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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. 11-FH-133
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) was a recipient of the Food Stamp Program¹ (Program). (Ex. 1) On March 25, 2011, the Division notified Claimant in writing it was seeking reimbursement for a reduced claim of overpaid Food Stamp benefits in the amount of \$720. (Ex. 8)

On March 25, 2011, Claimant requested a Fair Hearing. (Ex. 8.2-8.3) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 C.F.R. § 273.15(g) and 7 AAC 49.010 *et. seq.*

Claimant's Fair Hearing was scheduled to begin on May 4, 2011 but Claimant failed to appear and her request for hearing was deemed abandoned and the case dismissed. Later, Claimant explained her failure to appear and requested the case be re-opened and the hearing re-instated. On May 6, 2011, for good cause shown and without opposition by the Division of Public Assistance, this case was re-opened and the hearing set for June 15, 2011. At Claimant's request, the June 15, 2011 hearing was re-scheduled to July 7, 2011.

On July 7, 2011 the hearing was held and Claimant appeared telephonically, represented herself and testified on her own behalf. On July 7, 2011, Ms. [REDACTED] the Division's Public Assistance Analyst, appeared in person representing the Division and testified on behalf of the

¹ On October 1, 2008, the Food Stamp Program (FSP) was renamed the Supplemental Nutrition Assistance Program (SNAP). *See*, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Section 4001, 122 Statutes at Large 1651, 1853. The SNAP program is still commonly called the Food Stamp Program and will be referred to as the Food Stamp Program in this decision.

Division as the Division's Hearing Representative. All offered exhibits were admitted and the evidentiary record closed on July 7, 2011.

PROCEDURAL ISSUE

On December 19, 2008, the Division notified Claimant of its intention to seek reimbursement of benefits overpaid to Claimant in September 2008, October 2008 and November 2008. (Ex. 5.0-5.7) Claimant discussed the reimbursement of the overpayment with the Division's Eligibility Technician on December 29, 2008. (Ex. 6) In April and May 2010, Claimant acknowledged her obligation to repay the excess benefits she received and twice made payments in reimbursement. (Ex. 6; Ex. 8.1)

Food Stamp regulation 7 C.F.R. § 273.15(g) provides that a household "shall be allowed to request a hearing on any action by the State agency ... which occurred in the prior 90 days." Claimant was entitled to request a Fair Hearing within 90 days after the Division sent its December 19, 2008 notice to her, or, at the latest, within 90 days after December 29, 2008, the date she discussed the claim for reimbursement with the Division. Claimant did not request a Fair Hearing within the 90 day period allowed. Therefore, in this case, Claimant does not have legal grounds to request or obtain a Fair Hearing concerning the issue of whether or not she is obligated to reimburse the State for the excess benefits she received for September 2008, October 2008 and November 2008.

On February 22, 2011, Claimant re-acknowledged her obligation to pay the State's claim by requesting that the Division compromise the balance she owed. (Ex. 7) On March 25, 2011, the Division sent Claimant a notice that it agreed to compromise its claim for reimbursement of \$2,436.00, and was reducing the amount for which it was seeking reimbursement to \$720. (Ex. 8) Within 90 days, Claimant requested a Fair Hearing but did not express why.² (Ex. 8.2-8.3) Because regulation 7 C.F.R. § 273.18(g) limits the issues to be determined at a Fair Hearing to "any action taken by the State agency... which occurred in the prior 90 days", Claimant can seek review only of the Division's determination to seek reimbursement of \$720.³

ISSUE

Was the Division correct to compromise its December 2008 \$2,436 reimbursement claim for overpaid Food Stamp benefits to \$720?

FINDINGS OF FACT

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

² At the hearing, Claimant argued she felt she should not have to repay any amount because she felt wronged as a result of not knowing she would have to repay excess benefits paid to her. (Claimant's testimony)

³ However, in light of the decision in this case, should Claimant allow any portion of the \$720 compromised claim to become delinquent in the future, the Division may reinstate any portion of the compromised claim; i.e., it may seek reimbursement of the balance owed on the initial claim of \$2,436. See 7 C.F.R. § 273.18(e)(7)(iii).

1. Claimant was receiving Food Stamp Program (Program) benefits and on or about August 12, 2008 contacted the Division of Public Assistance (Division) requesting her Food Stamp case be closed because the household no longer needed assistance. (Ex. 2; Ex. 4.0) The Division notified Claimant her case would be closed effective August 31, 2008. (Ex.3; Ex. 4.0) The Division did not close Claimant's case and Claimant was issued Food Stamp benefits for September 2008, October 2008 and November 2008. (Ex. 4)
2. Claimant was issued \$770 of Food Stamp benefits in September 2008. (Ex. 4.1-4.2) Claimant was issued \$833 of Food Stamp benefits in October 2008 and in November 2008. (Ex. 4.3-4.4; Ex. 5.7). These benefits total \$2,436.
3. On December 19, 2008, the Division sent a letter to Claimant stating that due to inadvertent agency error, she had been overpaid \$2,436.00 and that the Division was seeking reimbursement. (Ex. 5.0-5.1; 5.7) On December 29, 2008, Claimant talked with the Division's Eligibility Technician concerning the overpayment and acknowledged she had used the excess Food Stamps despite knowing they were overpayments. (Ex. 6) Claimant did not request a Fair Hearing concerning the Division's request for reimbursement.
4. Claimant made payments on two occasions towards repayment of the \$2,436 claimed by the Division. (Hearing Representative's testimony; *see* Ex. 8.1 showing an April 26, 2010 and May 27, 2010 payment, each of \$66.)
5. On February 22, 2011, Claimant requested the Division compromise the claim a) due to a household move that would mean there would be only one income in the household; and, b) because when she applied for public assistance, she was unaware she would have to repay the money she received. (Ex. 7)
6. On March 25, 2011, the Division sent Claimant a letter notifying her that it had granted her request to compromise her claim and that it had compromised \$1,584 of the amount she owed, leaving a balance for her to repay of \$720. (Ex. 8) On March 25, 2011, Claimant requested a Fair Hearing. (Ex. 8.2-8.3)
7. During the hearing, Claimant agreed with the Division's calculations and agreed she owed \$720 of overpaid benefits. (Claimant's testimony)

PRINCIPLES OF LAW

I. Burden of Proof

"Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcoholic 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 Corp. 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.

Preponderance of the evidence is defined as follows:

“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) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 C.F.R. § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations in 7 C.F.R. § 271 – 274.

When Food Stamp benefits are paid out to a household in excess of the amount which should have been paid, a federal claim arises for the overpayment. 7 C.F.R. § 273.18. Subsection (b) of 7 C.F.R. § 273.18 identifies three types of Federal claims: 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).

Under 7 C.F.R. § 273.18, it does not matter why the overpayment occurred: fault is immaterial. 7 C.F.R. § 273.18(a)(1) states: “[a] recipient claim is an amount owed because of: (i) [b]enefits that are overpaid” The State agency must establish and collect any claim arising from overpayment of Food Stamp benefits. Regulation 7 C.F.R. § 273.18(a)(1)-(3) provides, in relevant part, Food Stamp Program benefits that are overpaid are claims that the state must collect from each person who was an adult member of the household when the overpayment occurred. 7 C.F.R. § 273.18(a).

Food Stamp regulation 7 C.F.R. § 273.18(e)(7)(i) grants the state discretion to compromise “all or any portion of a claim if it can be reasonably determined that a household’s economic circumstances dictate that the claim will not be paid in three years.” Subsection (iii) of this regulation authorizes the state to “reinstate any compromised portion of a claim if the claim becomes delinquent.”

ANALYSIS

I. Issue

In December 2008, the Division asserted a reimbursement claim against Claimant’s household for \$2,436 of Food Stamp benefits which were overpaid to Claimant for the months of September 2008, October 2008 and November 2008. Claimant did not dispute the claim. Over two years later, Claimant successfully sought compromise of the claim. The Division reduced its claim to \$720.

Claimant argues she should not have to repay \$720 of the Food Stamps overpaid to her household because it is the Division’s fault she received excess benefits and she feels wronged because she did not know she would have to repay benefits she received.

The issue is whether the Division erred in compromising its claim against Claimant for \$2,436 of overpaid Food Stamp benefits to \$720.

II. Burden of Proof and Standard of Proof

“The party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Claimant is seeking to change the status quo by trying to avoid paying the compromised claim of \$720. Therefore, Claimant has the burden of proving by a preponderance of the evidence that the Division erred in reducing the claim to \$720.

III. Repayment of Overpaid Food Stamp Program Benefits.

Claimant does not dispute her household was overpaid a total of \$2,436 for the months of September, October and November 2008. Claimant agrees she acknowledged the overpayment, made two payments toward reimbursement of the total obligation, and requested the compromise of her obligation. The parties agree Claimant received a reduction of \$1,584 in the State’s claim, leaving only \$720 remaining for Claimant to reimburse. Claimant does not dispute that her household received the compromised amount of \$720 in overpaid Food Stamp benefits and that it was not entitled to keep them. Finally, the parties agree that the overpayment of Food Stamp benefits is the result of the Division’s inadvertent error in failing to act on information concerning change in household income reported by Claimant in August 2008. Thus, the parties do not dispute the relevant facts.

The Division asserts it has no choice but to collect the overpaid Food Stamp benefits because recovery of the overpayment is required by the federal Food Stamp regulations and that it is entitled to compromise a claim for reimbursement. Claimant asserts the overpayment was not her fault, she used the excess Food Stamps because she needed them, and she wrongfully is being requested to repay the overpaid benefits.

The dispute in this case is whether Claimant is required to repay the remaining uncompromised amount of \$720 of overpaid Food Stamp Program benefits or whether the Division erred in seeking reimbursement of \$720 of excess benefits paid to Claimant.

First, the regulations concerning recovery of overpaid Food Stamp benefits clearly require the Division to recover overpaid benefits, irrespective of the cause of overpayment. *See* 7 C.F.R. § 273.18(a)-(b). The overpaid benefits are a federal claim that must be repaid. 7 C.F.R. 273.18(a). Therefore, the Division is required to seek reimbursement. 7 C.F.R. 273.18(a). There is no flexibility: once overpayment is found to have occurred, regardless of fault or cause, the Division must seek reimbursement. 7 C.F.R. § 273.18(a)(2). The Division did not err in seeking reimbursement of its claim for excess benefits paid to Claimant in the amount of \$720.

Second, Food Stamp regulation 7 C.F.R. § 273.18(e)(7)(i) grants to the State the discretion of determining if all or any portion of a claim may be compromised. The language of the regulation, “may,” gives the State clear discretion to decide whether or not to compromise a claim, and how much of the claim it desires to compromise. The sole limitation on the State agency is that a claim may not be compromised unless “it can be reasonably determined that a 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 Division compromised its claim to a balance owing of \$720, based on Claimant's request. The compromise of \$1,584 of the claim against Claimant's household is within the discretion of the Division. The Division relied on Claimant's statement that her household would have only one income due to its relocation. The Division exercised its discretion to reasonably determine that Claimant's household would not pay its claim of \$2,436 within three years but had income from which it could pay a reduced claim. Claimant provided no evidence that the Division failed to properly exercise its discretion or that her household would have been able to pay the total claim of \$2,436 within three years.

Claimant merely argued that she believed she was wronged because she did not realize when she accepted public assistance that she would have to reimburse benefits she was not entitled to receive. Claimant has not met her burden of proving by a preponderance of the evidence that the Division erred in compromising its claim against her to \$720.

Therefore, the Division did not err in seeking Claimant's reimbursement of the \$720 of Food Stamps overpaid.

CONCLUSIONS OF LAW

Claimant did not meet her burden of proving by a preponderance of the evidence that the Division erred in exercising its discretion under 7 C.F.R. § 273.18(e)(7) when it compromised its claim from \$2,436 to \$720.

DECISION

On March 25, 2011, the Division was correct to seek reimbursement from Claimant of \$720 of excess Food Stamps paid to Claimant, after compromising its claim for reimbursement of \$2,436 in benefits overpaid to Claimant for September 2008, October 2008 and November 2008.

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. 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.

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

DATED July 14, 2011.

/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on July 14, 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:

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

/signed/

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