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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-228
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Food Stamp recipient. (Ex. 1) On May 22, 2010, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$1,506.00 in Food Stamp benefits that she had allegedly improperly received during the months of April and May 2010. (Ex. 6.1) Claimant requested a fair hearing on July 13, 2010. (Ex. 7.1)

This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 CFR 273.15.

Pursuant to the Claimant's request, a hearing was held on August 9, 2010 before Hearing Examiner Jay Durych and on September 2, 2010 before Hearing Examiner Claire Steffens.¹ The Claimant attended the hearing telephonically, represented herself, and testified on her own behalf. [REDACTED] attended the September 2, 2010 hearing telephonically. She assisted the Claimant in her representation and testified on the Claimant's behalf.

[REDACTED], a Public Assistance Analyst with the Division, attended in person, testified on behalf of, and represented the Division.

STATEMENT OF ISSUES

The Division argued that it had made a mistake in calculating the Claimant's financial eligibility for Food Stamp benefits for the months of April and May 2010, and that as a result she received

¹ This case was subsequently administratively reassigned to Hearing Examiner Larry Pederson, who reviewed the entire record, including listening to the entire digital recording, before issuing this Decision.

\$1,506.00 in Food Stamp benefits to which she was not entitled. The Division therefore maintains it is entitled to recover the overpayment from the Claimant.

The Claimant argued that she should not be liable to repay benefits, when she had not made the error. She felt the Division employee who made the error should be required to repay the benefits.

The resulting issue is:

Was the Division correct to request the Claimant to repay \$1,506.00 in Food Stamp benefit payments it overpaid to the Claimant during the months of April and May 2010, when the overpayment was caused by the Division's error?

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits for her 5 person family on April 7, 2010. (Exs. 2.0 – 2.7)
2. The Claimant's application stated that she was employed full time for 40 hours per week and that another person in her household worked part time for 8 hours per week. (Ex. 2.2) Both are paid every two weeks. *Id.*
3. The Claimant's application contained a note explaining that she had been on maternity leave from December 15, 2009 through March 16, 2010 and therefore only had one paycheck in March 2010. (Ex. 2.8) The application also had two paychecks attached: one dated March 26, 2010 showing 32 hours of work, and one dated April 9, 2010 showing 80 hours of work. (Exs. 2.9 – 2.10)
4. The Division calculated the Claimant's total gross monthly household income was \$2,958.34. (Exs. 3.1 – 3.2) It did so by adding together the Claimant's gross monthly income and the gross monthly income of the other working person in her household. The Division calculated the Claimant's gross monthly income by taking the Claimant's March 26 paycheck (\$485.38), which was for only part of a pay period (32 hours), and the April 9, 2010 paycheck (\$1,069.14), which was for a full pay period (80 hours), averaging them and multiplying them by 2.15 (biweekly adjustment factor). (Ex. 3.0) This resulted in the Claimant's gross monthly income being \$1,966.65. *Id.* Using the same procedure, the other household working person's gross monthly income figure was \$991.69. *Id.*
5. On April 20, 2010, the Division determined the Claimant was financially eligible for Food Stamp benefits of \$669.00 for April 2010 and \$837.00 for May 2010. (Exs. 3.0 – 3.2)
6. On May 11, 2010, the Division reviewed the Claimant's total household income, determined that it had made an error in calculating her income, and calculated that the Claimant's actual gross monthly income, based on her working fulltime was \$2,811.00 and that when the other household member's gross monthly income (\$991.69) was added in, her total

gross monthly household income was \$3,802.00 (Exs. 4, 5.0, 6.6) As a result, the Division determined the Claimant's household was not financially eligible for Food Stamp benefits for the months of April and May 2010, and should not have received Food Stamp benefits in April and May 2010. (Exs. 5.0, 6.1 – 6.2)

7. On May 22, 2010, the Division sent the Claimant notice that she had been overpaid a total of \$1,506.00 in Food Stamp benefits for the months of April and May, 2010:

<u>Month</u>	<u>Income</u>	<u>Benefit Paid</u>	<u>Benefit Entitled To</u>	<u>Amount Overpaid</u>
April 2010	\$3,802.00	\$ 669.00	- 0 -	\$ 669.00
May 2010	\$3,802.00	<u>\$ 837.00</u>	<u>- 0 -</u>	<u>\$ 837.00</u>
	TOTALS	\$1,506.00	- 0 -	\$1,506.00

(Exs. 6.1 – 6.8)

8. The April and May 2010 Food Stamp overpayments were caused by the Division's error, and were not due to any fault on the Claimant's part. (██████ testimony; Ex. 6.1) Specifically, the Division miscalculated the Claimant's gross monthly income. (██████ testimony; Ex. 4)

9. The Claimant did not disagree with any of the income figures used by the Division. She also did not dispute having received the Food Stamp benefits totaling \$1,506.00 in April and May 2010.

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "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).

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for calculating the amount of a recipient's monthly Food Stamp benefit. One of the rules is that if a five person household makes more than \$3,494.00 in gross income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(1)(ii); *See* Ex. 6.5, which contains the Food Stamp income standards for the months of October 2009 through September 2010.

An agency "must establish and collect any claim" including a claim for overpaid benefits issued due to agency error. 7 CFR 273.18(a)(1)(i); 7 CFR 273.18(a)(2); 7 CFR 273.18(b)(3). *Also see Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009) (The Division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is due to the Division's error) Adult members of the Food Stamp recipient's household are the persons responsible for repaying an overpaid Food Stamp benefits. 7 CFR 273.18(a)(4)(i).

ANALYSIS

This case involves the question of whether or not the Division was correct to request that the Claimant repay \$1,506.00 of Food Stamp benefits, when the alleged overpayment was due to the Division's error. Because this case involves the Division's request for repayment, the Division has the burden of proof by a preponderance of the evidence.

It should first be noted that the applicable law is clear that the Division is allowed to recover overpaid Food Stamp benefits from an adult Food Stamp recipient, even when the overpayment is caused by the Division's error and not caused by any act on the part of a Food Stamp recipient. 7 CFR 273.18(a)(1)(i); 7 CFR 273.18(a)(2); 7 CFR 273.18(b)(3). *Also see Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)*

The basis for the Division's repayment action is that it improperly calculated the Claimant's income when it determined her household's Food Stamp eligibility. This miscalculation resulted in the Division undercounting the household's gross monthly income.

The Claimant's actual gross monthly income was \$2,811.00, rather than the \$1,966.65 originally calculated by the Division. *See Findings of Fact 4 and 6 above.* When the other working household member's gross monthly income of \$991.69 is added to the Claimant's gross monthly income of \$2,811.00, the total household gross monthly income is \$3,802.69. *Id.*

The Claimant did not disagree with the Division's calculations of her household's income for the months of April and May 2010, so they are accepted. *See Finding of 9 above.*

However, the Food Stamp gross monthly income limit for the Claimant's five person household was \$3,494.00. Because the Claimant's household's monthly income of \$3,802.69 was greater than \$3,494.00 during each of the two months in question, April and May 2010, it was not eligible to receive any amount of Food Stamp benefits during the months of April and May 2010.

Because the Claimant's household was not eligible to receive Food Stamp benefits during the months of April and May 2010, even though the Claimant was not responsible for the Division's error in issuing the benefits, the Claimant is responsible for repayment of the Food Stamp benefits she received, which totaled \$1,506.00. *See Finding of Fact 7 and 9 above.*

The Claimant's arguments in this case were that the Division employee, who made the mistake, should be responsible for repaying the Food Stamp benefits, and that she should not. However, the regulations are clear that the adults in the Food Stamp household are the parties responsible for repaying the Food Stamp benefits, even if a Division employee made the mistake. 7 CFR 273.18(a)(2); 7 CFR 273.18(a)(4)(i); 7 CFR 273.18(b)(3). *Also see Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).* This means that even though the Division employee made the mistake that resulted in the Claimant's household receiving benefits it was not entitled to, the Claimant is responsible for repaying those benefits.

In summary, the Division has met its burden of proof by a preponderance of the evidence. It has established that it failed to correctly calculate the Claimant's income when she applied for Food Stamp benefits on April 7, 2010. The Claimant's gross monthly income, when combined with the other working household member's gross monthly income, made the Claimant's household not eligible for Food Stamp benefits for the months of April and May 2010. As a result, the Claimant's household received \$1,506.00 in Food Stamp benefits it should not have received. The Claimant is therefore responsible to repay the Division for the overpaid Food Stamp benefits.

The Division was therefore correct to require that the Claimant repay the Division \$1,506.00 in overpaid Food Stamp benefits, despite the fact that the overpayment was not caused by the Claimant.

CONCLUSIONS OF LAW

1. The Division erred when it provided the Claimant with Food Stamp benefits for the months of April and May 2010 because it incorrectly calculated the Claimant's household's gross monthly income by miscalculating her gross monthly income.
2. The Division is legally entitled to recover repayment of overpaid Food Stamp benefits, even when the overpayment is due to the Division's error and not due to any fault on the Claimant's part. 7 CFR 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)
3. The Division met its burden of proof and demonstrated that the Claimant was overpaid a total of \$1,506.00 in Food Stamp benefits for the months of April and May 2010.
4. The Division was therefore correct to request repayment of \$1,506.00 from the Claimant for overpaid Food Stamp benefits for the months of April and May 2010.

DECISION

The Division was therefore correct to request repayment of \$1,506.00 from the Claimant for overpaid Food Stamp benefits for the months of April and May 2010.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.

DATED this 1st day of October 2010.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 1st day of October 2010, true and correct copies of the foregoing were sent to:
Claimant by U.S.P.S., Certified Mail
and to the following by e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I
[REDACTED], Chief of Field Services

J. Albert Levitre, Jr.
Law Office Assistant I