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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-492
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is a Food Stamp¹ recipient. (Ex. 1) On November 9, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$464 in Food Stamp benefits that she had allegedly mistakenly received during the months of May 2011 through October 2011. (Exs. 5.0 – 5.13) The Claimant requested a fair hearing on November 18, 2011. (Exs. 6.0 – 6.6)

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

The Claimant's hearing was held on January 24, 2012. The Claimant appeared telephonically; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

The issue in this case is whether the Division was correct to request that the Claimant repay it \$464 in Food Stamp benefit payments that were allegedly mistakenly overpaid to the Claimant during the months of May 2011 through October 2011. The Division agreed that the overpayment was caused by its own error, not the Claimant's. The Division agreed, prior to the hearing, to reduce the amount due to \$360.

¹ 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.

FINDINGS OF FACT

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

1. The Claimant is a single parent. Her household consists of four persons, the Claimant and three minor children. (Ex. 2.0) One of her minor children is under the age of 12 years. *Id.*
2. The Claimant was receiving Food Stamp benefits in April 2011. (Ex. 1) The Division received a Food Stamp renewal application from the Claimant on April 6, 2011. (Exs. 2.0 – 2.5)
3. The Claimant's April 6, 2011 Food Stamp renewal application stated that the Claimant was a college student. (Ex. 2.0) It also stated that she received child support and unemployment income, and she had rental costs of \$800 per month and no telephone expenses. (Ex. 2.2) The Division determined that the Claimant was not eligible to receive Food Stamp benefits because she was a college student. (Ex. 3.0)
4. The Division then issued the Claimant Food Stamp benefits for a three person household, which consisted only of her three minor children, who had no monthly income, beginning in May 2011. (Ex. 5.6) The household did not include the Claimant, nor did it count the Claimant's income or expenses when calculating the Food Stamp benefit amount. (██████ testimony) The Food Stamp benefit amount issued for each of the months of May 2011 through October 2011 was \$627, for a total amount of \$3,762 in Food Stamp benefits issued during those months. (Ex. 5.6)
5. The Division reviewed the Claimant's Food Stamp case on October 17, 2011. (Exs. 4.0, 5.0 – 5.1) In its review, the Division determined that it had made a mistake when it did not include the Claimant as part of the Food Stamp household. (Ex. 4.0)
6. The Division recalculated the amount of Food Stamp benefits the Claimant should have received if she had been included as part of her Food Stamp household during the months of May through October 2011. The Division calculated that based upon the Claimant's income and expenses, for a household of four, the Claimant should have received Food Stamp benefits in the amount of \$549 per month during each of the months of May 2011 through September 2011, and \$553 during the month of October 2011. (Exs. 4.0, 4.3 – 4.4, 5.6) This comes to a total amount of \$3,298. (Ex. 5.0)
7. In making its calculations of the amount of Food Stamp benefits the Claimant should have received during the months of May 2011 through October 2011, the Division used a gross monthly income figure of \$1,326.10 (\$732.70 in child support and \$593.40 in unemployment benefits) for the Claimant and rental expense of \$800. (Exs. 4.3, 4.6, 4.8) The Division arrived at the monthly unemployment benefit figure of \$593.40 based upon information it received from the Claimant on April 21, 2011 when it processed her April 6, 2011 Food Stamp renewal application. (Ex. 3.0, ██████ testimony) The Division's April 21, 2011 casenote, however, reflects that while the Claimant expected to continue receiving unemployment, she was having some unemployment issues, and that the Division Eligibility Technician attempted to contact the unemployment office to verify the unemployment income but was unsuccessful and did not

follow up. (Ex. 3.0) The Division also allowed the Claimant a rental expense of \$800, but no other expenses. (Ex. 4.8)

8. As a result of the Division's calculations, the Division determined that the Claimant was overpaid a total of \$464 (\$3,762 minus \$3,298). (Ex. 5.0) On November 9, 2011, the Division sent the Claimant written notice that she was required to repay the \$464 in allegedly overpaid benefits. (Exs. 5.0 – 5.13)

9. The Claimant agreed that the monthly child support income amount used by the Division in its calculations was correct. (Claimant testimony) However, the last time the Claimant received unemployment income was in April 2011. (Claimant testimony, Ex. 3.8) The Claimant therefore had no unemployment income during the months of May 2011 through October 2011. The Claimant also stated that she had monthly telephone expenses, but did not list them as an expense of her Food Stamp applications, because she had been told years ago by Division personnel that telephone expenses were not deductible. (Claimant testimony)

10. On January 12, 2012, the Division agreed to reduce the Food Stamp benefit amount allegedly overpaid to \$360. (Ex. 7)

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).

A party who raises an affirmative defense to a claim has the burden of proof with regard to that affirmative defense. *Agen v State, Dept of Revenue, Child Support Enforcement Div*, 945 P.2d 1215, 1220 (Alaska 1997).

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). The Division's determination of income is based upon a household's prior income and any anticipated income the household is "reasonably certain" to receive. 7 C.F.R. § 273.10(c)(1).

If the Division has made a mistake in calculating benefits, it is required to "restore to household benefits which were lost." 7 C.F.R. § 273.17(a)(1). In calculating the benefits to be restored, the agency shall determine if the household was "actually eligible" for the benefit months in question. 7 C.F.R. § 273.17(d)(2). If the household is determined to be eligible, then the Division is required to "calculate the allotment the household should have received. If the household

received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.” 7 C.F.R. § 273.17(d)(3).

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 the Claimant to repay \$464² in Food Stamp benefits that she had allegedly been overpaid during the months of May through October, 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).

In this case, the Division excluded the Claimant herself from her household of four persons, which consisted of her and her three minor children. This meant that benefits were calculated for a three person household, the three minor children, based upon the three minor children’s income and expenses, i.e. zero. The Division issued the three person household monthly benefits in the total amount of \$3,762 in Food Stamp benefits issued during the months of May 2011 through October 2011.

In October 2011, the Division realized that the Claimant should have been included in the household. This meant that the Division had to (a) increase the household size to four persons by including the Claimant, and (b) count the Claimant’s income and expenses when determining the household’s monthly benefit amount. The Division then came to the conclusion, that based upon the Claimant’s income and expenses, the Claimant’s household should only have received \$3,298 in Food Stamp benefits during the months of May 2011 through October 2011. The difference between the benefits paid (\$3,762) and those the Division argued should have been paid (\$3,298) is \$464. The Division is trying to recover that difference.

There is no question that the Division is required to “restore” benefits made by its error. *See* 7 C.F.R. § 273.17. However, the “restoration” of benefit calculations engaged in by the Division resulted in the Division finding that the Claimant’s household was actually overpaid benefits as a result of its error. There is also no question that the Division is required to pursue repayment of benefits that were overpaid as a result of its error. 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)

Resolution of this case revolves around the treatment of the Claimant’s income and expenses. The Division calculated the repayment amount by counting child support income in the amount of \$732.70 and unemployment income in the amount of \$593.40 that the Claimant did not

² As noted in Finding of Fact 10 above, the Division agreed to reduce this amount to \$360.

receive. However, the last day the Claimant received any unemployment was April 4, 2011. I.E, the Division counted the Claimant as having unemployment income in the amount of \$593.40 during each of the months of May 2011 through October 2011, which she did not receive. The Division also did not provide the Claimant with a telephone expense.

The Division argues that it was required to use the Claimant's income and expenses, as known to it in April 2011, when it refigured the benefits the Claimant should have received in the months of May 2011 through October 2011. The Division cites to 7 C.F.R. § 273.17(d)(2) in support of its argument. However, nothing in that particular regulation supports the Division's position. It merely has to do with determining actual eligibility for a particular month. Eligibility is not an issue here. 7 C.F.R. § 273.17(d)(3) is a bit more on point. It, however, does not state that the Division is not allowed to take income changes during the recalculation period into account, merely that the Division "shall calculate the allotment the household should have received." 7 C.F.R. § 273.17(d)(3).

The Division's argument with regard to income would make sense if the Claimant had an obligation to report her income change, i.e. the loss of unemployment income, during the period in question. In other words, unless the Claimant reported a change, then the Division could assume that her income remained the same. However, since the Claimant was expressly excluded by the Division from the household and because her income and expenses were not counted in determining the household's monthly benefit level, her income change would not affect her Food Stamp benefit amount, and she was not required to report her income change.³ The Division should therefore not have recalculated her household's benefit levels for May 2011 through October 2011 using monthly unemployment income she never received. This reduces the Claimant's monthly gross countable income to \$732.70, in child support payments during the months of May 2011 through October 2011, rather than the \$1,326.10 gross monthly income figure used by the Division.

The other item involved is one expense item. The Division allowed the Claimant one expense, being monthly rent of \$800. The Claimant had a telephone expense. She did not claim it as an expense on her April 6, 2011 Food Stamp renewal form. The Division did not allow her a deduction for that expense when it recalculated her May 2011 through October 2011 Food Stamp benefit amounts. In this case, the Division is justified in relying on the Claimant's April 6, 2011 Food Stamp renewal application, because the Claimant did not claim an expense for her telephone costs despite the fact that she could have. The Claimant did not testify or present any evidence that her telephone cost was a new expense incurred after April, 2011, in which case it would be relevant.

The Division should therefore have calculated the Claimant's "restored benefits" pursuant to 7 C.F.R. § 273.17 using a household of four persons, her undisputed rent of \$800, and her

³ The Division also argued that it should be allowed to utilize its prospective income determination, 7 C.F.R. § 273.10(c)(1), in its recoupment claim. In order to apply this, the Division would need to be "reasonably certain" that the unemployment benefits would continue unchanged. However, it should be noted that unemployment benefits have a definite ending date, as demonstrated by the fact that the Claimant's last unemployment benefits ended on April 4, 2011. In other words, the Division should not have assumed they would be "reasonably certain" to continue without first checking with unemployment for an expiration date.

undisputed \$732.70 in monthly child support income. When these amounts are used, the Claimant was entitled to receive a total of \$797 per month during each of the months of May through October 2011,⁴ a total of \$4,782 rather than the \$3,762 she actually received. The Claimant was therefore underpaid benefits rather than overpaid benefits.

In summary, the Division did not meet its burden of proof on this issue. The Claimant was actually underpaid benefits. The Division was therefore not correct when it requested that the Claimant reimburse it \$464 in overpaid benefits. The Division is directed to restore the Claimant benefits as calculated above. *See* 7 C.F.R. § 273.17.

CONCLUSIONS OF LAW

1. The Division should have used the Claimant's actual income for the months of May 2011 through October 2011 when it redetermined her household's Food Stamp benefit amount for those months. That actual income consisted solely of child support payments in the amount of \$732.70 per month.
2. The Claimant is not entitled to a telephone expense deduction.
3. When the Claimant's monthly Food Stamp benefit amount for the months of May 2011 through October 2011 is recalculated for a four person household, using only her child support income and rental expense, the Claimant was entitled to receive \$797 in Food Stamp benefits per month, a total of \$4,782, rather than the \$3,762 she actually received and rather than the \$3,298 the Division argued she should have received.
4. The Division had the burden of proof by a preponderance of the evidence in this case. It did not meet it. Instead, the facts of the case establish that the Claimant was underpaid rather than overpaid benefits. She was underpaid benefits in the amount of \$1,020, because she should have received \$4,782 in total benefits for the months of May 2011 through October 2011 rather than the \$3,762 she actually received.
5. The Division is therefore required to restore benefits to the Claimant pursuant to 7 C.F.R. § 273.17.

DECISION

The Division was not correct to require the Claimant to repay it for Food Stamp benefits it alleged she was overpaid during the months of May through October 2011. Instead, the facts of this case show the Claimant was actually underpaid. The Division is therefore required, pursuant to 7 C.F.R. § 273.17, to restore benefits to the Claimant in the amount of \$1,020.

⁴ This figure was derived using the Food Stamp Budget Work Sheet contained as part of the *Alaska Food Stamp Manual* Addendum 7. That Food Stamp Budget Work Sheet is attached to the Decision as Attachment A.

