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

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) began receiving Food Stamp benefits in March 2011. (Ex. 1) On May 31, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$340 in Food Stamp benefits that she had allegedly improperly received during April and May 2011. (Ex. 4) Claimant requested a fair hearing on June 13, 2011. (Ex. 5.0) At the same time as her hearing request, the Claimant requested that the Division compromise (reduce) the Food Stamp overpayment amount. (Ex. 5.1) On June 14, 2011, the Division denied the Claimant's request for compromise. (Ex. 6)

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

The Claimant's hearing was held on July 19, 2011. At the Claimant's request, the hearing encompassed both the Food Stamp overpayment issue and the Division's denial of the Claimant's request for compromise.

The Claimant attended the hearing telephonically; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

The Division argued it made a mistake when it issued the Claimant Food Stamp benefits for a four person household, and that it should have issued benefits for a household of three persons instead. As a result, the Division stated the Claimant received a total of \$340 more in Food Stamp benefits than she should have during April and May 2011, and that the Claimant was required to repay the Division the overpaid amount. The Division also stated it was not allowed,

by Alaska Food Stamp policy, to compromise Food Stamp overpayments when the amount overpaid was less than \$360.

The Claimant argued that she should not be liable to repay benefits, when she did not make the mistake. In addition, she argued that the Division's position that it would not compromise the Food Stamp overpayment amount because the overpaid amount was less than \$360 was unreasonable. The resulting issues are:

1. Was the Division correct to request the Claimant to repay \$340 in Food Stamp benefit payments that were overpaid to the Claimant during April and May 2011, even though the overpayment was caused by the Division's mistake?
2. Did the Division abuse its discretion by refusing to compromise (reduce) the overpayment amount?

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits for her four person household on March 25, 2011. (Ex. 1)
2. The Claimant participated in a Food Stamp application intake interview on March 26, 2011. (Ex. 2.0 – 2.1) During that interview, the Claimant informed the Division that one of her household members was her 19 year old daughter. (Ex. 2.0) That daughter was a fulltime college student who was not working. *Id.*
3. The Division Eligibility Technician who conducted the Claimant's March 26, 2011 intake interview specifically determined that the Claimant's 19 year old daughter was not eligible for Food Stamp benefits. *Id.*
4. The Claimant's household has monthly income of \$2,010.54. That income consists of \$1,387.04 monthly in gross wages and \$623.50 monthly in unemployment benefits. (Ex. 4.6) The Claimant's monthly shelter costs are \$850 in rent and heating costs (propane). (Ex 2.1)
5. The Division then issued the Claimant Food Stamp benefits for a four person household (including the 19 year old daughter), based upon the household's income and shelter costs, in the amount of \$478 per month during April and May 2011. (█████ testimony; Exs. 4.5 – 4.7)
6. The Division should have only issued the Claimant Food Stamp benefits for a three person household (excluding the 19 year old daughter), based upon the household's income and shelter costs, in the amount of \$308 per month during April and May 2011. (█████ testimony; Exs. 4.5 – 4.7)
7. On May 31, 2011, the Division sent the Claimant notice that she had been overpaid \$340 (\$170 per month) total in Food Stamp benefits during April and May 2011. (Ex. 4.0 – 4.1) The Division's notice explained that the overpayment was due to an "inadvertent agency error" and that she received a total of \$956 (\$478 per month) in benefits when she should have only

received \$616 (\$308 per month) in benefits. (Exs. 4.0, 4.5) The notice further explained that the reason the Claimant was overpaid was that her 19 year old daughter “was an ineligible student.” (Ex. 4.0) The notice stated the Division intended to collect the overpaid amount by reducing the Claimant’s “food stamp benefits by 10% or \$10, whichever is more and apply this to your overpayment balance.” *Id.*

8. On June 13, 2011, the Claimant requested the Division compromise (reduce) its overpayment claim against her. (Ex. 5.1)

9. The Division denied the Claimant’s request for a compromise (reduction) because it was “unable to compromise an overpayment amount that is less than \$360.” (Ex. 6) The Division has adopted a uniform policy that does not allow it to compromise (reduce) Food Stamp overpayments, when the overpaid amount is less than \$360. (█████ testimony)

10. The Claimant did not disagree with any of the income and expense figures used by the Division. She also did not dispute having received a total of \$956 in Food Stamp benefits during April and May 2011.

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, Alcoholic 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 determining whether an individual is eligible to receive Food Stamp benefits. One of those rules is that a fulltime college student, who is older than 17 years, and who is not employed at least halftime, is not eligible to receive Food Stamp benefits. 7 CFR 273.1(b)(7)(i); 7 CFR 273.5(a).

Food Stamp benefits are calculated, in part, based upon the number of eligible persons in the household. 7 CFR 273.10(e)(2)(ii)(a). If the household contains a student who is not eligible for Food Stamp benefits that student is not counted as part of the household in determining the household’s financial eligibility and benefit amount. 7 CFR 273.11(d)(3).

An agency “must establish and collect any claim” including a claim for overpaid Food Stamp 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 overpaid Food Stamp benefits. 7 CFR 273.18(a)(4)(i).

The federal Food Stamp regulations provide the Division with the ability to compromise (reduce) Food Stamp repayment claims:

(7) *Compromising claims.* (i) As a State agency, you may compromise a claim 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.

7 CFR 273.18(e)(7) (emphasis in original). The term "may" used in the regulation means that the decision whether to compromise an overpayment claim is subject to the Division's discretion.

The normal collection process requires that if the Division elects to pursue an overpayment claim resulting from agency error, the Division may collect the claim by reducing ongoing benefit payments by "the greater of \$10 per month or 10 percent of the household's monthly allotment." 7 CFR 273.18(f)(1) and (g)(1)(iii).

ANALYSIS

There are two issues in this case:

1. Was the Division correct to request the Claimant to repay \$340 in Food Stamp benefit payments that were overpaid to the Claimant during April and May 2011, even though the overpayment was caused by the Division's mistake?
2. Did the Division abuse its discretion by refusing to compromise (reduce) the overpayment amount?

1. Repayment

The Division has the burden of proof, by a preponderance of the evidence, on this issue because it is the party seeking to change the status quo by requesting repayment.

The undisputed facts relative to this issue are as follows:

- a. The Claimant has a four person household. Her 19 year old daughter is one of the four household members. She is not working and is going to college fulltime. *See Findings of Fact 1 and 2 above.*
- b. The household's total gross monthly income consists of \$2,010.54, which consists of \$1,387.04 in gross wages and \$623.50 in unemployment benefits. The household's monthly shelter costs are \$850 in rent and heating costs (propane). *See Findings of Fact 4 and 10 above.*
- c. The Division issued the Claimant Food Stamp benefits in the amount of \$478 per month during April and May 2011. That amount was the benefit level for a four person household, based on the household's undisputed gross monthly income and monthly shelter costs. *See Findings of Fact 5 and 10 above.*

- d. The amount of monthly Food Stamp benefits that should have been issued was \$308 per month during April and May 2011. That amount is the benefit level for a three person household, based on the household's undisputed gross monthly income and monthly shelter costs.¹ See Finding of Fact 6 above.

As a purely legal matter, the Claimant's daughter, because she was 19, not working, and going to college fulltime, was not eligible to receive Food Stamp benefits. *See* 7 CFR 273.1(b)(7)(i); 7 CFR 273.5(a). The Division knew the daughter was not eligible to receive Food Stamps. *See* Finding of Fact 3 above. However, it admittedly made a mistake. *See* Finding of Fact 7 above. It issued Food Stamp benefits for a household of four persons (including the daughter), when it should have issued Food Stamp benefits for a household of three persons (excluding the daughter).

The Division's mistake in issuing Food Stamp benefits for a four person household instead of a three person household meant that the Claimant received \$478 per month in Food Stamp benefits for April and May 2011, when she should have only received \$308 per month in Food Stamp benefits for April and May 2011. This was an overpayment of \$170 per month during April and May 2011, for a total overpayment of \$340 in Food Stamp benefits.

The Claimant argued she should not be responsible for paying back the overpaid Food Stamp benefit since the Division's mistake caused the overpayment. 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 the overpayment was caused by the Division's 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 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 provided the Claimant with Food Stamp benefits, during the months of April and May 2011, for a four person household when it should have only provided the Claimant with Food Stamp benefits for a three person household. As a result, the Claimant's household received \$340 in Food Stamp benefits it should not have received. The Claimant is responsible to repay the Division for the overpaid Food Stamp benefits. 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)*.

The Division was therefore correct to require that the Claimant repay the Division a total of \$340 in Food Stamp benefits that she was overpaid in the months of April and May, 2011, despite the fact that the overpayment was not caused by the Claimant.

¹ The Division's calculations of the appropriate benefit amount are contained in Exhibits 4.6 – 4.7. A review of the calculations shows that they were correctly performed based upon the Claimant's undisputed income and shelter costs.

2. Compromise

With regard to this issue, the Claimant is requesting affirmative relief, that an overpayment claim be compromised. The Claimant therefore has the burden of proof by a preponderance of the evidence on this issue.

The Division refused to compromise its overpayment claim. It has a policy position that it will not compromise a claim that is less than \$360. *See* Finding of Fact 9 above. While the Division's policy position is not enacted in regulation, the federal Food Stamp regulations clearly provide the Division with discretion to compromise a claim:

As a State agency, you **may** compromise a claim 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.

7 CFR 273.18(e)(7) (emphasis supplied).

The Claimant presented no evidence that the Division's policy position that it would not compromise a claim of less than \$360 was in any way arbitrary or capricious. Nor did she show that the Division's policy was legally contrary to federal regulation 7 CFR 273.18(e)(7).

In addition, the Division indicated it intended to collect the overpaid amount by reducing the Claimant's "food stamp benefits by 10% or \$10, whichever is more and apply this to your overpayment balance." *See* Finding of Fact 7 above. This collection method follows the letter of the federal regulations governing collection of overpayments caused by agency error. *See* 7 CFR 273.18(f)(1) and (g)(1)(iii). When this repayment method is applied to the Claimant's monthly Food Stamp amount of \$308 per month, it results in a monthly payment of \$30 (rounded down) towards the overpaid benefit claim. As a result, the Division would be repaid the entire \$340 in one year's time. The Division's claim would therefore be completely paid in less than three years.

Because the overpayment would be repaid within one year by application of the ten percent Food Stamp payment setoff, the Division was entirely within its discretion to decline compromise, inasmuch as the applicable regulation, 7 CFR 273.18(e)(7), only requires the Division to **consider** compromise if "the claim will not be paid in three years."

In summary, the Claimant did not meet her burden of proof on this issue. The Division was correct when it denied the Claimant's request for compromise of the overpayment amount.

CONCLUSIONS OF LAW

1. The Division met its burden of proof and demonstrated that the Claimant was overpaid a total of \$340 in Food Stamp benefits for the months of April and May 2011.
2. The Division is legally entitled to recover the overpaid Food Stamp benefits, even though the overpayment was caused by the Division's mistake. 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)*

3. The Division did not abuse its discretion when it denied the Claimant's request that the Division compromise (reduce) its overpayment claim in the amount of \$340. In addition, the Division's collection method follows the letter of the federal regulations governing collection of overpayments caused by agency error. *See* 7 CFR 273.18(f)(1) and (g)(1)(iii).

DECISION

The Division was correct to require the Claimant to repay \$340 in Food Stamp benefit payments that were overpaid to the Claimant during the months of April and May 2011, even though the overpayment was caused by the Division's mistake.

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 appeal, 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 this 11th day of August, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 11th day of August, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[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