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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. 10-FH-318  
 )  
 Claimant. ) Division Case No. [REDACTED]  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] Claimant) is a former Food Stamp recipient. (Ex. 1) On August 10, 2010, the Division of Public Assistance sent the Claimant notice that her Food Stamp benefits would be terminated and she would not receive Food Stamp benefits after August 31, 2010 because her income exceeded the Food Stamp program limits for her household size. (Ex. 4.0) Then, on September 16, 2010, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$716.00 in Food Stamp benefits that she had allegedly been overpaid during the months of June, July, and August 2010. (Exs. 6.0 - 6.13) Claimant requested a fair hearing on September 20, 2010. (Ex. 7)

This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 CFR 273.15.

The Claimant's hearing started on October 19, 2010. The Claimant appeared telephonically for the October 19, 2010 hearing. The hearing was continued until November 16, 2010. The Claimant appeared in-person for the November 16, 2010 hearing. The Claimant represented herself and testified on her own behalf.

[REDACTED], a Public Assistance Analyst with the Division, attended in person on both hearing dates; she testified on behalf of, and represented the Division.

## **STATEMENT OF ISSUES**

There are two issues present in this case:

1. Whether the Division was correct, on August 10, 2010, to terminate the Claimant's receipt of Food Stamp benefits after August 31, 2010 because her income exceeded the Food Stamp program's limit for her household size.

The Division's argument on the above issue was that the Claimant's total income, including unemployment benefit payments, caused her to exceed the Food Stamp program's monthly countable income limit for her household size. The Claimant argued that the Division's calculation of her monthly countable income was based upon an inaccurate child support figure and that in addition, the Division should not have averaged her monthly unemployment payments, but that it should rather use the exact unemployment benefit figures she actually received in a calendar month.

2. Whether the Division was correct to request the Claimant, on September 16, 2010, to repay \$716.00 in Food Stamp benefits for the months of June, July, and August 2010?

The Division's argument on the above issue was that it was justified in requesting the repayment because it made an error in not properly counting the Claimant's monthly child support for Food Stamp benefit calculation purposes. The Claimant's argument was that the Division used an inaccurate child support figure when it calculated the repayment figure.

## **SUMMARY OF DECISION**

1. The Division properly calculated the Claimant's monthly unemployment income and monthly child support as being \$1,900.60 and \$752.09 respectively. It was therefore correct when, on August 10, 2010, it terminated the Claimant's receipt of Food Stamp benefits after August 31, 2010 because her countable monthly household income exceeded the Food Stamp program's limit for her household size.
2. The Division properly calculated the Claimant's monthly child support as \$1,324.21 for Food Stamp benefit repayment purposes. It was therefore was correct to request repayment, on September 16, 2010, of \$716.00 from the Claimant for overpaid Food Stamp benefits for the months of June, July and August 2010.

## **FINDINGS OF FACT**

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

1. The Claimant applied for Food Stamp benefits for her 5 person family on June 9, 2010. (Exs. 2.1 – 2.7)
2. At the time of her June 9, 2010 application, the Claimant's total monthly household income consisted of a Social Security payment in the amount of \$421.07 per month and child support. (Exs. 2.3, 2.10; Claimant testimony)

3. The Claimant received the following amounts of child support during the months of February 2010 through the first part of August 2010:

<u>Month</u>	<u>Amount</u>
February 2010	\$1,116.66
March 2010	\$1,301.30
April 2010	\$1,232.12
May 2010	\$1,416.30
June 2010	\$ 876.97
July 2010	\$ 626.30
August 2010	\$ 312.97 <sup>1</sup>

(Ex. 2.9)

4. When the Division Eligibility Technician processed the Claimant's June 9, 2010 application, it determined the Claimant's monthly child support income was \$1,324.21. (Ex. 2.8) It arrived at this amount by averaging her April and May 2010 child support income payments (\$1,232.12 plus \$1,416.30 divided by 2). *Id.* The Eligibility Technician coded the Claimant's child support payments as having been retained by the Child Support agency ("CS" code) instead of having been paid to the Claimant ("CH" code). (██████ testimony). This coding error meant that the Division did not count the Claimant's child support income when it determined her household's monthly Food Stamp benefit amount. (██████ testimony)

5. The Division therefore issued the Claimant Food Stamp benefits for the months of June, July, and August, based solely on the Claimant's household having Social Security income of \$421.07 per month, rather than including her child support income. (██████ testimony)

6. On August 9, 2010, the Division reviewed the Claimant's Food Stamp case after being informed that she was receiving unemployment benefits. (Ex. 3.0; ██████ testimony) The Claimant receives \$442.00 per week in unemployment benefits. (Ex. 5.2) Her first unemployment benefit payment was made on July 4, 2010. *Id.*

7. During the above review, the Division found out that the Claimant had been receiving child support income which had not been taken into account when it issued her Food Stamp benefits for the months of June, July, and August 2010. *Id.*

8. The Division, on August 9, 2010, determined that the Claimant received \$1,900.60 per month in unemployment benefit payments. (Ex. 3.0) It arrived at this figure by multiplying her weekly unemployment benefit amount of \$442.00 and multiplying it by 4.3. *Id.* It then determined the Claimant was not financially eligible to receive Food Stamp benefits. (Ex. 3.0)

9. On August 10, 2010, the Division sent the Claimant notice that her Food Stamp case was closed and that she would not receive Food Stamp benefits after August 31, 2010 because her

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<sup>1</sup> The August 2010 child support amount received is not for the complete month as demonstrated by the fact that the Division's child support printout only shows child support payments sent to the Claimant through August 16, 2010. (Ex. 2.9)

countable income of \$3,404.88 exceeded the Food Stamp income limit of \$2,688.00 for her household size. (Ex. 4.0) That figure was arrived at based upon the total of Claimant's unemployment income (\$1,900.60), child support income (\$1,324.21) and Social Security Income (\$421.07) and subtracting the standard deduction of \$241.00. (██████ testimony)

10. The Division, on August 9, 2010, then recalculated the Claimant's Food Stamp benefit amounts for the months of June, July, and August 2010, based solely upon the monthly Social Security Income (\$421.07) and the averaged child support income (\$1,324.21) and determined the Claimant had been overpaid a total of \$716.00 during those months:

<u>Month</u>	<u>Income</u>	<u>Benefits Issued</u>	<u>Benefits Entitled</u>	<u>Overpayment</u>
June <sup>2</sup>	\$1,745.28	\$662.00	\$476.00	\$186.00
July	\$1,745.28	\$946.00	\$681.00	\$265.00
August	\$1,745.28	\$946.00	\$681.00	<u>\$265.00</u>
			TOTAL	\$716.00

(Exs. 3.2 – 3.20)

11. On September 16, 2010, the Division sent the Claimant written notice that she was required to repay \$716.00 in overpaid Food Stamp benefits for the months of June, July and August 2010. (Exs. 6.0 – 6.13)

12. After the Division had closed the Claimant's Food Stamp case and requested repayment of the \$716.00 in benefits, the Division sent the Claimant a corrected Food Stamp case closure notice on October 4, 2010. (Ex. 4.1) That notice stated the Claimant's countable monthly income was \$2,832.76<sup>3</sup> which was greater than the Food Stamp program's limit of \$2,688.00 for the Claimant's household size. *Id.* The Division's new countable monthly income figure was arrived at by totaling the unemployment income of \$1900.60, Social Security Income of \$421.07, and monthly child support of \$752.09, less a monthly child support pass through deduction of \$50.00, for countable child support income of \$702.09.<sup>4</sup> (Ex. 4.1) This amount also included a \$241.00 standard deduction. (██████ testimony) The Division arrived at the monthly child support income of \$752.09 (before the \$50 deduction) by averaging the Claimant's June and July child support payments. (Ex. 4.1; ██████ testimony)

13. The Division calculated the Claimant's repayment obligation using monthly child support income of \$1,324.21. (Exs. 6.0 – 6.13) It did not recalculate the Claimant's repayment obligation using the smaller child support figure of \$752.09 it used in its corrected October 4, 2010 case

<sup>2</sup> Benefits for the month of June 2010 were prorated because the application was not submitted until June 9, 2010. (Ex. 2.1 – 2.7; 6.6)

<sup>3</sup> This was a smaller figure than the \$3,404.88 countable month income figure stated in the Division's August 10, 2010 closure notice. (Ex. 4.0)

<sup>4</sup> The Division's total figure of \$2,832.76 as provided in its October 4, 2010 notice is inaccurate. If the Division had totaled the unemployment income (\$1,900.60), Social Security Income (\$421.07), the child support income (\$752.09), and deducted a \$50.00 child support pass through deduction and the \$241 standard deduction, the correct total would have been \$2,782.76.

closure notice, instead of the child support figure of \$1,324.21 used in its September 16, 2010 repayment demand notice. (██████ testimony)

14. The Claimant testified to the following:

- a. She did not actually receive \$1,900.60 per month in unemployment benefits, only the \$442.00 weekly, for 4 weeks per month.
- b. The child support payments she received in April and May 2010 were not representative payments, but were larger than normal because it was tax refund time.<sup>5</sup> She further testified that her normal child support payment was \$662.00 per month, the amount received during July 2010.

15. All of the Division's calculations, both for the repayment claim and to determine the August 31, 2010 case closure, were based upon the Claimant having combined shelter costs of \$1,374.00 per month (rent/mortgage of \$1,050.00 and a standard utility deduction (SUD) of \$324). (Ex. 5.8 – Case Closure; Exs. 3.7 – 3.20 - Repayment) The Claimant did not disagree with these figures.

### PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol 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). "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 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for calculating the amount of a recipient's monthly Food Stamp benefit. One of the rules is that if a five person household makes more than \$2,688.00 in countable income per month, it does not qualify for Food Stamp benefits. 7 CFR 273.9(a)(1)(ii); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2009 through September 30, 2010).

The Food Stamp program uses a complicated mathematical formula that takes the recipient's household income and expenses into account. The household's monthly **gross** income is totaled and then allowable deductions are taken from it to arrive at the monthly net income. 7 CFR 273.10(e)(1)(i). Social Security income, child support income, and retirement income are considered unearned income. 7 CFR 273.9(b)(2)(ii) and (iii).

A household whose only income is unearned receives a standard deduction of \$241.00. 7 CFR 273.9(d) (1); *Alaska Food Stamp Manual Addendum 4* (For the period effective October 1, 2009 through September 30, 2010). A household is also allowed a deduction for its shelter costs

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<sup>5</sup> Although the Claimant did not explain further, the spring of each year is when child support paying parents, whose child support payments are in arrears, often have their federal tax refunds garnished and the proceeds distributed to the custodial parent.

(rent//mortgage/utilities). 7 CFR 273.9(d)(6). This is not a dollar for dollar deduction, but is calculated relative to a household's monthly income. *Id.*

In calculating Food Stamp eligibility and benefits, the Division is required to estimate the household's future income based upon the income the recipient has received during the certification period and "any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period." 7 CFR 273.10(c)(1)(i). The Division is normally required to utilize the income the household received in the previous 30 day period. 7 CFR 273.10(c)(1)(ii).

When a household's income fluctuates "to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income." *Id.* This means the Division may average the Claimant's historical income to account for fluctuations and use that income figure to predict the Claimant's future income.

When a household receives income on a weekly or biweekly basis, the Division is required to determine monthly household income by multiplying the weekly income by 4.3 and biweekly income by 2.15. 7 CFR 273.10(c)(2)(i).

An agency "must establish and collect any claim" including a claim for overpaid benefits issued due to agency error. 7 CFR 273.18(a)(1)(i); 7 CFR 273.18(a)(2); 7 CFR 273.18(b)(3). *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 an overpaid Food Stamp benefits. 7 CFR 273.18(a)(4)(i).

### ANALYSIS

This case involves two separate issues:

1. Whether the Division was correct to terminate the Claimant's receipt of Food Stamp benefits after August 31, 2010 because her monthly countable income exceeded the Food Stamp program's limit for her household size.
2. Whether the Division was correct to request the Claimant to repay \$716.00 in Food Stamp benefits for the months of June, July, and August 2010?

Both of these issues involve the Division taking action that changes the status quo, i.e. termination of benefits, and a demand for repayment. The Division therefore has the burden of proof by a preponderance of the evidence with regard to both issues.

### Underlying Facts

Both of the Division's actions, case termination and repayment, are financially based. The financial facts are not disputed; merely how they should be applied. Those financial facts are:

- a. The Claimant has a 5 person household. Her shelter costs total \$1,374.00 per month (rent/mortgage of \$1,050.00 and a standard utility deduction (SUD) of \$324). (Ex. 5.8)
- b. The Claimant's household has monthly Social Security Income of \$421.07.
- c. The Claimant receives monthly child support payments that vary. Her child support payment history for February 2010 through the first half of August 2010 is as follows:

<u>Month</u>	<u>Amount</u>
February 2010	\$1,116.66
March 2010	\$1,301.30
April 2010	\$1,232.12
May 2010	\$1,416.30
June 2010	\$ 876.97
July 2010	\$ 626.30
August 2010	\$ 312.97 <sup>6</sup>

(Ex. 2.9)

- d. The Claimant began receiving unemployment benefits of \$442.00 per week on July 4, 2010.
1. Whether the Division was correct to terminate the Claimant's receipt of Food Stamp benefits after August 31, 2010 because her income exceeded the Food Stamp program's limit for her household size.

On August 10, 2010, the Division notified the Claimant that it was terminating her Food Stamp benefits after August 31, 2010 because it had determined her monthly countable income of \$3,404.88 exceeded the Food Stamp income limit of \$2,688.00 for her household size. (Ex. 4.0) After that notice, the Division sent the Claimant an October 4, 2010 notice, which contained a smaller estimate of her monthly countable income.

The household's countable monthly income, as calculated by the Division in its October 4, 2010 corrected closure notice totaled \$2,832.76, which was greater than the Food Stamp program's limit of \$2,688.00 for the Claimant's household size. (Ex. 4.1) The Division's new countable monthly income figure was arrived at using unemployment income of \$1,900.60, Social Security Income of \$421.07, and monthly child support of \$752.09, less a child support pass through deduction of \$50.00, for countable child support income of \$702.09, and a standard deduction of \$241.00. (█ testimony; Ex. 4.1) The Division arrived at the monthly child support income of

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<sup>6</sup> The August 2010 child support amount received is not for the complete month as demonstrated by the fact that the Division's child support printout only shows child support payments sent to the Claimant through August 16, 2010. (Ex. 2.9)

\$752.09 (before the \$50 deduction) by averaging the Claimant's June and July child support payments. (Ex. 4.1; ████████ testimony)

The Claimant has a 5 person household. As a result, if her household's countable income is greater than \$2,688.00, her household is not eligible to receive Food Stamp benefits. 7 CFR 273.9(a)(1)(ii); *Alaska Food Stamp Manual* Addendum 4 (For the period effective October 1, 2009 through September 30, 2010).

The Claimant posed two challenges to the figures used by the Division. The first was with regard to her child support income. The second was with regard to her unemployment income.

With regard to the Claimant's monthly child support income, the Division averaged her June and July child support income figures to come to the amount of \$752.09. The Claimant's position was that the Division should use \$626.00 per month, which she said was her normal payment.

A review of the Claimant's child support history for the months of February through July 2010<sup>7</sup> shows that the Claimant's monthly child support income ranged from a high of \$1,416.30 (May) to a low of \$626.30 (July). When income, in this case child support income, fluctuates, the pertinent federal Food Stamp regulation states that the income should be averaged. *See* 7 CFR 273.10(c)(1)(ii). The Division did average in this case, taking the Claimant's June and July 2010 child support income and dividing by two, to arrive at a monthly figure of \$752.09. The Division acted appropriately and followed the regulation, 7 CFR 273.10(c)(1)(ii), when it averaged the two months. The Division's action is therefore correct and the resulting figure of \$752.09 is correct as a result.<sup>8</sup>

With regard to the Claimant's monthly unemployment income, the Division arrived at a monthly figure of \$1,900.60. It arrived at this figure by taking the Claimant's weekly unemployment payment of \$442.00 and multiplying it by 4.3. The Claimant's position was that the Division should not use this multiplier and instead only use the actual money received during the month, i.e. normally 4 payments, and not 4.3 payments.

The Division, however, did not have the discretion to utilize the actual payments received. The applicable federal Food Stamp regulation, 7 CFR 273.10(c)(2)(i), requires the Division to multiply weekly income by a multiplier of 4.3, when calculating income for eligibility and benefit determination purposes. Consequently, the Division was correct to multiply the Claimant's weekly unemployment income of \$442.00 by the 4.3 multiplier, to arrive at a monthly unemployment income of \$1900.60.

The Claimant's household's total monthly income for Food Stamp eligibility purposes therefore consisted of the following:

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<sup>7</sup> The month of August is not referenced because the record does not contain the actual child support received during that entire calendar month.

<sup>8</sup> The Claimant should be aware that the Division's action in averaging her child support income for the months of June and July 2010 was to her advantage. If the Division had averaged her child support income for the months of February through July 2010, that figure would have been substantially higher: \$1,094.94. *See* Ex. 2.9.

Social Security	\$ 421.07
Child Support Averaged Income	\$ 752.09
Unemployment Income	<u>\$1,900.60</u>
Total	\$3,073.76

The Claimant was entitled to receive a deduction from this income of \$241.00. 7 CFR 273.9(d)(1); *Alaska Food Stamp Manual* Addendum 4 (For the period effective October 1, 2009 through September 30, 2010). The Division also accounted for the Claimant's shelter costs of \$1,374.00. (Ex. 5.8) This brought her countable monthly income to \$2,832.76.<sup>9</sup> This amount is greater than the countable income limit of \$2,688.00 for the Claimant's household size. As a result, the Division was correct to terminate the Claimant's Food Stamp benefits after August 31, 2010.

2. Whether the Division was correct to request the Claimant to repay \$716.00 in Food Stamp benefits for the months of June, July, and August 2010?

On September 16, 2010, the Division sent the Claimant written notice that she was required to repay \$716.00 in overpaid Food Stamp benefits for the months of June, July and August 2010, as follows:

<u>Month</u>	<u>Income</u>	<u>Benefits Issued</u>	<u>Benefits Entitled</u>	<u>Overpayment</u>
June <sup>10</sup>	\$1,745.28	\$662.00	\$476.00	\$186.00
July	\$1,745.28	\$946.00	\$681.00	\$265.00
August	\$1,745.28	\$946.00	\$681.00	<u>\$265.00</u>
			TOTAL	\$716.00

(Exs. 6.0 – 6.13)

The reason the Division requested the repayment of the benefits was because it did not calculate the Claimant's benefits correctly. It originally failed to count her monthly child support income

<sup>9</sup> The Division's October 4, 2010 corrected case closure notice and Ms. [REDACTED]'s testimony both refer to a child support pass through deduction of \$50. Despite the reference to the deduction, the Division did not apply it in this case because if it had, the Claimant's countable income would then have been \$2,782.76, which still would have been greater than the \$2,688.00 countable income limit for the Claimant's 5 person Food Stamp household.

In addition, neither the *Alaska Food Stamp Manual* nor the list of applicable income deductions or income disregards contained in the applicable federal Food Stamp regulation, 7 CFR 273.9, allow \$50.00 to be deducted from child support payments when calculating Food Stamp eligibility and benefit levels. The Alaska Temporary Assistance program allows such an income disregard pursuant to 7 AAC 45.500(c); the Food Stamp program does not.

<sup>10</sup> Benefits for the month of June 2010 were prorated because the application was not submitted until June 9, 2010. (Ex. 2.1 – 2.7; 6.6)

when it calculated and issued her benefits.<sup>11</sup> When it issued her Food Stamp benefits for the months of June, July, and August 2010, it issued them based solely on her monthly household Social Security Income of \$421.07. This resulted in the Claimant receiving more benefits than she should have received if the Division had included her monthly child support income as part of her income for benefit calculation purposes.

For the purposes of repayment recovery, the Division calculated the Claimant's monthly child support income as being the average of her April and May 2010 child support payments, That averaged amount was \$1,324.21.

It is first important to note that the Division based its request for repayment for the months of June, July, and August 2010 only on the Claimant's averaged child support income for the months of April and May 2010 and the household monthly Social Security Income (\$421.07)<sup>12</sup> :

Social Security	\$ 421.07
Child Support Averaged Income (April and May)	<u>\$1,324.21</u>
Total	\$1,745.28

The critical issue here is whether the Division was correct to use the child support income figure of \$1,324.31. The Claimant testified her normal monthly child support payment was \$626.00. She explained that the higher payments she received in April and May 2010 were larger than normal due to it being tax season.

When determining Food Stamp eligibility and benefit levels, the Division is required to estimate the household's future income based upon the income the household received in the previous 30 day period. 7 CFR 273.10(c)(1)(ii). When a household's income fluctuates "to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income." *Id.*

On June 9, 2010, when the Claimant applied for Food Stamp benefits, the Claimant's child support history for the four preceding months of February through May 2010 ranged from a high of \$1,416.30 (May) to a low of \$1,116.66 (February). As of June 9, 2010, the Claimant had not received any recent child support payments even close to the \$626.00 figure testified to by the Claimant. While the Claimant might well normally have received only \$626.00 per month in child support, as she testified to, her child support payments in the 4 month period immediately prior to her June 9, 2010 application greatly exceeded \$626.00 per month. As a purely legal matter, given the fluctuation in monthly child support income, it was correct for the Division to average the Claimant's April and May 2010 child support income, as allowed by federal Food

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<sup>11</sup> The Claimant did not argue that her child support should not have been counted as income for the purposes of determining her Food Stamp benefit amount. Instead, she disputed the amount of the child support income counted by the Division.

<sup>12</sup>The Division's repayment request for the months of July and August 2010 did not count the monthly unemployment income of \$1,900.60, which the Claimant received in July and August 2010.

Stamp regulation 7 CFR 273.10(c)(1)(ii), when determining her monthly Food Stamp benefit amount. This resulted in a monthly child support income figure of \$1,324.21.

If the Division had correctly issued the Claimant Food Stamp benefits based on her June 9, 2010 application, it would have issued those benefits using the household's monthly Social Security Income (\$421.07) and her averaged monthly child support income (\$1,324.21). By logical extension, it is appropriate to use that same averaged monthly child support income figure when determining what benefit the Claimant should have received, as compared to what she actually received. The difference between what the Claimant should have received and what she actually received was \$716.00 for the months of June, July, and August 2010.<sup>13</sup>

The Division met its burden of proof. It demonstrated that based upon the Claimant's child support history, it was correct to use an average of her April and May 2010 monthly child support income, when calculating the Food Stamp benefits she should have correctly received for the months of June, July, and August 2010. Because the Division is required by federal Food Stamp regulation 7 CFR 273.18(a)(2) to collect overpaid benefits, the Division was correct to request that the Claimant repay the \$716.00 in Food Stamp benefits that she received in excess of what she was entitled to receive.

### **CONCLUSIONS OF LAW**

#### 1. Food Stamp Closure

- a. The Division correctly applied the federal Food Stamp regulation, 7 CFR 273.10(c)(1)(ii), when it averaged the Claimant's child support income received in June and July 2010, to determine that her monthly child support income was \$752.09.
- b. The Division correctly applied the federal Food Stamp regulation, 7 CFR 273.10(c)(2)(i), to determine that her monthly unemployment income was \$1,900.60.
- c. The combination of the Claimant's monthly child support income (\$752.09), her monthly unemployment income (\$1,900.60), and her undisputed household monthly Social Security Income (\$421.07), totaled \$3,073.76. After applying the standard deduction of \$241, as required by 7 CFR 273.9(d)(1), and taking the Claimant's shelter costs into account, the Claimant's countable monthly income totaled \$2,832.76.
- d. Because the Claimant's countable monthly income of \$2,832.76 was greater than the Food Stamp program's limit of \$2,688.00 for her 5 person household, the Claimant did not qualify for Food Stamp benefits.

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<sup>13</sup> This Hearing Examiner independently reviewed the Division's calculations as contained in the Division's September 16, 2010 repayment request (Exs. 6.0 – 6.13). *Also See* Exs. 3.7 – 3.20. Those calculations were correct.

- e. The Division was therefore correct when it, on August 10, 2010, terminated the Claimant's receipt of Food Stamp benefits after August 31, 2010 because her countable monthly household income exceeded the Food Stamp program's limit for her household size.

2. Repayment Request.

- a. The Division admittedly erred when it processed the Claimant's June 9, 2010 Food Stamp application by not counting her monthly child support income as part of the household's income.
- b. The Division's error resulted in the Claimant receiving more Food Stamp benefits than she was entitled to receive during the months of June, July, and August 2010.
- c. Pursuant to federal Food Stamp regulation 7 CFR 273.10(c)(1)(ii), the Division was correct to use a monthly child support figure of \$1,324.21 (averaged April and May 2010 child support payments) when calculating the Claimant's Food Stamp benefits overpayments for the months of June, July, and August 2010.
- d. The Division met its burden of proof and demonstrated that the Claimant was overpaid a total of \$716.00 in Food Stamp benefits for the months of June, July, and August 2010.
- e. The Division was therefore correct to request repayment pursuant to federal Food Stamp regulation 7 CFR 273.18(a)(2), on September 16, 2010, of \$716.00 from the Claimant for overpaid Food Stamp benefits for the months of June, July and August 2010.

**DECISION**

1. The Division was correct when it, on August 10, 2010, terminated the Claimant's receipt of Food Stamp benefits after August 31, 2010 because her countable monthly household income exceeded the Food Stamp program's limit for her household size.
2. The Division was correct to request repayment, on September 16, 2010, of \$716.00 from the Claimant for overpaid Food Stamp benefits for the months of June, July and August 2010.

**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. To do this, the Claimant must send a written request directly to:

