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

In the Matter of)	
)	
S. S.,)	OHA Case No. 12-FH-191
)	
Claimant.)	DPA Case No.
_____)	

FAIR HEARING DECISION and ORDER

I. Introduction

There are two issues in this case. The first is whether S. S. is required to pay back Food Stamp¹ benefits that were issued to her in error. Assuming the answer to the first question is yes, the second is whether the the Division of Public Assistance (Division should compromise (reduce or forgive) its Food Stamp overpayment claim against Ms. S. due to financial hardship.

On May 10, 2012, the Division sent Ms. S. written notice she had received \$229 more in Food Stamp benefits than she should have, and that it was requiring repayment of that amount.² Ms. S. verbally requested a fair hearing and also requested the Division compromise its claim against her.³

On May 15, 2012, the Division sent Ms. S. notice her request for a compromise was denied.⁴ On May 25, 2012, the Division sent Ms. S. a corrected notice stating the amount of benefits she owed was \$224.⁵

The Office of Hearings and Appeals held a hearing on June 5, 2012. Ms. S. appeared telephonically; she represented herself and testified on her own behalf. Terri Gagne, Public

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. 4.0 – 4.11.

³ Ex. 5.0.

⁴ Ex. 5.1.

⁵ Exs. 6.3 – 6.12.

Assistance Analyst with the Division of Public Assistance (Division), appeared in-person and represented the Division. The hearing was recorded.

This decision concludes that Ms. S. received \$224 more in Food Stamp benefits than she should have, that she is required to repay that amount, and that the Division was not required to compromise its claim against her. The Division's decision to require Ms. S. to repay the Division \$224 in overpaid Food Stamp benefits is AFFIRMED.

II. Facts

Ms. S. receives Food Stamp benefits.⁶ She notified the Division on March 1, 2012 that she was receiving unemployment benefits in the amount of \$242 per week.⁷ The Division did not take her unemployment benefits into account when it issued her \$438 in Food Stamp benefits for the month of April 2012.⁸ The Division discovered it had not counted her unemployment income when it performed a case review on April 17, 2012.⁹

The Division then recalculated the Food Stamp benefit amount Ms. S. should have received for the month of April 2012. Based upon Ms. S.'s undisputed income (monthly unemployment of \$997.60¹⁰) and housing expenses (\$80 rent; \$26 telephone¹¹), the Division calculated that Ms. S. should have received \$214 in Food Stamp benefits instead of the \$438 she actually received; this meant she was overpaid a total of \$224.¹²

Ms. S. agreed with the income and expense figures used by the Division and did not dispute the Division's calculations of the amount overpaid.¹³ However, she requested that the Division compromise the amount due to financial hardship; specifically she had incurred medical expenses in the past because the Division had not handled her Medicaid benefits correctly and because she was trying to save money to allow her to move.¹⁴ The Division denied her request for a compromise.¹⁵ The Division's letter telling Ms. S. her request for a compromise was denied stated that "[i]f you are currently receiving Food Stamps, your monthly food stamp benefits will

⁶ Ex. 1.

⁷ Exs. 2.0 – 2.1.

⁸ Exs. 3.0, 4.11.

⁹ Ex. 3.0.

¹⁰ S. testimony; Exs. 3.0 – 3.1)

¹¹ S. testimony; Ex. 3.6)

¹² Exs. 6.3, 6.9.

¹³ S. testimony.

¹⁴ *Id.*

¹⁵ Ex. 5.1.

be reduced by 10% each month to repay the amount owed.”¹⁶ Ms. S. is a current Food Stamp recipient; the amount of Food Stamp benefits she received in June 2012 was \$209.¹⁷

III. Discussion

A. Repayment

The first issue is whether Ms. S. is required to repay the Division \$224 in Food Stamp benefits. The overpayment was issued due to agency error, because the Division failed to take her unemployment income into account, when it calculated and distributed her April 2012 benefits.

Food Stamps is a federal program administered by the State.¹⁸ 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 upon the monthly income, after applicable deductions, received by all household members and upon the number of people living in the household.¹⁹

Ms. S. did not dispute that she received the benefits and that she had received \$224 more in benefits than she should have received.²⁰ Instead, she argued that the Division was not entitled to repayment because its own error had caused the overpayment. The federal regulations are clear that the Food Stamp agency “must establish and collect any claim” for overpaid Food Stamp benefits issued.²¹ This is even when the overpayment is caused by the Division’s error.²² Adult members of the Food Stamp recipient’s household are the persons responsible for repaying overpaid Food Stamp benefits.²³ As a matter of law, Ms. S. was overpaid \$224 in Food Stamp benefits and is required to repay those benefits to the Division.

IV. Conclusion

The Division’s decisions to require Ms. S. to repay the Division \$224 in overpaid Food Stamp benefits is AFFIRMED.

¹⁶ Ex. 5.1.

¹⁷ Ex. 4.11.

¹⁸ 7 C.F.R. § 271.4(a).

¹⁹ 7 C.F.R. § 273.10(e)(2)(ii)(A).

²⁰ The Division’s calculations are located at Ex. 6.9.

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

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

²³ 7 C.F.R. § 273.18(a)(4)(i).

V. Appeal Rights

Ms. S. has the right to appeal this decision by requesting a review by the Director. To do this, she must 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

An appeal 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.

DATED: June 26, 2012.

/signed/
Lawrence Pederson
Hearing Authority

Certificate of Service

I certify that on this 26th day of June, 2012, true and correct copies of the foregoing were sent to:

Ms. S. by U.S.P.S First Class Certified Mail, Return Receipt Requested

and to the following by secure e-mail:
Jeff Miller, Public Assistance Analyst
Terri Gagne, Public Assistance Analyst
Erin Walker-Tolles, Policy & Program Development
Joy Dunkin, Staff Development & Training
Kari Lindsey, Administrative Assistant II
Courtney Wendel, Policy & Program Development

/Signed/
J. Albert Levitre, Jr.
Law Office Assistant I