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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 11-FH-390
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) is a Food Stamp<sup>1</sup> recipient. (Ex. 1) On October 3, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$388 in Food Stamp benefits that he had allegedly mistakenly received during August 2011. (Exs. 10 – 10.12) The Claimant requested a fair hearing on October 12, 2011. (Ex. 11.1)

This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 C.F.R. § 273.15.

The Claimant's hearing was held on November 22 and 23, 2011. The Claimant appeared telephonically; he represented himself, and testified on his own behalf. ██████████, a Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf. ██████████, the mother of the Claimant's children, appeared telephonically and testified on behalf of the Division.

The record was left open after the hearing, until December 11, 2011, for the parties to submit additional documentary evidence. The Division's information was received on December 5, 2011. The Claimant did not submit a response.

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. *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, the common usage refers to the program as the Food Stamp Program, which usage this decision also follows.

## **STATEMENT OF ISSUES**

The issue in this case is whether the Division was correct to request the Claimant to repay \$388 in Food Stamp benefit payments that were allegedly overpaid to the Claimant during August 2011.

The Division argued that the overpayment arose because the Claimant should not have received Food Stamp benefits in August 2011 for a three-person household, which included his two children, but rather for a one-person household, being only the Claimant. The basis for the Division's argument was that the Claimant was not entitled to receive Food Stamp benefits for a three-person household because he did not have the children in his home for more than half of the month of August 2011. The Claimant disagreed with the Division and raised several arguments in response. His arguments raised the following sub-issues:

1. Was the Claimant entitled to claim his two minor children as part of his Food Stamp household for the month of August 2011?
2. Alternatively, did the fact that the Claimant had visitation with his two minor children for 21 days in June 2011 and did not receive Food Stamps during that month entitle him to claim his two minor children as part of his Food Stamp household for the month of August 2011?
3. Did the Division correctly calculate the amount of Food Stamp benefits the Claimant was allegedly overpaid for the month of August 2011?
4. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were allegedly overpaid to the Claimant during August 2011, even though the overpayment was caused by the Division's mistake?

## **FINDINGS OF FACT**

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

1. The Claimant was a Food Stamp recipient in July 2011. (Ex. 1) He resides in Big Lake, Alaska. *Id.* He received \$239 in Food Stamp benefits during the month of July 2011. (Ex. 10.12)
2. On July 15, 2011, the Claimant requested that his two minor children be added to his Food Stamp case. (Exs. 2.1 – 2.2) He notified the Division that his minor children would be in his home for three weeks. (Ex. 2) He provided the Division with the exact dates the children would be in his home. (Ex. 11.1)
3. On July 18, 2011, the Division sent the Claimant written notice that his two minor children would be added to his Food Stamp case and that he would receive \$627 in Food Stamp benefits during August 2011. (Ex. 3)

4. On July 22, 2011, the Claimant's minor children's mother notified the Division that the children would be with the Claimant for a three week period, from July 22, 2011 until August 12, 2011, and would be with her the majority of August 2011. (Ex. 4)

5. The Claimant had extended visitation with his two minor children beginning on July 22, 2011 until August 12, 2011. (Claimant testimony) The children were returned to their mother on August 12, 2011. *Id.* The Claimant also had his children for 4 additional overnight stays in August 2011. *Id.* This amounted to a total of 15 days overnight visitation during the month of August, 2011 (August 1 overnight through August 11 overnight is 11 days plus four additional days) . The month of August has 31 days.

6. The Claimant received a total of \$627 in Food Stamp benefits for the month of August 2011. (Ex. 10.12)

7. The Claimant also had extended visitation with his two minor children for 21 days in June 2011. (Claimant testimony; Ex. 11.1) He went into the Division's offices on June 1, 2011 to request that he receive Food Stamp benefits for the children. *Id.* The Division denied his request because Food Stamp benefits had already been issued for the children for the month of June 2011 through their mother's Food Stamp case. *Id.*

8. On October 3, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$388 in Food Stamp benefits that he had allegedly mistakenly received during August 2011. (Exs. 10 – 10.12.) The Division's notice explained that the overpayment was caused "because the children should not have been added to your case, since they were not at your home for the majority of the month." (Ex. 10)

9. The Division's calculations of the amount allegedly overpaid were based upon the difference between the amount of Food Stamp benefits received in August 2011 (\$627) and the amount the Division submitted the Claimant should have received in August 2011 (\$239). (Ex. 10) That difference is \$388. *Id.*

### **PRINCIPLES OF LAW**

A party who is 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 normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *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 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining whether a Food Stamp household is eligible to receive Food Stamp benefits. Food Stamp benefit amounts are calculated based upon the gross amount of monthly income received by all household members and upon the number of people living in the household. 7 C.F.R. § 273.9(e); 7 C.F.R § 273.10(e)(2)(ii)(a).

Children under the age of 22 and their parents with whom they “live” must be included in a Food Stamp household. 7 C.F.R. § 273.1(b)(ii). The federal Food Stamp regulations do not define the term “live” nor do they address the situation of when parents have split custody of their minor children or extended visitation arrangements. The federal government has opted to let individual state governments adopt uniform statewide policies on Food Stamp household composition issues that are not specifically addressed in the federal regulations. 7 C.F.R. § 273.1(c).

The State of Alaska Food Stamp regulations do not contain any provisions that address the issue of either split child custody or extended visitation. *See* 7 AAC 46.010 *et. seq.* However, the State of Alaska’s uniform policy is contained in the *Alaska Food Stamp Manual*:

When the parents are living apart and both claim the same child as a food stamp household member, the child is included in the food stamp household containing the parent who is exercising primary responsibility for the care and parental control of the child.

*Alaska Food Stamp Manual* § 601-1A(2)(b).

Children who are staying with their parent(s) for less than half of the calendar month are not considered members of that parent’s Food Stamp household:

Non-household members include:

\* \* \*

- e. Visitors, including parents, children and spouses, staying temporarily with the food stamp household even though they may purchase food and prepare meals with the household during the visit. However, when the visit is anticipated to last more than half the days in the calendar month, the visitor is treated as a household member for that month when determining eligibility and benefit amount, unless otherwise excluded.

*Alaska Food Stamp Manual* § 601-1A(4).

The maximum amount a one-person Food Stamp household, living in an Alaska urban area, could have received in August 2011, regardless of the amount of its income or allowable deductions, was \$239. *Alaska Food Stamp Manual* Addendum 4. Big Lake, Alaska is classified as an urban area. *Alaska Food Stamp Manual* Addendum 1.

An agency “must establish and collect any claim” for overpaid Food Stamp benefits issued. 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2). *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 C.F.R. § 273.18(a)(4)(i).

## ANALYSIS

The primary issue in this case is whether the Division was correct to request the Claimant to repay \$388 in Food Stamp benefit payments that were allegedly overpaid to the Claimant during August 2011. There are four sub-issues, each of which is addressed separately below:

1. Was the Claimant entitled to claim his two minor children as part of his Food Stamp household for the month of August 2011?
2. Alternatively, did the fact that the Claimant had visitation with his two minor children for 21 days in June 2011 and did not receive Food Stamps during that month entitle him claim his two minor children as part of his Food Stamp household for the month of August 2011?
3. Did the Division correctly calculate the amount of Food Stamp benefits the Claimant was allegedly overpaid for the month of August 2011?
4. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were allegedly overpaid to the Claimant during August 2011, even though the overpayment was caused by the Division's mistake?

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

1. Was the Claimant entitled to claim his two minor children as part of his Food Stamp household for the month of August 2011?

The Claimant had his two minor children in his home for 15 overnight stays in August 2011. *See* Finding of Fact 5 above. August has 31 days in the month. The Claimant therefore had the children in his home for slightly less than half of the month of August.

In order for the Claimant to claim his two minor children as part of his Food Stamp household during the month of August 2011, they would have had to live with him for more than half the month. *Alaska Food Stamp Manual* § 601-1A(4)(e). The Division had the burden of proof on this issue. It satisfied its burden of proof and demonstrated that the minor children lived with the Claimant for less than half of the month of August 2011.

Because the minor children only lived with the Claimant for slightly less than half of the month of August 2011, he was not entitled to claim them as part of his Food Stamp household for the month of August 2011.

2. Alternatively, did the fact that the Claimant had visitation with his two minor children for 21 days in June 2011 and did not receive Food Stamps during that month entitle him claim his two minor children as part of his Food Stamp household for the month of August 2011?

The Claimant had visitation with his children for 21 days in June 2011. *See* Finding of Fact 7 above. He asked to have his children added to his Food Stamp case on June 1, 2011. *Id.* The Division denied his request because Food Stamp benefits had already been issued for the children for June 2011 through their mother's Food Stamp case. *Id.*

The Claimant's argument is essentially one that the Division owes him a month of Food Stamp benefits for his children because he did not receive Food Stamp benefits for them in June 2011. However, this case is only concerned with the issue of whether the Claimant was entitled to claim his children as part of his household during the month of August 2011. If the Claimant wished to challenge the denial of June 2011 benefits, he would have had to request a hearing on that issue.<sup>2</sup> The denial of June 2011 benefits is a completely different issue than the question of whether the Claimant was entitled to receive Food Stamp benefits for his children for August 2011. As a purely legal matter, because these are totally separate issues, the fact that the Claimant did not receive Food Stamp benefits for his children in June 2011 does not entitle him to receive Food Stamp benefits for them in August 2011.

3. Did the Division correctly calculate the amount of Food Stamp benefits the Claimant was allegedly overpaid for the month of August 2011?

The above discussion demonstrates that the Claimant was not entitled to claim his two minor children as part of his household for August 2011. This meant that the Claimant had only a one-person Food Stamp household in August 2011, instead of a three-person household. The Division, however, issued the Claimant Food Stamp benefits for a three-person household for August 2011. It should have issued the Claimant Food Stamp benefits for a one-person household for August 2011.

The Division calculated that the Claimant was overpaid \$388. This is the difference between the benefits he received (\$627 for a three-person household) less the benefits he should have received (\$239 for a one-person household). *See* Findings of Fact 6, 8, and 9 above.

The Claimant challenged the Division's calculations. He argued that the Division did not provide him with the full amount of all the income deductions to which he was entitled. However, the Division calculated that the Claimant was entitled to receive \$239 in Food Stamp benefits for August 2011. This is the maximum amount a one-person Food Stamp household located in urban Alaska can receive. *Alaska Food Stamp Manual* Addendum 4. Big Lake, Alaska, where the Claimant lives, is classified as an urban area. *Alaska Food Stamp Manual* Addendum 1. As a purely legal matter, even if the Claimant's argument he did not receive the full amount of all the

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<sup>2</sup> This Office has no record of the Claimant requesting a Fair Hearing regarding the denial of his June 1, 2011 request to have his children added to his Food Stamp case.

income deductions to which he is entitled is correct, he would still not have been entitled to receive more than \$239 in August 2011 Food Stamp benefits.

Consequently, the Division met its burden of proof and was correct when it calculated that the Claimant was overpaid \$388 in Food Stamp benefits for the month of August 2011.

4. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were allegedly overpaid to the Claimant during August 2011, even though the overpayment was caused by the Division's mistake?

The Claimant told the Division the exact dates his children were going to be in his household in August 2011. *See* Finding of Fact 2 above. These dates, including the additional two weekend visitations, totaled 15 days out of a 31 day month. *See* Finding of Fact 5 above. Because, as discussed above, this was less than half of the month, the Claimant was not entitled to receive Food Stamp benefits for a three-person household in August 2011. However, the Division mistakenly issued the Claimant Food Stamp benefits for a three-person household for August 2011.

The Claimant argued that he should not be required to repay excess Food Stamp benefits he received because the Division made a mistake. This argument raises a purely legal question. The federal Food Stamp regulations are clear that the Division is required to collect Food Stamp overpayments: an agency "must establish and collect any claim" for overpaid Food Stamp benefits issued. 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2). The Alaska Supreme Court has also dealt with this issue and ruled that the Division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is caused by Division's error. *Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)*.

### **CONCLUSIONS OF LAW**

The Division had the burden of proof in this case by a preponderance of the evidence. It satisfied its burden of proof and established that it was correct when it requested the Claimant repay it \$388 in Food Stamp benefits he was overpaid in August 2011 for the following reasons:

1. The Claimant was not entitled to claim his two minor children as part of his Food Stamp household for the month of August 2011 because he had visitation with them for less than half of the month.
2. The fact that the Claimant had visitation with his two minor children for 21 days in June 2011 and did not receive Food Stamps during that month does not entitle him to claim his two minor children as part of his Food Stamp household for the month of August 2011.
3. The Division correctly calculated the amount of Food Stamp benefits the Claimant was overpaid for the month of August 2011. That amount was \$388.

4. The Division was correct to request the Claimant to repay Food Stamp benefit payments in the amount of \$388 that was overpaid to the Claimant during August 2011, even though the overpayment was caused by the Division's mistake.

### **DECISION**

The Division was correct to require the Claimant to repay \$388 in Food Stamp benefit payments that were overpaid to the Claimant during August 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 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 29th day of December, 2011.

/Signed/  
Larry Pederson  
Hearing Authority

### **Certificate of Service**

I certify that on this 29th day of December, 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

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J. Albert Levitre, Jr.  
Law Office Assistant I