCS) (Exs. 8.0 – 8.1; DPA Hearing Representative's testimony). The OCS representative confirmed that at all times relevant hereto (a) the Claimant's grandson had been in the care of the Claimant, and (b) the Claimant was receiving \$737.70 per month in foster care program payments for her grandson. *Id.* The OCS representative also confirmed that (a) until August 2009 the Claimant's granddaughter had also been in the care of the Claimant; and (b) until August 2009 the Claimant had also been receiving \$876.00 per month in foster care program payments for her granddaughter. *Id.*
5. Based on the information discussed in the preceding paragraph, the DPA Eligibility Technician who had been working with the Claimant realized that he had made a mistake with regard to the calculation of the Claimant's Food Stamp benefits (Ex. 8.1; DPA Hearing Representative's testimony). The mistake was in not counting the Claimant's grandchildren's foster care program payments as income for purposes of the Food Stamp Program (Ex. 9.12; DPA Hearing Representative's testimony).
6. The Eligibility Technician attempted to correct the above-referenced mistake (a) by adding the Claimant's granddaughter's monthly foster care program payments to the Claimant's Food Stamp case for the period April 2009 through August 2009; and (b) by adding the Claimant's

² It is important to note that, while all overpayments occurred during the period April 2009 through September 2009, these overpayments were netted-out against underpayments which occurred during the period October 2009 through February 2010 (see Exs. 11.1 – 11.2). Thus, when discussing *overpayments alone*, it is correct to reference the period April 2009 through September 2009, while when discussing *net overpayments*, it is correct to reference the period April 2009 through February 2010.

grandson's monthly foster care program payments to the Claimant's Food Stamp case for the period April 2009 through September 2009 (Exs. 8.1 – 8.6; DPA Hearing Representative's testimony).

7. When the Claimant's Food Stamp case was re-processed after inclusion of the foster care program payments, it became apparent that the Claimant had been overpaid Food Stamp Program benefits during the period April 2009 through September 2009 (Exs. 8.1 – 8.6; DPA Hearing Representative's testimony).

8. On January 8, 2010, DPA mailed to the Claimant a notice (Ex. 9) which requested repayment of the overpaid Food Stamp benefits. The notice stated in relevant part as follows:

We have reviewed our records and it has come to our attention that you received more food stamps than you were entitled to receive. For the months of April 2009 through September 2009 you received \$3,342.00. We believe that you should have received \$95.00 in food stamps for that period. This is because the agency did not count your foster [grandchildren's] income. As such, based on our calculations you were overpaid by \$3,247.00 This overpayment was due to . . . inadvertent agency error

9. The Claimant requested a fair hearing with regard to the DPA's Food Stamp Program repayment claim on January 15, 2010 (Ex. 10; Division Hearing Representative's testimony).

10. On or about February 2, 2010, DPA realized that the Claimant had never requested that her grandchildren be included in her household for Food Stamp purposes (Exs. 11.1 – 11.2). Accordingly, DPA realized that although it had *overpaid* Food Stamp benefits to the Claimant during the period April 2009 – September 2009, it had subsequently *underpaid* Food Stamp benefits to the Claimant during the period October 2009 – February 2010. *Id.*

11. On February 8, 2010, DPA mailed to the Claimant a corrected notice (Exs. 12.1 – 12.15; Exs. 19.0 – 19.15) which again requested repayment of the overpaid Food Stamp benefits. The notice stated in relevant part as follows

We have reviewed our records and it has come to our attention that you received more food stamps than you were entitled to receive. For the months of April 2009 through September 2009 you received \$3,342.00. We believe that you should have received \$1,307.00 in food stamps for that period. This is because the agency added your grandchildren to your case and counted their foster care payments in error. As such, based on our calculations you were overpaid by \$2,035.00. However, we owed you \$427.00 for the months October 2009 through February 2010; therefore, the outstanding balance on this overpayment is \$1,608.00 This overpayment was due to . . . inadvertent agency error

12. The amount of Food Stamp benefits which the Claimant actually *received* for the months of April 2009 through February 2010 was \$3,948.00 (Exs. 11.1 – 11.2).

13. The amount of Food Stamp benefits which the Claimant *should have received* for the months of April 2009 through February 2010, based on the applicable regulations, was \$2,440.00 (Exs. 11.1 – 11.2).

14. Thus, during the months of April 2009 through February 2010 the Claimant's household received \$1,508.00 more in Food Stamp benefits than the Claimant's household should have received based on the applicable regulations (Exs. 11.1 – 11.2).³

15. The Division's recoupment notice dated February 8, 2010 (Exs. 12.1 – 12.15; Exs. 19.0 – 19.15) was mathematically not correct in that it stated the net overpayment for the period April 2009 through February 2010 as \$1,608.00, while the Division's own records (Exs. 11.1 – 11.2) show that the net overpayment for this period was actually \$1,508.00 (\$100.00 less).

16. The Food Stamp Program overpayments to the Claimant's household during the months of April 2009 through September 2009 were caused by errors on the part of DPA and were not the fault of the Claimant (Exs. 9, 19.0; DPA Position Statement; DPA Hearing Representative's testimony).

17. At the hearing of March 2, 2010 the Claimant testified in relevant part that:

a. She is frustrated. She initially told the Division's Eligibility Technician that she was receiving Foster Parent payments and was told that these payments were exempted from income under the Food Stamp Program.

b. She properly reported all of her income and believed that she was rightfully receiving her Food Stamp benefits. She was not aware of DPA's overpayment error until she received DPA's repayment notice.

c. She did not initially request Food Stamp benefits for her grandchildren. It is not her fault that she was overpaid Food Stamps. She did not do anything wrong.

18. At the hearing, the Claimant did not dispute the DPA's assertions regarding the total amount of Food Stamp benefits *actually received* by the Claimant's household during the period in question (Claimant testimony). Likewise, the Claimant did not dispute the Division's assertions regarding the amount of Food Stamp benefits which *should have been paid* to the Claimant's household during the period in question. *Id.* Rather, the Claimant's position was essentially that she had at all times complied with the requirements of the Food Stamp Program; that she had done nothing wrong; and that her household should not be penalized for DPA's mistake. *Id.*

³ The DPA's *overpayments* to the Claimant during the period April 2009 – September 2009 total \$2,035.00 (Ex. 11.1). The DPA's *underpayments* to the Claimant during the period October 2009 – February 2010 total \$527.00 (Ex. 11.2). When the \$527.00 in underpayments are subtracted from the \$2,035.00 in overpayments, the result is a net overpayment of \$1,508.00 for the period April 2009 – February 2010.

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.⁴ 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 it alleges were not properly 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.⁵ 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.⁶

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].

⁴ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁵ 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).

⁶ *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”).

On August 22, 1996, Congress enacted amendments to the Food Stamp Act which modified 7 USC 2022(b) (set forth above).⁷ The language of the statute was changed to mandatory language (“*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].

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 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 . . . due to the Department's administrative error, the Department is entitled to recoupment in view of the mandatory nature of the federal regulations. . . .

The United States Secretary of Agriculture has the statutory authority to delegate 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). However, the Secretary has not exercised this authority, and the federal regulations (discussed above) which delegate certain authority to state agencies *does not* include the authority to waive Food Stamp overpayments. *Id.*

⁷ 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).

In *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997), and in *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3rd Dist. 2002), the California appellate courts 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.

Most recently, in *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009), the Alaska Supreme Court discussed “agency error” Food Stamp recoupment cases. In this decision the court ultimately held, based on the controlling federal Food Stamp statutes and regulations (discussed above), that Food Stamp Program overpayments made due to state agency error *must* be recouped *even from innocent recipient households*.

ANALYSIS

Introduction.

The facts relevant to this case are not disputed:

- a. The Claimant actually *received* Food Stamp benefits for the months of April 2009 through February 2010 in the amount of \$3,948.00. See Findings of Fact at Paragraph 12, above.
- b. The amount of Food Stamp benefits which the Claimant *should have received* for the months of April 2009 through February 2010, based on the applicable regulations, was \$2,440.00. See Findings of Fact at Paragraph 13, above.
- c. During the months of April 2009 through February 2010 the Claimant’s household received \$1,508.00 more in Food Stamp benefits than the Claimant’s household should have received based on the applicable regulations. See Findings of Fact at Paragraph 14, above.
- d. The Food Stamp Program overpayments to the Claimant’s household during the months of April 2009 through September 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 Paragraph 15, 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 April 2009 through September 2009, even though the overpayments were caused by 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.

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.

I. The Applicable Federal Statutes and Regulations Require 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.”⁸ 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 federal regulation 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.*

II. Judicial Decisions Confirm That The Division is Required to Seek Recoupment of Overpaid Benefits Even in Cases of Agency Error.

Even where (as here) 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.

As noted in the Principles of Law, above, the Food Stamp statutes were amended in 1996. Since that time, virtually all courts have held that the applicable federal statute and regulations require recoupment of Food Stamp benefits regardless of fault.⁹ See, for example, *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd 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). The Alaska Supreme Court itself confirmed the mandatory nature of Food Stamp recoupment in the recent 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 page 7, above).

In conclusion, *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 page 7, above). That decision is binding on this Office.

⁸ Paragraph (g)(2) concerns Electronic Benefit Transfer (EBT) accounts and does not apply to this case.

⁹ 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).

III. 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. Further, 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.

As noted in the Findings of Fact, above, the Division's recoupment notice dated February 8, 2010 was mathematically not correct. It stated the net overpayment for the period April 2009 through February 2010 as \$1,608.00. However, the Division's own records show that the net overpayment for this period was actually \$1,508.00, or \$100.00 less than stated in the Division's notice. Accordingly, in this case the DPA is required by federal law to seek to recover the net overpayment of \$1,508.00 in Food Stamp benefits overpaid to the Claimant during the months of April 2009 through February 2010.

CONCLUSIONS OF LAW

1. The applicable federal statute and regulation (7 U.S.C.A. § 2022 and 7 C.F.R. § 273.18), 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 Division met its burden of proof and proved, by a preponderance of the evidence, that it was correct to seek recoupment from the Claimant of a net overpayment of Food Stamp benefits for the months of April 2009 through February 2010.
3. However, the Division's recoupment notice dated February 8, 2010 was mathematically not correct in that it stated the net overpayment for the period April 2009 through February 2010 as \$1,608.00. The Division's own records show that the net Food Stamp overpayment for this period was actually \$1,508.00.

DECISION

The Division was correct to seek recoupment from the Claimant of Food Stamp benefit overpayments. However, due to a mathematical error, the net overpayment for the months of April 2009 through February 2010 was not correctly stated by the Division in its notice. The net overpayment is in the amount of \$1,508.00, which is \$100.00 less than the amount requested by the Division.

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:

