

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (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-361
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is and was at all times relevant hereto a recipient of the Food Stamp ¹ Program (Ex. 1). On October 4, 2010 the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division), mailed to the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of August 2010 (Exs. 4, 4.1). The notice requested repayment in the amount of \$226.00 (Ex. 4). On October 19, 2010 the Claimant requested a fair hearing with regard to the Division's repayment claim (Ex. 5.1).

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

The Claimant's hearing was held as scheduled on November 17, 2010 before Hearing Examiner Jay Durych. The Claimant attended the hearing in person, represented herself, and testified on her own behalf. The Claimant's husband, [REDACTED], also attended the hearing but did not testify. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division.

All testimony was received and all exhibits offered by the parties were admitted into evidence. At the conclusion of the hearing the record was left open for the filing of an additional exhibit by the Division and for the Claimant's response thereto. The Division's post-hearing filing was

¹ In 2008 Congress amended the Food Stamp Act. See Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, at this time the program is still commonly referred to as the "Food Stamp Program."

timely received on November 17, 2010. The Claimant did not submit a response to the Division's filing. On November 26, 2010 the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on October 4, 2010, it mailed to the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of August 2010 and that it would seek to recover from the Claimant overpaid Food Stamp benefits for the month of August 2010 in the amount of \$226.00?

FINDINGS OF FACT

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

1. The Claimant is and was at all times relevant hereto a recipient of the Food Stamp Program (Ex. 1).
2. The Division's records indicate that on May 27, 2010 the Claimant informed DPA that her husband had lost his job and would soon be receiving unemployment benefits (Ex. 16).
3. Records of the State of Alaska Department of Labor (DOL) indicate that the Claimant's husband received unemployment insurance benefits (UIB) from the week ending June 5, 2010 through the week ending November 6, 2010 (Ex. 17). These records further indicate that, during the month of August 2010, the Claimant's husband received four (4) weekly UIB payments, each in the amount of \$124.00, for a total of \$496.00 in UIB payments (Ex. 17).
4. On or about August 12, 2010 the Claimant completed, signed, and submitted an Eligibility Review Form to DPA (Exs. 13.0 – 13.3). The Claimant sought continued benefits for her household of four (4), consisting of the Claimant, her husband, and their two minor children (Ex. 13).
5. At page 3 of her August 12, 2010 Eligibility Review Form the Claimant clearly reported that her household was receiving the following monthly income (Ex. 13.2):

Child Support Enforcement Division pass-through	\$50.00
Unemployment Insurance Benefits (UIB)	\$274.00 bi-weekly ²
Adult Public Assistance Benefits (APA)	\$521.00
Alaska Temporary Assistance Program Benefits (ATAP)	\$554.00
Supplemental Security Income (SSI)	\$674.00

² The UIB income reported by the Claimant on her Eligibility Review Form (\$274.00 bi-weekly or \$548.00 per month) is actually *higher* than either the amount reported by DOL (\$496.00 per month – Ex. 17) or the \$533.20 per month figure used by the Division (Ex. 2). Otherwise, the income figures reported by the Claimant were accurate.

6. The Division processed the Claimant's Eligibility Review Form on September 4, 2010 (Ex. 2). The Division counted UIB payments of \$124.00 per week (Ex. 2). The Division then multiplied the weekly UIB payment by 4.3, resulting in a monthly UIB payment of \$533.20 (Ex. 2). At this time the Division discovered that it had not been counting the Claimant's husband's UIB, and had accidentally overpaid benefits to the Claimant for the month of August 2010 (Ex. 2).

7. On October 4, 2010 the Division mailed to the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of August 2010 (Exs. 4.0 - 4.10). The notice stated that, for the month of August 2010, the Division had based its benefit amount on gross household income of \$1,799.00, whereas the Claimant's household's actual gross income was \$2,332.00 (\$533.00 higher) (Ex. 4.5).

8. The Division's October 4, 2010 overpayment notice indicated that DPA had applied a standard deduction of \$241.00 (Ex. 4.5). The Division also indicated that it had originally counted shelter costs of \$218.00, but that this had been in error (Ex. 4.5). Due to these errors, the Division asserted that it had paid the Claimant \$395.00 in Food Stamp benefits for August 2010, when it should only have paid the Claimant \$169.00 in Food Stamp benefits for that month (Exs. 4.0, 4.5). The Division requested repayment of the \$226.00 overpayment (Exs. 4.0, 4.5).

9. The Claimant requested a fair hearing with regard to the Division's repayment claim on October 19, 2010 (Ex. 5.1). The Claimant further requested that her benefits remain at their then-current rate pending the outcome of her hearing (Ex. 5.1).

10. On November 5, 2010 the Division mailed to the Claimant a notice stating, among other things, that the Division would be reducing her monthly Food Stamp benefits by 10%, beginning December 2010, in order to recover the \$226.00 in benefits for August 2010 which it alleged had been overpaid and which are the subject of the present case (Ex. B).³

11. In a post-hearing filing dated November 17, 2010, the Division confirmed that the income which should have been counted as received by the Claimant's household for the month of August 2010 was as follows (Exs. 18.0 – 18.3):

Child Support Enforcement Division pass-through	\$50.00
Unemployment Insurance Benefits (UIB)	\$533.20
Adult Public Assistance Benefits (APA)	\$521.00
Alaska Temporary Assistance Program Benefits	\$554.00
Supplemental Security Income (SSI)	\$674.00

These figures are the same as the Claimant reported in her August 12, 2010 Eligibility Review Form (Ex. 13.2 – see Paragraph 5, above), except that the Claimant's husband's Unemployment Insurance Benefits (UIB) were converted from a bi-weekly figure of \$274.00 to a monthly figure of \$533.20 (Ex. 18.0).

³ Because the Claimant had filed a hearing request to contest the August 2010 overpayment issue, the Division's reduction of the Claimant's benefits, prior to issuance of a decision in this case, was in error. At the hearing, the Division's Hearing Representative acknowledged this and indicated that he would take action to correct the mistake.

12. At the hearing of November 17, 2010 the Claimant testified in relevant part as follows:

a. She at all times believed that she was rightfully receiving her Food Stamp benefits. The Claimant was not aware that her Food Stamp benefits had been overpaid for the month of August 2010 until she received the Division's notice dated October 4, 2010. By that time, her household had used all of the August 2010 Food Stamp benefits.

b. Her husband recently had heart surgery. Because of her household's current financial circumstances, it would be very hard for them to pay back any overpaid Food Stamp benefits.

c. The Division made a number of errors with regard to her case. As of the date of the hearing, the Claimant's household had not received its Adult Public Assistance Program benefits or its Alaska Temporary Assistance Program benefits, for the month of November 2010.

13. At the hearing, the Claimant did not dispute the DPA's assertion that the total amount of Food Stamp benefits received by the Claimant's household during August 2010 was \$395.00 (Claimant testimony). The Claimant likewise did not dispute the Division's assertion that the amount of Food Stamp benefits which should have been paid to the Claimant's household during August 2010 was \$169.00. Rather, Claimant's position was essentially that she had complied with the requirements of the Food Stamp Program; that she had timely reported receipt of her husband's UIB income; that she had done nothing wrong; and that her household should not be penalized for the DPA's mistake (Claimant testimony).

14. At the hearing of November 17, 2010 the Division's hearing representative confirmed that the overpayment at issue occurred due to Division error and that the Claimant had properly reported her income (DPA representative's testimony).

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo normally bears the burden of proof.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 which it asserts were improperly issued. Accordingly, the Division bears the burden of proof in this case.

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

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

II. The Food Stamp Program – In General.

Congress established the federally funded, state-administered food stamp program in 1964 to “safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households.” 7 USC 2011. The federal government is responsible for funding all benefits paid and shares the cost of administration with participating states. 7 USC 2013(a), 7 USC 2025(a).

Eligibility for food stamp benefits may be established financially, based on low income and limited resources (7 USC 2014(c) – (i)), or categorically, by the receipt of other federal benefits such as Supplemental Security Income (SSI) (7 USC 2014(j)).

The federal statutes comprising the Food Stamp Act are codified at 7 U.S.C. 2011 – 2029. The federal regulations implementing the Food Stamp Act are promulgated by the United States Department of Agriculture and are found primarily at 7 CFR 271 – 274. The State of Alaska has also 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 Recovery of Overpaid Benefits.

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

* * * * *

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

* * * * *

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

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

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”).

(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].

* * * * *

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

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

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

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

In *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009), the Alaska Supreme Court held, based on the controlling federal Food Stamp statutes and regulations, that Food Stamp Program overpayments made due to state agency error must be recovered *even from innocent recipient households*.

ANALYSIS

I. Introduction.

The following facts are not disputed:

a. The Claimant *actually received* Food Stamp benefits for the month of August 2010 in the amount of \$395.00. *See Findings of Fact at Paragraphs 8 and 13, above.*

b. The amount of Food Stamp benefits which the Claimant *should have received* for the month of August 2010, based on the applicable regulations, was \$169.00. *See Findings of Fact at Paragraphs 8 and 13, above.* This was \$226.00 more in Food Stamp benefits than the Claimant’s household should have received based on the applicable regulations. *See Findings of Fact at Paragraphs 8 and 13, above.*

c. The Food Stamp Program overpayment to the Claimant’s household during the month of August 2010 was caused by an error on the part of the DPA and was not the fault of the Claimant. *See Findings of Fact at Paragraphs 7, 8, and 14, above.*

Accordingly, the sole question in this case is whether the Division was correct to seek recovery of the Food Stamp benefits which were overpaid to the Claimant during the month of August 2010 due to the Division's error. The resolution of this issue does not require the adjudication of any disputed facts. Rather, the issue presented for consideration is the purely legal issue of whether recovery of the agency-caused Food Stamp overpayment 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 Alaska Supreme Court decision which construed those statutes and regulations.

II. The Federal Statutes and Regulations Require That DPA Seek Recovery of Overpayments.

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." ⁷ Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the "overpayment [is] caused by an action or failure to take action by the State agency." Thus, it is clear that 7 C.F.R. § 273.18 requires on its face that the DPA attempt to recover overpaid benefits, *even when the overpayment is the result of the DPA's own error.*

III. The Alaska Supreme Court has Confirmed That the Division is Required to Seek Recovery of Overpaid Benefits Even in Cases of Agency Error.

Even when a statute or regulation appears clear on its face, it is often helpful to review judicial decisions which have interpreted the statute or regulation at issue. A review of the pertinent court decisions indicates that the authority to waive Food Stamp overpayments has *not* been delegated from the United States Secretary of Agriculture (Secretary of Agriculture or Secretary) to the state agencies. *Bliek v. Palmer*, 916 F.Supp. 1475 (N.D. Iowa 1996), *affirmed* 102 F.3d 1472 (8th Cir. 1997). In this decision, the federal 8th Circuit court held that while the Secretary has the statutory authority to do so, the federal regulation which delegates certain authority to state agencies does not include the authority to waive Food Stamp overpayments. *Id.*

The Alaska Supreme Court has held, based on the language of the federal statute and regulation, that Food Stamp Program overpayments made due to state agency error must be recovered *even*

⁷ Paragraph (g)(2) concerns EBT accounts and does not apply to this case.

from innocent recipient households. See Allen v. State of Alaska Department of Health & Social Services, 203 P.3d 1155 (Alaska 2009) (Discussed in the Principles of Law, above).

In summary, it is clear that federal law *requires* that state agencies such as DPA seek to recover Food Stamp Program benefits even where (as here) the overpayment was caused by agency error and the benefit recipient was innocent of any wrongdoing.

IV. Summary.

The applicable federal statute (7 U.S.C.A. § 2022) and federal regulation (7 C.F.R. § 273.18) require that the DPA attempt to recover all overpaid Food Stamp benefits. On their face, the federal statute and regulation give the Division no discretion to waive recovery, even where (as here) the Food Stamp overpayment resulted from agency error. Judicial decisions interpreting the current federal statute and regulations confirm that state agencies have no discretion to waive recovery of overpayments even where (as here) the Food Stamp overpayment resulted from agency error. Accordingly, in this case the DPA is required by federal law to seek to recover the \$226.00 in Food Stamp benefits overpaid to the Claimant during the month of August 2010.

CONCLUSIONS OF LAW

1. The Division proved, by a preponderance of the evidence, that, due to its own error, it over-paid the Claimant's Food Stamp benefits by \$226.00 for the month of August 2010.
2. The applicable federal statutes and regulations, and the relevant court decisions, (including the recent decision of the Alaska Supreme Court in *Allen v. State of Alaska Department of Health & Social Services*), all require the Division to seek recovery/repayment of Food Stamp overpayments, even in cases involving agency error.
3. The Claimant failed to prove, by a preponderance of the evidence, that any legal or factual defense barred the Division's claim for recovery of the overpaid Food Stamp benefits.
4. The Division was therefore correct when on October 4, 2010 it mailed to the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of August 2010 and that it would seek to recover from the Claimant overpaid Food Stamp benefits for the month of August 2010 in the amount of \$226.00.

DECISION

The Division was correct when on October 4, 2010 it mailed to the Claimant a notice stating that her Food Stamp benefits had been overpaid for the month of August 2010 and that it would seek to recover from the Claimant overpaid Food Stamp benefits for the month of August 2010 in the amount of \$226.00.

APPEAL RIGHTS

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

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

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 20th day of December, 2010.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 20th day of December 2010 copies of the foregoing document were sent to the Claimant by U.S.P.S Mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.
[REDACTED], DPA Fair Hearing Representative

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

(signed)

J. Albert Levitre, Jr.
Law Office Assistant I