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

In The Matter Of:)	
)	
Y D. M,)	OHA Case No. 12-FH-158
)	
Claimant.)	DPA Case No.
_____)	

FAIR HEARING DECISION and ORDER

I. Introduction

There is only one issue in this case: whether Y D. M is required to pay back Food Stamp¹ benefits which were issued to her in error by the State of Alaska Division of Public Assistance (DPA or Division).

On April 11, 2012 the Division sent Ms. M a written notice stating that during March 2012 she had been paid \$438.00 more in Food Stamp benefits than she should have received, and that the Division was requiring repayment of that amount.² On April 25, 2012 Ms. M verbally requested a fair hearing on this issue.³

The Office of Hearings and Appeals held Ms. M's hearing on May 23, 2012. Ms. M participated in the hearing by telephone, represented herself, and testified on her own behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, attended the hearing in-person, represented the Division, and testified on its behalf. The hearing was recorded.

This decision concludes that, through no fault of her own, Ms. M was paid \$438.00 more in Food Stamp benefits than she should have been during the month of March 2012. This decision further concludes that, pursuant to applicable federal Food Stamp regulations, Ms. M must reimburse the

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"). This decision follows the common usage of referring to SNAP as the Food Stamp program.

² Exs. 7.0 – 7.8.

³ Ex. 8.

Division for these overpaid benefits. The Division's decision to require Ms. M to repay it the \$438.00 in overpaid Food Stamp benefits is therefore AFFIRMED.

II. Facts

Ms. M's two person household received Food Stamp benefits during the period January 1, 2012 - March 31, 2012.⁴ On January 27, 2012 she informed the Division that she had begun receiving unemployment insurance benefits (UIB).⁵ On that date a Division Eligibility Technician (ET) checked the Division's computer interface with the State of Alaska Department of Labor and concluded that Ms. M would likely receive \$318.00 per week, or \$1,367.40 per month, in UIB.⁶ However, the Division failed to act on this information by reducing or terminating benefits until March 16, 2012, by which date Ms. M had already been overpaid benefits for March 2012.⁷ On March 19, 2012 the Division mailed a notice to Ms. M advising that her Food Stamp benefits would end on March 31, 2012 because her child support and UIB had caused her household to exceed the Food Stamp Program's maximum income limit for a two person household.⁸ The Division mailed a revised Food Stamp case closure notice to Ms. M on May 11, 2012.⁹

On April 11, 2012 the Division mailed a notice to Ms. M advising that, during the month of March 2012, she had not been financially eligible for Food Stamp benefits, but that the Division had mistakenly paid her \$438.00 in Food Stamp benefits; this meant that Ms. M had been overpaid \$438.00 in Food Stamp benefits.¹⁰

At her hearing, Ms. M agreed with the income and expense figures used by the Division and did not dispute the Division's calculation of the amount overpaid.¹¹ Rather, she asserted that it would be unfair to require her to repay the Food Stamp benefits at issue given her financial circumstances and the fact that the overpayment was caused by the Division's error.¹²

III. Discussion

This case does not involve any disputed issues of material fact. The sole question in this case is whether the Division is correct to seek recovery of the \$438.00 in Food Stamp benefits which were overpaid to the Claimant during the month of March 2012 due to the Division's own error. This issue -

⁴ Ex. 1.

⁵ Ex. 2.

⁶ Exs. 2, 3.

⁷ Ex. 5.

⁸ Ex. 6.

⁹ Ex. 9.

¹⁰ Exs. 7.0 - 7.10.

¹¹ Ms. M's testimony.

¹² Ms. M's testimony.

whether recovery of the agency-caused Food Stamp overpayment is required by applicable law - is a purely legal issue.

The Food Stamp Program is a federal program administered by the states.¹³ The Code of Federal Regulations (C.F.R.) contains the rules for determining a household's monthly Food Stamp payment. Food Stamp benefit amounts are calculated based on the number of people living in the household, and on the monthly income, (after applicable deductions), received by those household members.¹⁴

The federal statute pertaining to recoupment of Food Stamp benefits is 7 U.S.C.A. § 2022. Subsection (b)(1) of that statute provides in relevant part that the "state agency *shall* collect any overissuance of benefits issued to a household" [Emphasis added]. This statute requires, on its face, that the DPA attempt to recover overpaid benefits.

The federal implementing regulation pertaining to recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. That regulation has three subsections that are pertinent to this case. Subsection (a)(2) of that regulation provides in relevant part that "the State agency *must* establish and collect any claim . . . ". Subsection (e)(1) of that regulation also provides in relevant part that "state agencies *must* begin collection action *on all claims* unless [inapplicable]." Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the "overpayment [is] caused by an action or failure to take action by the State agency." Thus, it is clear that federal regulation 7 C.F.R. § 273.18 requires on its face that the DPA attempt to recover overpaid benefits, *even when the overpayment is the result of the DPA's own error*. The Alaska Supreme Court recently confirmed this in the case of *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009). The federal regulations, and the *Allen* decision, are binding on this Office.

Ms. M did not dispute that she received \$438.00 more in Food Stamp benefits than she should have received for March 2012.¹⁵ Rather, she argued that she had done nothing wrong and that the Division's own error had caused the overpayment.¹⁶ However, the federal regulations are clear that the Food Stamp agency "must establish and collect any claim" for overpaid Food Stamp benefits issued.¹⁷ This is the case even where (as here) the overpayment is caused by the Division's error.¹⁸ Accordingly,

¹³ 7 C.F.R. § 271.4(a).

¹⁴ 7 C.F.R. § 273.10(e)(2)(ii)(A).

¹⁵ Ms. M's hearing testimony.

¹⁶ Ms. M's hearing testimony.

¹⁷ 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

¹⁸ 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)

