



## FINDINGS OF FACT

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

1. The Claimant is an Iraqi national, who previously worked for the U.S. government in Iraq. (Claimant testimony) He resides in Alaska. (Exs. 1, 3.1) The Claimant was being assisted by Catholic Social Services when he moved to Alaska. (Claimant testimony)
2. On September 27, 2010, the Claimant was approved to apply for Iraqi Special Immigrant status by the Chief of Mission for the United States Embassy located in Baghdad, Iraq. (Ex. 3.1)
3. On October 15, 2010, which was after the Claimant was already residing in Alaska, he petitioned for Special Immigrant Iraqi status. (Ex. A) On November 5, 2010, he was sent written notification that his petition for Special Immigrant status as an “Iraqi employed by/on behalf of US Gov in Iraq” was approved. *Id.* The effective date of his approval was October 15, 2010. *Id.*
4. When the Claimant received his Special Immigrant status approval, he was told by his caseworker at Catholic Social Services that he was eligible to apply for Food Stamp benefits. (Claimant testimony) He gave all of his paperwork to Catholic Social Services who helped him with his Food Stamp application. *Id.*
5. The Claimant applied for and was approved for Food Stamp benefits on October 19, 2010. (Ex. 1) He received Food Stamp benefits in the total amount of \$2,729 during the time period from October 19, 2010 through the end of September 2011. (Exs. 1, 9.7 – 9.8)
6. The Claimant reapplied for Food Stamp benefits on September 6, 2011. (Exs. 2 – 2.5) When the Division reviewed his file, it only found a United States Embassy letter stating he was approved to apply for a Special Immigrant status. It did not find any proof he had actually been approved for the Special Immigrant status. (Ex. 3)
7. On September 8, 2011 the Division sent the Claimant notice that it only had the United States Embassy letter and no proof of his current immigration status. (Ex. 4) The Division requested that the Claimant provide it with proof of his current immigration status. *Id.*
8. On October 5, 2011, the Claimant provided the Division with a document showing that he had applied with the U.S. Citizenship and Immigration Service on April 25, 2011 for Adjust to Permanent Resident Status (case type 1485) “as direct beneficiary of immigrant petition.” (Ex. 5.2)
9. On October 10, 2011, the Division notified the Claimant that his September 6, 2011 Food Stamp renewal application was denied because he was not either a U.S. citizen or an eligible alien. (Ex. 6)
10. On October 14, 2011, the Division reviewed a U.S. Department of Homeland Security (Homeland Security) computer printout that stated the Claimant had applied for permanent resident status but that Homeland Security was “[n]ot sure what his current status is.” (Ex. 7.1)

11. On October 14, 2011, the Division determined that the Claimant should not have received Food Stamp benefits because he did “not have eligible alien status. Worker gave benefits based on a statement from the American Embassy and not from [the Department of Homeland Security].” (Exs. 8 - 8.1)

12. On November 9, 2011, the Division sent the Claimant written notification that it was requesting repayment of \$2,729 in Food Stamp benefits that he had allegedly mistakenly received for the months of October 2010 through September 2011. (Exs. 9.1 – 9.20) The Division’s notice explained that the overpayment was caused by inadvertent agency error and that he should not have received any amount of Food Stamp benefits because he was not an eligible alien. (Ex. 9.1)

### **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.

The Food Stamp program restricts eligibility for Food Stamp benefits to individuals who are United States citizens or qualified aliens. 7 CFR 273.4(a). A qualified alien, who entered the country on or after August 22, 1996, is not eligible to receive Food Stamp benefits for a period of five years after the date he or she physically entered the United States. 7 CFR 273.4(a)(2); 62 FR 61344.

The Food Stamp regulations contain a number of exceptions to the United States citizenship requirement and the five year exclusion requirement for qualified aliens. These exceptions are described in 7 C.F.R. § 273.4(a)(3) – (7). One of the exception categories is “Special immigrants from Iraq and Afghanistan admitted under section 101(a)(27) of the [Immigration and Naturalization Act].” *Alaska Food Stamp Manual* § 602-1D(2)(k) and (4)(k). The Refugee Crisis In Iraq Act of 2007, PL 110-181, § 1244, is the enabling legislation that allows Iraqi refugees to apply for Special Immigrant status under section 101(a)(27) of the Immigration and Naturalization Act.

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 issue in this case is whether the Division was correct to request that the Claimant repay it \$2,729 in Food Stamp benefit payments that he received during the months of October 2010 through September 2011.

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. *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).

The Division argued the Claimant should not have received the Food Stamp benefits because he was not a U.S. citizen or an eligible alien. It is undisputed that the Claimant is not a U.S. citizen.

The Claimant argued that he was an eligible alien because he had been approved for Special Immigrant status. The record shows that the Claimant was an Iraqi national who was approved for Special Immigrant status effective October 15, 2010. *See* Finding of Fact 3 above. Because the Claimant was from Iraq and approved for Special Immigrant Visa status effective October 15, 2010, he was eligible for Food Stamps effective October 15, 2010. *Alaska Food Stamp Manual* § 602-1D(2)(k) and (4)(k).

It appears that the actual federal approval for the Claimant's Special Immigrant status was not in the Division's possession at the time he was initially approved for Food Stamps in October 2010. *See* Finding of Fact 6 above. In fact, the Claimant was not notified he was approved for Special Immigrant status until November 5, 2010. *Id.* It therefore appears that he was mistakenly approved for Food Stamp benefits in October 2010. However, in order for the Division to prevail in this case, it is required to prove that the Claimant was not eligible for Food Stamp benefits during the months of October 2010 through September 2011. The Claimant has clearly demonstrated that he was eligible for Food Stamp benefits, due to the approval of his petition for Special Immigrant status, as of October 15, 2010, which was before he was approved for Food Stamp benefits. As a result, the Division has not met its burden of proof by a preponderance of the evidence. The Division was therefore not correct when it requested the Claimant repay it the Food Stamp benefits he received during the months of October 2010 through September 2011.

### CONCLUSIONS OF LAW

1. The Claimant was eligible for Food Stamp benefits effective October 15, 2010 because he was approved for a Special Immigrant Visa effective October 15, 2010.
2. The Division did not meet its burden of proof by a preponderance of the evidence and establish that the Claimant was not eligible for Food Stamp benefits during the period from October 2010 through September 2011.

