

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Telephone: (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. 10-FH-223
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) has been a recipient of Food Stamps since 2003. (Ex. 1) Claimant applied for re-certification of her benefits in May 2009. (Eligibility Technician testimony) The Division of Public Assistance (Division or DPA) recertified Claimant’s eligibility and issued Claimant Food Stamp benefits from June 2009 through June 2010. (Ex. 3)

A routine Quality Assurance review (hereinafter, review or QA review) determined errors had occurred during the benefit calculation process when Claimant was recertified as eligible for Food Stamps between June 2009 and June 2010. (Ex. 2.0-2.2D) On June 12, 2010, the Quality Assurance review resulted in a determination that Claimant’s medical expenses were incorrectly calculated and some had not been verified, and, consequently, overpayment of benefits existed from June 2009 through June 2010. (Ex. 3) On June 29, 2010, Claimant was notified she had received a total overpayment of benefits in the amount of \$813, for which the State was seeking reimbursement because the Division had allowed an “incorrect medical deduction.” (Ex. 4.0) This notice was accompanied by supporting documentation showing the changes in benefit calculation. (Exs. 4-4.25) Claimant requested a fair hearing on July 6, 2010. (Ex. 5)

This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.010 and 7 C.F.R. § 273.15.

The Fair Hearing was held October 14, 2010 and continued November 18, 2010.¹ Claimant appeared telephonically, represented herself and testified on her own behalf on both days. Ms. [REDACTED],

¹ Claimant had requested a fair hearing in a related case (10-FH-250), which became consolidated with this case. The two cases were scheduled to be heard concurrently on October 14, 2010. The two cases dealt with the same issue, i.e., recovery of benefits overpaid due to alleged error in calculating Claimant’s medical expenses, but concerned different time periods.

Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division on both days. The Division's Eligibility Technician [REDACTED] (hereinafter, Eligibility Technician) appeared telephonically on October 14, 2010 and was called to testify by the Claimant. The Division's Quality Assurance Supervisor, [REDACTED], appeared telephonically October 14, 2010 and November 18, 2010 and testified on behalf of the Division.

The evidentiary record was left open for the submission of additional documents until November 30, 2010, when the record closed. On November 18, 2010, Claimant submitted additional documents.² On November 22, 2010, the Division submitted an explanatory letter, revising the alleged amount of overpaid benefits. (Ex. 17) All exhibits were admitted.

DECISION SUMMARY

Claimant obtained benefits between June 2009 and June 2010 as a result of a recertification application. The Eligibility Technician relied on verified documentation of medical expenses, provided between July 2008 and May 2009, to prospectively estimate Claimant's medical expense deduction when calculating Claimant's food stamp benefit for the period June 2009 through June 2010. The Eligibility Technician calculated Claimant's medical expense deduction to be \$353.73. The Eligibility Technician erroneously left out Claimant's medically local related travel and possibly omitted the housekeeping expense from the medical expense deduction when she calculated Claimant's benefit.

The Division's Quality Assurance review was conducted between January 2010 and March 2010. The Quality Assurance review changed the medical expenses allowed by the Eligibility Technician. The particular medical expenses involved in this case are: a. prescribed nutritional products; b. a prescribed foam bed pad; c. medically related travel; d. costs of shipping nutritional products; e. prescription co-pays; and f. dental expenses. The QA review alleged it believed the Eligibility Technician's verification of medical expenses was incorrect, in part because it appeared re-verification of current medical expenses was not done at the time of recertification. However, as discussed further in part IV of this decision, neither federal regulations nor the Alaska Food Stamp Manual circumscribe the time period for verifying prospective or estimated medical expenses.

The QA review resulted in an allegation Claimant was overpaid benefits between June 2009 and June 2010. The Quality Assurance review calculated Claimant's medical expense deduction to be \$259.25, in part by correctly re-calculating the cost of Claimant's prescribed nutritional products, by correctly not allowing the shipping costs for those products, and by correctly reducing the co-pay amount for the cost of a one-time vaccination, each of which had been allowed by the Eligibility Technician.

The resulting change in calculations led to an alleged overpayment of \$813 of benefits and the Division made a claim for reimbursement. After discovering an error in the review calculations, the Division

However, during the October 14, 2010 hearing it became evident that each case had different evidentiary information and the cases were separated. Due to the need for additional time, this case (10-FH-223) was continued to November 18, 2010. Case 10-FH-250 was scheduled to be heard November 18, 2010 after the completion of case 10-FH-223. Between October 14, 2010 and November 18, 2010, the parties resolved case 10-FH-250 and that case was dismissed. This case (10-FH-223) was concluded November 18, 2010.

² Previously, Claimant submitted exhibits some of which had been marked with letters and some with numbers. These have been re-marked for administrative convenience with alphabetical letters from A to N.

changed its alleged amount of overpayment to \$630. Claimant requested compromise of the claim and the Division compromised the claim to \$360, for which it sought reimbursement.

However, the QA review erroneously disallowed Claimant's medical expenses for out-of-state medically related travel and the prescribed foam bed, in addition to the medical expenses the Eligibility Technician erroneously did not allow for medically related local travel and housekeeping. Furthermore, both the Eligibility Technician and the QA review may have erroneously disallowed Claimant's dental expenses but this cannot be determined from the evidentiary record.

Claimant is allowed the medical expenses of medically related travel, housekeeping, prescribed medical equipment and dental expenses as deductions authorized by Federal Food Stamp regulation 7 C.F.R. § 273.9(d)(3). Because these expenses were incorrectly omitted from the medical expense deduction and because changes in the medical expense deduction may also affect the amount of shelter cost deduction, the correct amount of Food Stamp benefit cannot be calculated in this decision.

Consequently, the Division has not proven by a preponderance of the evidence that Claimant was overpaid benefits. Therefore it may not bring a claim for overpayment. The case is remanded to the Division for further review in light of this decision.

ISSUE

Was the Division correct to request the repayment of Food Stamp benefits allegedly overpaid to Claimant during the months of June 2009 through and including June 2010?

FINDINGS OF FACT

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

1. Claimant is a physically disabled senior citizen receiving Supplemental Security Income (SSI) since the early 1990's. (Claimant's testimony) During the period relevant to this case, Claimant was receiving SSI, Adult Public Assistance and Medicaid benefits. (Claimant's testimony; Exs. 13.2-13.3; 13.5; 13.8-15.47; Eligibility Technician's testimony) Claimant purchases as much housekeeping help she can afford. (Claimant's testimony)
2. Claimant had been receiving Food Stamps for several years before applying for recertification in May 2009. In the past, Claimant had worked with the same Eligibility Technician, who was extensively familiar with Claimant's eligibility information and circumstances and had been a case worker for more than 20 years. (Ex. 1; Eligibility Technician's testimony; Ex. L)
3. Between July 3, 2008 and June 2009, Claimant and the Eligibility Technician reviewed Claimant's recurring medical expenses, including verifying documentation.³ (Eligibility Technician's testimony; Claimant's testimony; Exs. 2.3-2.99; Exs. A, D, G, H, I, J, L) The Eligibility Technician

³ The Eligibility Technician testified Claimant began providing verification of her annual expenses in August 2008. However, many of the receipt copies included in the evidentiary file date from the certification year 2007-2008 and are date stamped July 2008. *See, e.g.*, Exs. 2.9-2.99. For example, on July 3, 2008, the Eligibility Technician received a receipt for housekeeping expenses for 2007. (Ex. 2.96)

obtained extensive verification of Claimant's medical expenses that were expected to re-occur and to apply to the forthcoming recertification period of June 2009 through June 2010. (Eligibility Technician's testimony) Claimant would bring in her expense verification and when there was a question, the Eligibility Technician would request further documentation as needed. (Eligibility Technician's testimony) Claimant submitted expense receipts from years 2007, 2008, and 2009. (E.g., Exs. 2.9-2.14, 2.80 year 2007; Exs. 2.60-2.63; 2.66; 2.74-2.76; 2.79 year 2008; Exs. 2.22-2.25; 2.28-2.29; 2.32-2.33)

5. The Eligibility Technician specifically relied on the DPA Food Stamp manual and policy office personnel to determine what deductions were allowable because some of Claimant's expenses were unfamiliar to her. (Eligibility Technician's testimony) The Eligibility Technician prepared a spreadsheet of the medical expenses she allowed. (Eligibility Technician's testimony; Ex. H) In May 2009, Claimant and the Eligibility Technician reviewed the spreadsheet specifically to determine if any would not re-occur during the forthcoming certification year or if the expense would change by more than \$25. (Eligibility Technician's testimony; Claimant's testimony)

6. After verifying Claimant's expenses for the prospective 2009-2010 year, the Eligibility Technician returned receipts to Claimant so she could submit them to the Alaska Housing Finance Corporation. (Claimant's testimony) Therefore, some receipts which had been verified for prospective medical expenses were not in Claimant's DPA file in January 2010, when a Quality Assurance review was done. (Ex. L; Claimant's testimony) Claimant claimed and provided documentation for prescribed nutritional products (e.g., Exs. 2.8-2.36 *et. seq.*); prescribed medical equipment in the form of a prescribed foam bed pad (e.g., Ex. 2.79-2.80; Ex. D, E); medically related travel (e.g., Exs. 2.94-2.99); housekeeping (e.g., Ex. 2.96; Ex. G). Claimant incurred dental expenses from the Four Corners Dental and Tudor Dental Group but the amount of expense(s) is not identified in the evidentiary record. (Ex. 2.2B)⁴

7. The Eligibility Technician conducted an eligibility interview with Claimant on or about June 29, 2009. During the interview the Eligibility Technician confirmed that the previously verified medical expenses were expected to continue unchanged, or changed in an amount of more than \$25. (Eligibility Technician's testimony) The Eligibility Technician reviewed Claimant's expenses for recurring out-of-state travel and determined that Claimant expected to continue her doctor visits in the same frequency as she had before. (Eligibility Technician's testimony) The Eligibility Technician believed the following: a) this was sufficiently recent verification of Claimant's expenses; b) the expenses were reasonable; c) the expenses were not expected to change more than \$25; d) the expenses would recur during the forthcoming certification year; and e) Claimant was credible and cooperative. The Eligibility Technician did not write in her case note that she verified Claimant's travel expenses, but she remembers she did. (Eligibility Technician's testimony)

⁴ Neither party supplied documentation of Claimant's dental expenses although each party had an obligation to do so if they wished to have the Hearing Authority decide in favor of either of their respective assertions. Moreover, the QA's statement it was "unable to verify the [dental expenses] as a non-reimbursable expense" is not persuasive because a) it had an obligation to request verification from Claimant and Claimant to supply it; b) it is a routine matter for the Division to verify Medicaid reimbursed claims; and c) because dental benefits reimbursed by Medicaid are limited. Consequently, on remand, the parties should re-consider the amount of dental expenses to be included in Claimant's medical deduction and Claimant needs to re-submit the expenses for consideration.

8. The Eligibility Technician applied the verified medical expenses as part of calculating Claimant's benefits for the prospective recertification period including June 2009 through June 2010. (Eligibility Technician's testimony; Claimant's testimony; Ex. 12) The Eligibility Technician verified allowable monthly medical expenses of \$353.73 (consisting of past monthly expenses of \$91.49 and newly verified monthly expenses of \$262.24) (Ex. 12)

9. The Eligibility Technician calculated that Claimant's total medical expense deduction was \$353.73, as follows:

Prescribed Nutritional Products		\$262.24 per month
total shipping costs included:	\$39.48	
Out of state travel (total \$675.15) ⁵		56.26 per month
Medical Equipment (foam bed pad) (total 21.99)		1.83 per month
Prescription Co-payments (total \$400.70)		<u>33.40</u> per month
Total monthly medical expense deduction:		\$ 353.73

(Ex. 2.2A)

10. The Eligibility Technician omitted the costs of Claimant's local medically related travel. (Eligibility Technician's testimony; Claimant's testimony; Exs. 2.86-2.91; Exs. I, M, N; and Ex. 2.96; Ex. A, p. 1; Ex. G) The Eligibility Technician omitted Claimant's housekeeping expenses. (Eligibility Technician's testimony; Claimant's testimony) Claimant supplied a copy of her housekeeping documentation for 2007 in the amount of \$200 (Ex. 2.96) and of \$405 for 2008,⁶ verified by a document dated April 26, 2009. (Ex. G)

11. The Eligibility Technician calculated benefit amounts as: (Exs. 4.9-4.10; Exs. 4.24-4.25)

Month	Benefit Paid	Month	Benefit Paid
June 2009	122.00	Jan 2010	130.00
July 2009	122.00	Feb 2010	130.00
Aug 2009	122.00	Mar 2010	130.00
Sept 2009	122.00	Apr 2010	130.00
Oct 2009	120.00	May 2010	130.00
Nov 2009	130.00	June 2010	130.00
Dec 2009	130.00		

12. A Quality Assurance (QA) review of the calculations concluded by the Eligibility Technician was made between January 2010 and March 2010 to determine if Claimant's benefits had been correctly calculated. (Quality Assurance Supervisor's testimony; Ex. 2.0; Ex. 2.2) The month of

⁵ After recertification was approved, Claimant learned that one out-of-state doctor from whom she obtained care annually had retired and that she would not be incurring the expense for that visit. (Claimant's testimony)

⁶ This receipt is dated April 2009 but purports to be for housekeeping expenses as an "Annual Statement for 2009." The date appears to be mistaken because a 2009 annual statement could not be accomplished in April 2009. It is likely an annual statement for 2008, especially probable because the 2007 statement was submitted in July 2008 and there was no evidence of a 2008 statement in the record.

January 2010 was selected as the sample month for review and the results applied to the period June 2009 through June 2010. (Quality Assurance Supervisor's testimony; Ex. J; Ex. 2.0; Ex. 2.2) On May 10, 2010, the Quality Assessment Report noted "there is one agency-caused error discovered in review of the case record which results in a \$43 overpayment." (Ex. 2.0)

13. The QA reviewed Claimant's file, maintained by the Division, which contained a number of copies of the documentary verification of Claimant's medical deductions but not all of them. (Exs. 2.3-2.99; Claimant's testimony; Ex. L) Some of the documents the Eligibility Technician had used to verify Claimant's deductions were not in the Division's file kept for Claimant and had been returned to Claimant. (Claimant's testimony: Ex. L)

14. The QA review determined some of the medical expenses allowed by the Eligibility Technician were incorrect. (QA Supervisor's testimony; Ex. 2.0-2.2D; Ex. 3)

A. The Quality Assurance reviewer identified the medical expenses addressed by the Eligibility Technician which were changed. (See, Exhibit 2.2A "Medical Expenses – AGENCY") These included the nutritional products shipping costs, prescribed foam bed pad, prescription co-pays and some medically related travel. (Ex. 2.2A)

B. The QA review then calculated a "Medical Expenses – COMP I / ACTUAL". This calculation omitted the nutritional products shipping costs, prescription foam bed pad expense, dental expenses, and housekeeping expenses.⁷ (Ex. 2.2B) The QA review noted it disallowed the housekeeping expense because it was "not an allowable medical expense and service took place/receipt dated 3/3/10." (Ex. 2.2B) Claimant supplied a housekeeping receipt dated April 29, 2009 to the Division on July 3, 2008. (Ex. 2.96) Also the QA review did not allow \$91.49 of past monthly expenses verified by the Eligibility Technician, because this amount represented "past one-time expenses" already allowed in the prior recertification period. (Ex. 2.2B)

C. QA re-calculated Claimant's medical expenses and created "Medical Expenses – COMP II / CORRECTED." Both Comp I and Comp II deducted \$35 from the total medical expenses amount, which amount was later used to generate a computer calculated benefit amount. The total changes in the computer-generated benefit amount (based on the Comp II / Corrected total medical expenses) resulted in an alleged overpayment of \$813. (Exs. 4.0; 4.24-4.25; 13.0-13.1; 14.0-14.1; 15.0-15.1) The QA review elected to use the calculations of "Comp II / Corrected" calculations in preference for its "Comp I Actual" calculations because it "resulted in the lesser error." (Ex. 2.0; Quality Assurance Supervisor's testimony)

15. The QA "Comp II / Corrected" review determined some of the medical expenses calculated and allowed by the Eligibility Technician were incorrect as shown on the chart below:

Item	Eligibility Technician	Quality Assurance Review (monthly)	Exhibit Reference Reason for change
Vitamin D 1000iu	\$ 3.61	\$ 6.02	2.1, 2.2 cost change

⁷ The Comp I/ Actual calculation also did not allow expense for an exercise ball, [REDACTED] Pool pass, October 2007 expense for Earth's Nutritional Supplement. (Ex. 2.2B) These are not at issue.

Vitamin A&D	.26	.95	2.1, 2.2 math error
Bariatric vitamins	13.85	12.64	2.1, 2.2 math error
Bariatric B-50	7.83	6.62	2.1, 2.2 math error
Multi Pro Whey Sup	63.82	45.15	2.1, 2.2 math error
Shipping costs	39.48 (3.29 monthly)	0	2.2A, not allowed
Out of State Travel	675.15 (56.26 monthly)	0	2.2A, 2.2C not allowed
Medical Equipment			
Foam Bed Pad	21.99 (1.83 monthly)	0	2.2A, 2.2C not allowed
Dental	0*	0*	2.2B, QA unable to verify non-medicaid expense
Local medical travel	0	0	Omitted by ET & QA
Prescription co-pays	400.70** (33.39 monthly)	15.00**	2.2A, 2.2C, 2.2D note 4
Housekeeping	0***	0***	2.96; G, omitted by ET & QA

* The QA review referenced expenses from two specific dental providers ([REDACTED] Dental and [REDACTED] Dental Group) that were included in its “Comp I/ Actual” that were omitted from its “Comp II / Corrected” document. (Ex. 2.2B; Ex. 2.2C) The QA notes the expense “occurred prior to sample month” of January 2010 and “unable to verify this as non-reimbursable [sic] expense. (Ex. 2.2B) The documentation on which the QA review relied was not supplied as part of the evidentiary file.

**The substantial difference in the prescription co-pay amount is due to the disallowance of a one-time vaccination expense of \$209.98. This amount, subtracted from \$400.70 results in \$190.72, which when divided by 12 months yielding an average monthly remaining co-pay of \$15.89, rounded to \$15.00. Ex. 2.2D.

*** Exhibit 2.96 for housekeeping expenses in 2007 of \$200 was received by the Division on July 3, 2008; Exhibit G is a receipt dated April 2009 for expenses of \$405 in 2008. See footnote 10.

16. The QA review noted the dental bill from [REDACTED] Dental, predated January 2010, but the QA review did not identify the amount of expense for this bill, nor for the dental bill from [REDACTED] Dental Group, which it also reviewed. (Ex. 2.2B) The QA review note states the dental expenses were claimed but not allowed because the QA was “unable to verify these expenses as a non-reimbursable expense.” (Ex. 2.2B)

17. The QA review calculations of Comp II / Corrected resulted in a determination of monthly allowable medical expenses as follows: (Ex. 2.2C)

a. Prescribed nutritional products:	\$244.25
b. Co-pays:	<u>15.00</u>
Total medical expense deduction:	\$259.25

18. The QA review then reduced the \$259.25 medical expense deduction by \$35.00, and allowed a total of \$224.25 as a medical expense deduction for calculating Claimant’s Food Stamp benefit. (Ex. 2.2C) The QA review then applied the medical expense deduction of \$224.25 into a computer generated calculation of benefit amounts. (Exs. 13.0-13.1; 14.0-14.1; 15.0-15.1) The computer automatically deducted another \$35.00, altered the shelter cost deduction for each month based on the medical expense deduction and allowed a standard deduction, resulting in a new benefit amount allegedly payable to Claimant between June 2009 and June 2010. (Exs. 13.0-13.1; 14.0-14.1; 15.0-15.1) The QA determined Claimant was entitled to a lesser amount of benefits in each of the months of June 2009 through and including June 2010. (Ex. 4.24) After the Fair Hearing, the Division’s Fair Hearing Representative corrected the mistaken double \$35 deduction and re-determined the allegedly overpaid benefit amounts. After re-calculating benefits with the re-assessed medical deductions determined by the QA review and the after-hearing correction, the Division alleged Claimant had been overpaid as follows:

Year and Month	\$ Allegedly Overpaid (per original Quality Assurance review)	\$ Allegedly Overpaid (corrected after hearing)
2009 June	70	58
July	70	58
August	70	58
September	70	58
October	69	56
November	58	43
December	58	43
2010 January	58	43
February	58	43
March	58	43
April	58	43
May	58	43
June	58	43
Total:	\$813	\$630

(Exs. 4.24-4.25; Exs. 13.0-15.1; Ex. 17)

19. On June 29, 2010, the Division sent written notice to Claimant it was making a claim for reimbursement of \$813 of Food Stamp benefits it had overpaid her in the months June 2009 through June 2010. (Ex. 4.0) The notice informed Claimant the agency had overpaid Claimant because it “allowed an incorrect medical deduction.”⁸ (Ex. 4.0)

⁸ The notice letter did not clearly or directly indicate the alleged overpayment of benefits also was due to changes in Claimant’s shelter cost deduction. Although her actual shelter costs were unchanged, the shelter cost *deduction* did change because the shelter cost deduction calculation includes, and is dependent on, the medical expense deduction. *See*, Ex. 4.9-4.10. The notice reference to shelter cost deductions was included only a) descriptively in the Attachment A overpayment sheet (Ex. 4.2); b) numerically in the Overpayment Calculation Form (Ex. 4.9-4.10); and c) as a deduction in each monthly Allotment Determination (Exs. 4.11-4.21).

20. On July 6, 2010, Claimant requested fair hearing. (Ex. 5)

21. On September 14, 2010, Claimant requested a hardship exemption from reimbursing the \$813 claimed. (Ex. 16.0-16.1) The Division notified Claimant on September 16, 2010 it had granted her a compromise based on hardship⁹ and reduced its claim from \$813 to \$360. (Ex. 16.2)

22. On November 18, 2010, the Division submitted a letter changing the amount of the alleged overpaid benefits. (Ex. 17) The change in the alleged amount resulted from the Division's correction of its error of subtracting \$35 twice from the total medical expenses allowed as a deduction.¹⁰ (Ex. 17) The Division's November 18, 2010 letter alleged Claimant had been overpaid \$630 and it was seeking reimbursement of \$360. (Ex. 17)

PRINCIPLES OF LAW

I. Burden of Proof

This case involves the Division's request to collect alleged overpaid Food Stamp benefits. 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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A 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). Therefore, the standard of proof is the preponderance of the evidence.

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. *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

III. Food Stamp Program

The Food Stamp Program is a federal program administered by the states. 7 C.F.R. 271.4(a). The State of Alaska has adopted regulations to implement the federal Food Stamp Program. Those regulations are found at 7 AAC 46.010-990.

⁹ Claimant is permanently disabled and has had gastric bypass surgery which requires her to consume certain bariatric vitamins and special foods and protein supplements, which she buys under prescription. (Ex. 16.1; Eligibility Technician's testimony) Claimant receives Supplemental Security Income as a Disabled Adult, Alaska Adult Public Assistance as a Disabled Adult, Medicaid and other public assistance benefits. (See, Exs. 13.2, 13.3, 13.5 and generally Exs. 13.0-15.47)

¹⁰ As shown on Comp II (Addendum C) and on Exhibits 13.0-13.1; 14.0-14.1; and 15.0-15.1, the \$35 of medical expense which 7 C.F.R. § 273.9(3) requires the Claimant to bear was deducted twice. It was deducted first when establishing the amount of total medical expenses to include in a computer generated Food Stamp Budget Work Sheet, and was deducted a second time by the automatic computer processing. This double deduction was corrected by the Division and resulted in an alleged overpayment of \$630 instead of \$813. (Ex. 17)

Certain deductions from income, for purposes of calculating Food Stamp benefits, are allowed. 7 C.F.R. § 273.9(d). Included in the allowed deductions are a recipient's medical expenses in excess of \$35 per month. 7 C.F.R. § 273.9(d)(3). After the medical expenses are reduced by \$35, allowed medical expenses pertinent to this case are:

- a. expenses of prescribed over-the-counter medications, prescribed medications, prescribed equipment, supplies, services and treatments: 7 C.F.R. 273.9(d)(3)(ii-iii);
- b. expenses of medical and dental care, including dentures: 7 C.F.R. § 273.9(d)(3)(i), (vi);
- c. expenses constituting the reasonable cost of transportation and lodging to obtain medical treatment or services: 7 C.F.R. 273.9(d)(3)(ix);
- d. the expense(s) of maintaining an attendant, homemaker, home health aide, child care services, or housekeeper necessary due to age, infirmity, or illness.¹¹ 7 C.F.R. § 273.9(d)(3)(x).

Regulation 7 CFR § 273.18 authorizes claims against households where benefits have been overpaid. 7 C.F.R. § 273.189(a). The recipient who has been overpaid is made subject to a claim for reimbursement in the amount of the overpayment and this claim is a federal debt which the state agency must collect, subject to certain regulations. 7 C.F.R. § 273.18(a)(1)-(3). A claim arises because benefits have been overpaid. 7 C.F.R. § 283.18(a)(1) (“[a] recipient claim is an amount owed because of: (i) [b]enefits that are overpaid”) Food Stamp Program benefits that are overpaid are Federal claims that the State must collect, as restitution, from each person who was an adult member of the household when the overpayment occurred. 7 C.F.R. § 273.18(a)(4).

Subsection (b) of 7 C.F.R. § 273.18 identifies three types of Federal claims which arise upon a determination that benefits have been overpaid and for which the state must seek reimbursement: 1) Intentional Program Violations; 2) Inadvertent household error; and 3) Agency error. An agency error is “any claim for an overpayment caused by an action or failure to take action by the State agency.” 7 C.F.R. § 273.18(b).

Federal regulations permit a state agency to compromise a claim or any portion of it if the agency reasonably can determine that the household's economic circumstances dictate that the claim will not be paid in three years. 7 C.F.R. § 273.18(e)(7)(i). The state agency may reinstate any compromised portion of a claim if the claim becomes delinquent, and any portion of the claim may be offset against benefits received by the household. 7 C.F.R. § 273.18(e)(7)(ii)-(iii).

Alaska Food Stamp Manual Sections (Manual Sections)

The Alaska Food Stamp Manual Sections concerning medical expense deductions follow the federal Food Stamp regulations.

Food Stamp Manual Section 602-4 DEDUCTIONS

¹¹ Alaska Food Stamp Manual Section 602-4D i identifies only “attendant” but the federal regulation also permits medical expense deduction for the costs of maintaining a housekeeper.

Households are allowed certain deductions from gross income when calculating their net income to determine their food stamp eligibility and allotment amount. An expense is allowed in the month it is billed or becomes due, regardless of when it is paid. ... Deductible expenses must be incurred by the household and not covered by an excluded reimbursement, excluded vendor payment or in-kind income. ... An expense must be verified when it results in a deduction.

Food Stamp Manual Section 602-4 D MEDICAL DEDUCTION

Medical expenses in excess of \$35 per month incurred by the household can be deducted for household members considered Special Category ... individuals.

The Food Stamp Manual Section 602-4 D 1. allows the same medical expenses as does 7 C.F.R. § 273.9(d)(3), with the exception of federal regulation subsection 7 C.F.R. § 273.9(d)(3)(x), which allows the expense of maintaining a housekeeper necessary to age, infirmity or illness. See footnote 8.

Section 602-4 D 2. provides medical expenses not allowed are the cost of a special diet, medical expenses covered by vendor payments, and medical expenses covered by reimbursements.

Section 602-4 D 3. concerns verification of allowable medical expenses and states medical expenses incurred by the household member must be verified at application and recertification. Acceptable verification includes, but is not limited to, current medical bills, statements from the medical provider, receipts, and insurance statements.

Section 602-4 D 4. Provides, in relevant part, when the household reports medical expenses that come due during the certification period, the information may be used to determine the household's monthly medical deduction for the remainder of its certification period. The household is not required to report or verify any changes in medical expenses during the certification period. The household may report at recertification any medical expenses that occurred during the prior certification and have these expenses considered in determining its monthly medical deduction for the new certification period.

Section 602-4 D 4. also provides that a household's monthly medical deduction is based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period. It also states households may estimate medical expenses they expect during the certification period.

The household is not required to report or verify any changes in medical expenses during the certification period. The household may report, at recertification, the medical expenses that occurred during the prior certification and have these expenses considered in determining its monthly medical deduction for the new certification period.

Food Stamp Manual Section 602-4 E. SHELTER DEDUCTION

Households are allowed a shelter deduction from their countable income when the total shelter costs are more than 50% of their net income.

Food Stamp Manual Section 604-2 E. 1. VERIFICATION REQUIREMENTS: RECERTIFICATION

The purpose of the recertification application is to review the household's current circumstances to determine continued eligibility for food stamps. This Section requires households to provide verification of ... d. new or previously unreported and/or unverified shelter costs (if questionable), dependent care, and medical expenses; e. previously verified shelter, dependent care, and medical expenses that have changed by more than \$25; and f. previously verified shelter, dependent care and medical expenses when the information is questionable. ...

Food Stamp Manual 601-4 C defines questionable information as unclear or inconsistent information that contradicts information on a previous application, a statement made by the applicant, or other information received by the agency. For example, if a household's expenses continually exceed income prior to deductions, the expenses are questionable.

Food Stamp Manual Section 607-1 C. CORRECTING ERRORS CAUSED BY INCORRECT DEDUCTIONS

When an incorrect payment is caused by not allowing deductions reported and verified by the household, or using deductions that should not have been allowed, correct the error by using the deduction amount that should have been used.

ANALYSIS

I. Issue

Claimant argued the Eligibility Technician's calculations were correct and that if they were incorrect, they were incorrect by failing to attribute medical deductions which Claimant should have been allowed, i.e., local travel and housekeeping. Therefore, Claimant argues, she has not been overpaid benefits and the Division's claim should be denied.

The Division argued that the Eligibility Technician erred in allowing certain medical deductions. These errors resulted in an overpayment of benefits to Claimant during the months of June 2009 through June 2010 and Claimant must reimburse the State for the overpaid benefits.

Therefore the issue is whether the Division was correct to request the repayment of Food Stamp benefits allegedly overpaid to Claimant during the months of June 2009 through June 2010

II. Burden of Proof

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). The Division is attempting to change the status quo by seeking reimbursement of Food Stamp benefits it alleges have been overpaid. Accordingly, the Division bears the burden of proof in this case.

Because the burden of proof in this case is on the Division, a claim for reimbursement does not arise, under 7 CFR § 273.28, unless the Division proves by a preponderance of the evidence that it overpaid

Food Stamp benefits to Claimant. Once it has met this burden, a claim for reimbursement arises by operation of law. 7 CFR § 273.18(a)(2).

III. Were Food Stamp Benefits Overpaid to Claimant During the Months From June 2009 Through June 2010?

Before a claim for reimbursement of overpaid benefits can be made, there must be a determination that Food Stamp benefits have been overpaid. 7 CFR § 273.18(b). The burden is on the Division to prove by a preponderance of the evidence there has been an overpayment of benefits, and the amount of benefits overpaid.

A. Facts

Claimant, a physically disabled senior citizen, has been receiving public assistance from multiple programs as a physically disabled person since the 1990's. Claimant had been receiving Food Stamps for several years before applying for recertification of her benefits in June 2009. Claimant's recertification period is annual and her benefit amount is calculated prospectively.

Each year, Claimant obtains medically prescribed nutritional products, a foam bed pad and obtains medical care from local and out of state providers. Claimant's expenses for these recur without substantial change. Claimant submitted documentation of her medical expenses to the Eligibility Technician during the months of July 2008 through May 2009 in time for the calculation of her benefits for the forthcoming recertification period of June 2009 through June 2010. When the Eligibility Technician was unsure whether to allow an item as a medical expense deduction, she obtained guidance from the Division's policy staff. The Eligibility Technician and Claimant worked together to verify Claimant's medical expenses between August 2008 and May 2009 and the Eligibility Technician created a spreadsheet of medical expenses which she applied in processing Claimant's recertification application for the 2009-2010 recertification period.

When Claimant's recertification application was processed in June 2009, the Eligibility Technician re-verified and confirmed Claimant's past medical expenses. The Eligibility Technician expressly verified if Claimant's past expenses were expected to re-occur in the forthcoming certification year or change by more than \$25.00. The Eligibility Technician diligently verified the medical expenses she allowed Claimant when calculating the medical expense deduction. Claimant was recertified for benefits based on medical expenses of \$353.73 monthly.

The Eligibility Technician calculated Claimant was eligible for (and Claimant received) Food Stamp benefits of \$122 in the months of June, July, August, and September 2009; benefits of \$120 in October 2009; and benefits of \$130 in the months of November 2009 through June 2010, inclusive. The calculation of these amounts of benefits was completed by the Eligibility Technician on or about June 29, 2009. This case pertains to the Food Stamp certification period June 2009 through June 2010.¹²

In determining these benefit amounts, the Eligibility Technician allowed as a deduction from income a number of items as medical expenses. Some of these items were prescribed nutritional products, pro-

¹² This period spans 13 months and hence is not a true annual certification year. However, all parties in this case used this period (June 2009 through June 2010), including for the period of alleged overpayment. Therefore, this decision addresses the period June 2009 through and including June 2010.

rated monthly at \$262.24 (their shipping costs of \$39.48 pro-rated at \$3.29 monthly), a prescribed foam bed pad, pro-rated at \$1.83 monthly, and medically related out-of-state travel, pro-rated monthly at \$56.26 and medical co-payments of \$400.70, pro-rated monthly at \$33.39.

A Quality Assurance review of Claimant’s Food Stamp benefits was conducted during the period January 2010 through March 2010. The Quality Assurance review focused on the medical expenses allowed as deductions by the Eligibility Technician. The review resulted in a determination that benefits had been overpaid to Claimant between June 2009 and June 2010 in the amount of \$813.00. *See*, Exhibits 2.0-2.2D; 4.24-4.25. This result was ascribed to the failure of the Eligibility Technician to verify expenses, due to some mathematical calculation errors, to not allowing housekeeping expenses, to not allowing dental expenses, and due to not including in the medical expense deduction Claimant’s out-of-state travel expenses, a vaccination expense, and the cost of a prescribed foam bed pad which the Eligibility Technician had allowed.

The Eligibility Technician’s calculations underlying the determination of Claimant’s benefit amount are not in the evidentiary file. Some of the documentation provided by Claimant to the Eligibility Technician was returned to Claimant and hence was not available for the QA review. The evidentiary record contains a copy of the Eligibility Technician’s spreadsheet and the QA documents identifying items which were reviewed. (Exhibits 2.2-2.2D)

The medical expense deduction difference between the Quality Assurance review and the Eligibility Technician are as follows:

Item	Eligibility Technician	Quality Assurance Review (monthly)	Exhibit Reference Reason for change
Vitamin D 1000iu	\$ 3.61	\$ 6.02	2.1, 2.2 cost change
Vitamin A&D	.26	.95	2.1, 2.2 math error
Bariatric vitamins	13.85	12.64	2.1, 2.2 math error
Bariatric B-50	7.83	6.62	2.1, 2.2 math error
Multi Pro Whey Sup	63.82	45.15	2.1, 2.2 math error
Shipping costs	39.48 (3.29 monthly)	0	2.2A, not allowed
Out of State Travel	675.15 (56.26 monthly)	0	2.2A, 2.2C not allowed
Medical Equipment			
Foam Bed Pad	21.99 (1.83 monthly)	0	2.2A, 2.2C not allowed
Dental	0*	0*	2.2B, QA unable to verify non-medicaid expense
Local medical travel	0	0	Omitted by ET & QA
Prescription co-pays	400.70** (33.39 monthly)	15.00**	2.2A, 2.2C, 2.2D note 4
Housekeeping	0***	0***	2.96; G omitted by ET & QA

For text accompanying *, **, and ***, see Finding of Fact 15.

The substantial difference in the prescription co-pays allowed was attributed by Quality Assurance to the omission of a one-time vaccination expense of \$209.98 subtracted from \$400.70 resulting in \$190.72 divided by 12 months yielding an average monthly remaining co-pay of \$15.89, rounded to \$15.00. Ex. 2.2D.

B. Medical Expenses Constituting the Medical Expense Deduction

The Division has the burden of proving by a preponderance of the evidence that it overpaid Food Stamp benefits to Claimant from June 2009 to June 2010. Claimant's benefits are calculated by deducting from Claimant's income the standard deduction and her medical expense deduction which yields a Total Adjusted Income. Then, Claimant's shelter costs are totaled and she is given an additional deduction to the extent these shelter costs exceed 50% of her Total Adjusted Income. *See*, Exhibits 13.0-13.1; 14.0-14.1 and 15.0-15.1. Therefore, any change in Claimant's medical expense deduction may have an impact on the shelter cost deduction, which in turn affects the benefit amount. *See*, Exhibit 4.9-4.10. In this case, a change in the medical expense deduction substantially affected Claimant's shelter cost deduction each month. Part of the alleged overpaid benefits is the result of the change in the shelter cost deduction, which was not addressed by the parties, and which contributes to the failure to prove by a preponderance of the evidence that benefits have been overpaid to Claimant.

The Quality Assessment Report of May 20, 2010 determined the Division made one error resulting in a \$43 overpayment. However, the Division sought reimbursement of alleged overpayment first in the amount of \$813 and later for \$630. This inconsistency was not explained. Moreover, it appears that more than one error occurred during the recertification process and during the Quality Assessment review, as explained below.

1. Eligibility Technician: medically related local travel expenses

The Eligibility Technician acknowledged she should have included Claimant's local travel expenses in her medical expense deduction but that she erroneously overlooked them. Reasonable costs of transportation and lodging to obtain medical treatment or services are allowed by 7 C.F.R. § 273.9(d)(3)(ix). The preponderance of the evidence is that all medical expenses submitted by Claimant to the Eligibility Technician were verified by the Technician and were expected to re-occur during the 2009-2010 recertification period. Because the Eligibility Technician did not include Claimant's local medically related travel expenses as part of Claimant's medical deduction, the amount of these expenses is not identified. These expenses were necessarily left out of the expenses reviewed during the QA review. Therefore, the Eligibility Technician (and QA review) incorrectly omitted medically related local travel expenses from the medical expense deduction. On remand, the amount of medically related local travel expenses should be included in Claimant's medical expense deduction.

2. Quality Assurance review: prescribed nutritional products, medical co-pay, shipping

The QA review correctly re-calculated the monthly pro-rata amount allowed for prescribed nutritional products as follows:

a. It reduced the amount by \$17.99 from those allowed by the Eligibility Technician and changed the co-pay amount from \$33.39 monthly to \$15.00 monthly.

b. The QA review correctly dis-allowed the cost of shipping prescribed nutritional products in the amount of \$3.29 monthly from Claimant's monthly medical expenses.

Consequently, the QA review allowed Claimant a monthly prescribed nutritional product medical expense totaling \$244.25.

In addition, the QA review correctly subtracted a one-time vaccination expense from the medical co-pay amount resulting in a correct monthly co-pay amount of \$15.00. The QA review was correct to make these adjustments because regulation 7 C.F.R. § 273.9(d)(3) does not support including them as deductible medical expenses.

3. Quality Assurance review: out of state travel expenses, medical equipment expenses, dental expenses, housekeeping expenses

A. Out of State Travel

Reasonable amounts of medically related travel expenses for out-of-state travel are allowed by 7 C.F.R. § 273.9(d)(3)(ix). The QA review incorrectly did not allow any expense for Claimant's out of state travel. Had Claimant been allowed her out-of-state travel expenses, her medical expense deduction would have increased by \$56.26 monthly ($675.15 \div 12$).

QA did not allow Claimant her expenses of out-of-state travel because it believed the travel expenses were not verified to be expected to re-occur during the prospective certification period. However, the preponderance of the evidence is that all medical expenses submitted by Claimant to the Eligibility Technician were verified by the Technician and were expected to re-occur during the 2009-2010 recertification period. Therefore, the QA review incorrectly did not allow out-of-state travel expenses to be included in the medical expense deduction.

B. Medical Equipment Expenses

Regulation 7 C.F.R. § 273.9(d)(3)(iii) expressly provides a medical deduction is allowed for costs of prescribed equipment. The prescribed foam bed pad is prescribed medical equipment. The QA review did not allow any expense for Claimant's medically prescribed foam bed pad. If allowed as an expense, the foam bed pad cost would have added \$ 1.83 to Claimant's monthly medical expense deduction ($\$21.99 \div 12$).

This item was not allowed for the same reasons as for the out-of- state travel expenses: i.e., alleged inadequate verification. However, the preponderance of the evidence is that all medical expenses submitted by Claimant to the Eligibility Technician were verified by the Technician and were expected to re-occur during the 2009-2010 recertification period. Moreover, the preponderance of the evidence, including Claimant's credible testimony and that of the Eligibility Technician, is that the prescribed foam bed pad is an annual purchase. *See*, Exhibits 2.79-2.80; Exhibits D, E. Claimant should have been allowed its cost as a medical equipment expense. Therefore, the QA review incorrectly did not allow the foam bed pad expense to be included in the medical expense deduction.

C. Housekeeping

Federal Food Stamp regulation 7 CFR § 273.9(d)(3)(x) allows the cost of maintaining a housekeeper if necessary due to age or infirmity. It is undisputed Claimant is a physically disabled senior citizen who receives substantial public assistance and is limited in the amount of housekeeping help she can afford. At minimum, Claimant supplied proof of her housekeeping expense for the prior year on July 3, 2008. (Exhibit 2.96) The evidentiary record also contains a receipt dated March 3, 2010. (Exhibit 2.2B) Also, Claimant supplied a receipt dated April 26, 2009 for annual expenses for 2008.¹³ Clearly, Claimant was seeking to add her housekeeping expenses to her medical expense deduction, as recognized by the QA review “Comp I / Actual.”

It is unclear from the review of the QA calculations of the Eligibility Technician’s medical expense deduction if the Eligibility Technician allowed Claimant her housekeeping expense. However, it is clear the QA review specifically identified housekeeping as an expense asserted by Claimant but not allowed by the QA review. *See*, Exhibit 2.2B. Therefore, the QA review incorrectly did not allow the housekeeping expense to be included in the medical expense deduction. Claimant’s housekeeping expenses should be included in the re-calculation of the medical expense deduction.

However, the Quality Assurance reviewer mistakenly dis-allowed the housekeeping expense because it was “not an allowable medical expense) Therefore, the QA review incorrectly did not allow Claimant’s housekeeping expense to be included in the medical expense deduction.

D. Dental expenses

Federal Food Stamp regulation 7 C.F.R. § 273.9(d)(3) clearly allows dental expenses as a medical expense. 7 C.F.R. § 273.9(d)(3)(i) and (vi). The “Comp I / Actual” refers to the QA review of a dental bill from [REDACTED] Dental and a dental bill from [REDACTED] Dental Group. Clearly, Claimant’s dental expenses were part of the Eligibility Technician’s file because the QA reviewed them, but they were not included in the evidentiary record. The QA review denied each bill because it was unable to verify if the expense was reimbursable or not.¹⁴ However, it is a routine matter for the Division to check Claimant’s Medicaid records to determine if these expenses were reimbursed by Medicaid and, in any event, it could have required Claimant to supply this information. Therefore, the QA review incorrectly did not allow Claimant’s dental expense to be included in the medical expense deduction. On remand, the unreimbursed dental costs should be identified by Claimant and/or Division and re-calculated as appropriate medical expenses to be added to the medical expense deduction.

C. Combined Effect.

Claimant was erroneously deprived of the deduction for the above-discussed several medical expenses. The amount of these medical expenses cannot be calculated for purposes of this decision because the evidentiary file does not document expense amounts for some of them, e.g., local travel and dental. Nonetheless, the impact of allowing these expenses will be important in the calculation of benefits not only because they increase Claimant’s medical expense deduction but also because of the deduction’s effect in calculating the shelter cost deduction, and ultimately, the benefit amount.

¹³ See footnote 10.

¹⁴ The QA review also noted one expense was for a period prior to the “sample month” of January 2010. This fact, by itself, would not disqualify the expense because the period of review spanned from June 2009 to June 2010.

If the total monthly expense that the QA review did allow, i.e., \$259.24, were supplemented by the out-of-state travel and medical equipment expenses that Claimant should have been allowed, i.e., \$58.09, at minimum, Claimant's monthly medical expense deduction would have been \$317.34. This result would necessarily change the amount of alleged overpayment or perhaps result in no overpayment.

In summary, the Division mis-calculated Claimant's medical expense deduction. At minimum, Claimant should have received a deduction of \$317.34 and not \$259.25. The correct medical expense deduction has yet to be ascertained because it requires the inclusion of Claimant's medical expenses for local travel, housekeeping and dental costs.

C. Verification

The Quality Assurance reviewer noted on the Quality Assessment Report as well on its explanatory pages (Exhibits 2.2 and 2.2D) that it appeared the Eligibility Technician had not verified the expenses claimed for expenses at the time of recertification and had accepted aged documents as valid verification.

Alaska Food Stamp Manual 602-4D, subsections 1, 3, and 4 guide the Eligibility Technician who is determining whether verification of a claimed expense is adequate. These sections address, in relevant part, the QA review concern that the Eligibility Technician used aged documentation. Subsection D 1. provides, in relevant part, that medical expenses incurred by the household member must be verified at recertification and that acceptable verification includes, but is not limited to, current medical bills, statements from the medical provider, receipts, and insurance statements.

Manual Section 602-4, subsection D 4. makes clear that the household may report, at recertification, any medical expenses that occurred during the prior certification and have these expenses considered in determining its monthly medical deduction for the new certification period. Moreover, the prospective expenses can be estimated and therefore need not be precise. It is the Eligibility Technician's prerogative to determine what information, if any, is questionable, and to obtain verification as needed. Manual Section 601-4 C.

The Alaska Food Stamp manual has no definitive time frame limiting the period during which the Eligibility Technician can look at documentation when verifying a medical deduction. The Eligibility Technician is charged with determining what the prospective medical expenses will be and determining whether verifying documents correctly support the prospective medical expenses.

Moreover, Alaska Food Stamp Manual Subsection 604-2 E 1., which applies to recertification verifications, requires verification only of new or previously unverified expenses, "[p]reviously verified ... medical expenses that have changed by more than \$25, and information which is questionable." Manual Section 604-2 E 1. f.

The Eligibility Technician, who has over twenty years of experience as a case worker, testified credibly concerning her methods and behavior in ascertaining Claimant's medical expenses. She testified that she extensively verified Claimant's medical expenses and expressly checked for changes over \$25 in amount and that they would be re-occurring during the prospective certification period.

Claimant is known to the Eligibility Technician and has had a substantial and cooperative relationship over the years for which recertification has taken place. Claimant had been receiving public assistance since the 1990's, approximately 9 years before the events in this case. Claimant submitted verification of her claimed expenses over the 10-month period immediately before the recertification period at issue. The Eligibility Technician relied on Claimant's credibility, as well as her documentation, to prospectively calculate the allowed medical deductions.

The Division's date stamp of July 3, 2008 on many, if not all, of the exhibits supplied in the evidentiary record, and the Eligibility Technician's spreadsheet, confirms and supports the Eligibility Technician's credible testimony that she verified Claimant's expenses prospectively for the 2009-2010 recertification year. When embarking on the verification process in July 2008, in anticipation of the recertification year 2009-2010, Claimant could only supply expenses for the prior year, i.e., July 2007-June 2008. As the months progressed from July 2008 to May 2009, Claimant could have supplemented her verified expenses, but necessarily could not have supplied documentary verification of expenses which would not reoccur until after May 2009. Claimant's regular pattern of medical treatment and expenses was expected to re-occur in the 2009-2010 certification period.

Therefore, the use of documentation from 2007, 2008, and/or 2009 to verify Claimant's prospective medical expenses for the June 2009-June 2010 recertification period was not incorrect because the Eligibility Technician verified the expenses were expected to re-occur and were not expected to change by more than \$25 and the information was not questionable. The preponderance of the evidence is that verification of all expenses accepted by the Eligibility Technician did occur and that the verification included determining that the expenses allowed were expected to re-occur during the certification period. The Division failed to prove by a preponderance of the evidence that the Eligibility Technician erred in verifying the prospective medical expenses for the certification year beginning June 2009.

IV. Reimbursement

In this case, the Division has not met its burden of proving that Food Stamp benefits have been overpaid. Therefore, it has not proved it has a claim for reimbursement of overpaid benefits. Consequently, the Division may not seek reimbursement of the alleged overpayment of \$630 or of the compromised amount of \$360 at this time.

This case is remanded to the Division for action consistent with this decision.

CONCLUSIONS OF LAW

1. The Division's computation of Claimant's medical expense deduction is not in accord with Food Stamp regulation 7 C.F.R. § 273.9(d) because:

- a. The Eligibility Technician should have included Claimant's local travel expenses in the medical expense deduction; 7 C.F.R. § 273.9(d)(3)(ix).
- b. The Eligibility Technician should have included Claimant's housekeeping expenses in the medical expense deduction; 7 CFR § 273.9(d)(3)(x).
- c. The Quality Assurance review should have included Claimant's dental expenses in the medical expense deduction; 7 C.F.R. § 273.9(d)(3)(i) and (vi).

d. The Quality Assurance review should have included Claimant's out-of-state travel expenses in the medical expense deduction in the amount of \$56.26 monthly or as calculated on remand; 7 C.F.R. § 273.9(d)(3)(ix).

e. The Quality Assurance review should have included Claimant's medical equipment expense of \$21.99 (\$1.83 monthly) for a foam bed pad in the medical expense deduction; 7 C.F.R. § 273.9(d)(3)(iii).

2. The Division's Quality Assurance review correctly applied Food Stamp regulation 7 C.F.R. § 273.9(d) because:

a. The Eligibility Technician correctly verified Claimant's medical expenses and that they were expected to recur within the prospective recertification period of June 2009 through June 2010.

b. The Quality Assurance review correctly re-calculated Claimant's prescribed nutritional product expenses by deleting \$39.48 of shipping costs; increasing the monthly medical expense for Vitamin D by \$2.41 and of Vitamin A&D by \$.69; decreasing the monthly medical expense for Bariatric vitamin by \$1.21, Bariatric B-50 by \$1.21 and Multi Pro Whey Supplement by \$18.67.

c. The Quality Assurance review correctly re-calculated Claimant's medical co-payments by omitting a one-time vaccination expense of \$209.98.

3. The Division did not meet its burden of proving by a preponderance of the evidence that Claimant received excess Food Stamps from June 2009 through June 2010 and is subject to a claim for reimbursement of overpaid benefits.

DECISION

The Division's reimbursement claim fails to account for medical expenses which should have been allowed in the medical expense deduction. Consequently, it is not possible to determine whether Claimant has been overpaid Food Stamp benefits between June 2009 and June 2010. The Division failed to prove Claimant had been overpaid Food Stamp benefits from June 2009 through June 2010. The Division was not correct to seek reimbursement from Claimant of alleged excess Food Stamp benefits provided to Claimant during the months of June 2009 through June 2010.

This case is remanded to the Division for further review in accordance with this decision.

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
P.O. 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 January 26, 2011


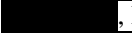
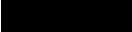
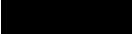
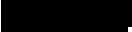

/signed/

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 26th day of January 2011 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.
and to other listed persons (via e-mail), as follows:

, Hearing Representative
, Hearing Representative
, Chief, Policy & Program Dev.
, Administrative Assistant II
, Eligibility Technician I
, Staff Development & Training

J. Albert Levitre, Jr., Law Office Assistant I