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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-137
 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 17, 2011, the Division notified Claimant in writing that she had been overpaid \$3,540.00 of Program benefits for the months of December 2010, January 2011, and February 2011 and it was seeking reimbursement of \$3,540.00. (Ex. 7.1-7.2)

On March 31, 2011, Claimant requested a Fair Hearing. (Ex. 8) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 AAC 49.010 *et. seq.*

Claimant's Fair Hearing was begun on June 9, 2011 and continued to June 28, 2011 for Claimant's benefit. On both dates, Claimant appeared telephonically, represented herself and testified on her own behalf. On both dates, Mr. [REDACTED], the Division's Public Assistance Analyst, appeared in person representing the Division and testified on behalf of the Division. All offered exhibits were admitted and the evidentiary record closed on June 28, 2011.

ISSUE

Was the Division correct to seek reimbursement from Claimant of \$3,540 of Food Stamp benefits which allegedly were overpaid to her household for the months of December 2010, January 2011, and February 2011?

FINDINGS OF FACT

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.

The following facts have been proved by a preponderance of the evidence:

1. In October 2010, Claimant was receiving Food Stamp Program (Program) benefits. (Ex. 1) On October 25, 2010, Claimant's husband reported a change in the household's income, due to his employment, to the Division. (Ex. 5) It is undisputed the Division received Claimant's "report of change" (ROC) on October 26, 2010. (Ex. 5; Hearing Representative's testimony)
2. The Division did not stop or change Claimant's Food Stamp benefits after receiving the information that the household's income had increased. (Hearing Representative's testimony; Ex. 5) The Division continued to issue, and Claimant's household continued to receive, Food Stamp benefits of \$1,180 each month for December 2010, January 2011 and February 2011. (Ex. 6.1)
3. On February 2, 2011, Claimant applied for re-certification of eligibility for Food Stamp benefits. (Ex. 2.0-2.4) The Division date stamped the application as received on February 4, 2011. (Ex. 2.4) The Eligibility Technician processed the re-certification application on February 14, 2011 and denied the application because the household had too much income. (Ex. 3-3.6) In the process of determining continued eligibility, the Division's Eligibility Technician became aware Claimant's husband had been working since October 2010. (Ex. 6)
4. On February 14, 2011, the Division determined Claimant had been overpaid during the months of December 2010, January 2011 and February 2011 in the total amount of \$3,540. (Ex. 6.1-6.2)
5. On March 17, 2011, Claimant was notified in writing she had been issued \$3,540 in overpaid Food Stamp benefits for the months of December 2010 through February 2011 and that the overpayment was the result of "inadvertent agency error." (Ex. 7.1) The March 17, 2011 notice stated the Division was seeking to recover the \$3,540 in Program benefits that had been overpaid. (Ex. 7.1-7.14)
6. On March 31, 2011, Claimant requested a Fair Hearing asserting she had reported the income change and faxed pay stubs to the Division. (Ex. 5) Claimant did not dispute the Division's calculations of the overpayment amount. (Claimant's testimony)
7. During the hearing, the Division admitted Claimant had been overpaid because the Division did not act on Claimant's report of income change. (Hearing Representative's testimony; *see* Ex. 7.1)

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)).

III. Food Stamp Program

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 CFR § 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 CFR § 271 – 274.

Eligibility and the amount of Food Stamp benefits a household receives are based upon the countable income of all the household members. 7 CFR § 273.10(e)(1)(i)(A)

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 CFR § 273.18. Subsection (b) of 7 CFR § 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 CFR § 273.18(b).

Under 7 CFR § 273.18, it does not matter why the overpayment occurred: fault is immaterial. 7 CFR § 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 CFR § 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 CFR § 273.18(a).

ANALYSIS

I. Issue

Claimant argues she should not have to repay Food Stamps overpaid to her household because it is the Division’s fault she received excess benefits and she did everything required of her to stop the receipt of benefits. The Division asserts the law requires it to recover excess benefits paid, irrespective of fault as to why the benefits were overpaid.

The issue is whether the Division is correct to seek reimbursement from Claimant’s household of \$3,540 of Food Stamp benefits which were overpaid to Claimant during December 2010, January 2011 and February 2011.

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). The Division is seeking to change the status quo by requiring Claimant to repay the Division for the Food Stamp benefits it alleges it overpaid his household for the months of December 2010 through and including February 2011. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits and that she must reimburse the State in the amount of the benefits she was overpaid.

III. Repayment of Overpaid Food Stamp Program Benefits.

The parties agree: 1) Claimant was overpaid Food Stamp benefits in the amount of \$3,540; and 2) the overpayment resulted from the Division’s failure to act on information reported by Claimant in October 2010. Thus, the parties do not dispute the relevant facts.

This case arose because the Division asserts it has no choice but to collect the overpaid Food Stamps because recovery of the overpayment is required by the federal Food Stamp regulations. Claimant asserts the overpayment was not her fault and therefore she should not have to repay overpaid benefits. During the hearing, Claimant asserted she had done everything required of her to prevent erroneous issuance of benefits.

The dispute in this case is whether Claimant is required to repay the \$3,540 of overpaid Food Stamp Program benefits notwithstanding the overpayment was the result of the Division’s inadvertent error.

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). Here, it is undisputed Claimant was overpaid a total of \$3,540 for the months of December 2010, January 2011 and February 2011. 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).

Therefore, the Division did not err in seeking Claimant’s reimbursement of the \$3,540 of Food Stamps overpaid.

CONCLUSIONS OF LAW

1. The Division has met its burden of proving by a preponderance of the evidence that Claimant was overpaid a total of \$3,540 in Food Stamps for December 2010, January 2011 and February 2011.
2. The Division is required by federal regulation 7 C.F.R. § 273.18(a) and (b) to recover from Claimant the amount of Food Stamps overpaid to her, irrespective of why the overpayment occurred.
3. The Division was correct to seek reimbursement from Claimant a total of \$3,540 of excess Food Stamps paid to Claimant for December 2010, January 2011, and February 2011.

DECISION

The Division was correct to seek reimbursement from Claimant of \$3,540 of excess Food Stamps paid to Claimant for December 2010, January 2011 and February 2011.

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


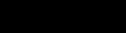
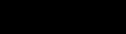
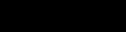
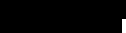

DATED July 13, 2011.

 /signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on July 13, 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

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