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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-005
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) was a recipient of the Food Stamp Program¹ (Program). (Ex. 1) On December 27, 2010, the Division notified Claimant in writing that he had been overpaid \$627 of Program benefits in October 2010 and it was seeking reimbursement of \$627. (Ex. 3; Ex. 4 – 4.11)

On January 5, 2011, Claimant requested a Fair Hearing. (Ex. 5) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 AAC 49.010 *et. seq.*

Claimant's Fair Hearing was held on January 27, 2011. Claimant appeared telephonically, represented himself and testified on his own behalf. Claimant's fiancée, [REDACTED], (Fiancée) appeared telephonically and testified on behalf of Claimant. Mr. [REDACTED], the Division's Public Assistance Analyst, appeared in person representing the Division and testified on behalf of the Division.

ISSUE

Was the Division correct to seek reimbursement from Claimant of \$627 of Food Stamp benefits which allegedly were overpaid to his household in October 2010?

¹ On October 1, 2008, the Food Stamp Program (FSP) was renamed the Supplemental Nutrition Assistance Program (SNAP). *See*, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The SNAP program is still commonly called the Food Stamp Program and will be referred to as the Food Stamp Program in this decision.

FINDINGS OF FACT

The following facts have been proved by a preponderance of the evidence:

1. Claimant was receiving Food Stamp Program (Program) benefits beginning July 30, 2010. (Ex. 1; Ex. 4.10) Claimant received \$627 of Food Stamps during each of the months of August 2010 and September 2010. (Ex. 4.10) During the first week of September 2010, Claimant reported he had started work on August 22, 2010. (Ex. 2; Ex. 4.11)
2. It is undisputed the Division received Claimant's "report of change" (ROC) during the first week of September 2010. (Ex. 4.11; Claimant's testimony) Claimant reported he would not be eligible for Food Stamps because he was working full time, 40 hours a week, at \$20.00 per hour. (Ex. 2; Ex. 4.11; Claimant's testimony)
3. The Division of Public Assistance (Division) did not act on Claimant's report of income change in time to change Claimant's October 2010 benefit amount. (Ex. 2; Hearing Representative's testimony; Claimant's testimony) The Division issued Claimant benefits of \$627 for the month of October 2010. (Ex. 3; Ex. 4.10) Claimant called the Division on October 15, 2010 to report he had received Food Stamps, apparently in error, for October 2010. (Ex. 2)
4. On December 27, 2010, Claimant was notified in writing he had been issued \$627 in overpaid Food Stamp benefits for the month of October 2010. (Ex. 4-4.11) The December 27, 2010 notice stated the Division was seeking to recover the \$627 in Program benefits he had been overpaid. (Ex. 4-4.1)
5. On January 5, 2011, Claimant requested a Fair Hearing. (Ex. 5) During the hearing, Claimant asserted he had done everything required of him to prevent erroneous issuance of benefits. (Claimant's testimony) Claimant was told, when he called about the overpayment, he would have to repay only \$50 and nothing more. (Fiancée's testimony²; *see*, Ex. 5)
6. During the hearing, the Division admitted Claimant had been overpaid \$627 for the month of October 2010 because the Division had not acted on Claimant's report of income change in time to stop the October 2010 payment. (Hearing Representative's testimony; *see*, Ex. 3)

PRINCIPLES OF LAW

I. Burden of Proof

"Ordinarily the party 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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding.

² Claimant's fiancée testified she overheard Claimant's calls with the Division about the matter. (Fiancée's testimony)

Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

Preponderance of the evidence is defined as follows:

“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) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 CFR § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations in 7 CFR § 271 – 274.

Eligibility and the amount of Food Stamp benefits a household receives are based upon the countable income of all the household members. 7 CFR § 273.10(e)(1)(i)(A)

When Food Stamp benefits are paid out to a household in excess of the amount which should have been paid, a federal claim arises for the overpayment. 7 CFR § 273.18. Subsection (b) of 7 CFR § 273.18 identifies three types of Federal claims: 1) Intentional Program Violations; 2) Inadvertent household error; and 3) Agency error. An agency error is “any claim for an overpayment caused by an action or failure to take action by the State agency.” 7 CFR § 273.18(b).

Under 7 CFR § 273.18, it does not matter why the overpayment occurred: fault is immaterial. 7 CFR § 273.18(a)(1) states: “[a] recipient claim is an amount owed because of: (i) [b]enefits that are overpaid” The State agency must establish and collect any claim arising from overpayment of Food Stamp benefits. Regulation 7 CFR § 273.18(a)(1)-(3) provides, in relevant part, Food Stamp Program benefits that are overpaid are claims that the state must collect from each person who was an adult member of the household when the overpayment occurred. 7 CFR § 273.18(a).

ANALYSIS

I. Issue

Claimant argues he should not have to repay Food Stamps overpaid to his household because it is the Division’s fault he received excess benefits and he did everything he could to stop the October payment. The Division asserts the law requires it to recover excess benefits paid, irrespective of fault as to why the benefits were overpaid.

The issue is whether the Division is correct to seek reimbursement from Claimant’s household of \$627 of Food Stamp benefits which were overpaid to Claimant in October 2010.

II. Burden of Proof and Standard of Proof

“The party 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 Division is seeking to change

the status quo by requiring Claimant to repay the Division for the Food Stamp benefits it alleges it overpaid his household in October 2010. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits and that he must reimburse the State in the amount of the benefits he was overpaid.

III. Repayment of Overpaid Food Stamp Program Benefits.

The dispute in this case is whether Claimant is required to repay the \$627 of overpaid Food Stamp Program benefits.

During the Fair Hearing, Claimant proved he had given timely notice (the first week of September 2010) of his income change to the Division and that he had called in October 2010, after he received benefits, to question their issuance. Claimant asserted because the overpayment resulted from the Division's error, he should not be required to repay the \$627. Claimant agrees that he was overpaid \$627 of Program benefits in October 2010. The Division acknowledges the overpaid Food Stamps resulted from the Division's delay in processing the Claimant's reported change in income. The parties do not dispute the relevant facts.

This case arose because the Division asserts it has no choice but to collect the overpaid Food Stamps because recovery of the overpayment is required by the Food Stamp regulations, whereas Claimant asserts the overpayment was not his fault and therefore he should not have to repay overpaid benefits.

The regulations concerning recovery of overpaid Food Stamp benefits clearly require the Division to recover overpaid benefits, irrespective of the cause of overpayment. *See* 7 C.F.R. § 273.18(a)-(b). Here, it is undisputed Claimant was overpaid \$627 in October 2010. The overpaid benefits are a federal claim that must be repaid. 7 C.F.R. 273.18(a). Therefore, the Division is required to seek reimbursement. 7 C.F.R. 273.18(a). There is no flexibility: once overpayment is found to have occurred, regardless of fault or cause, the Division must seek reimbursement. 7 C.F.R. § 273.18(a)(2). Therefore, the Division did not err in seeking Claimant's reimbursement of the \$627 of Food Stamps overpaid to him in October 2010.

CONCLUSIONS OF LAW

The Division has met its burden of proving by a preponderance of the evidence that:

1. Claimant was overpaid \$627 in Food Stamps in October 2010.
2. The Division is required by federal regulation 7 C.F.R. § 273.18(a) and (b) to recover from Claimant the amount of Food Stamps overpaid to him, irrespective of why the overpayment occurred.

Therefore, the Division was correct to seek reimbursement from Claimant of \$627 of excess Food Stamps paid to Claimant in October 2010.

DECISION

The Division was correct to seek reimbursement from Claimant of \$627 of excess Food Stamps paid to Claimant in October 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, 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

If the Claimant appeals, the 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 this 3rd day of March 2011.


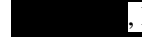
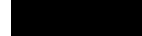
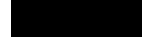
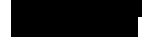

/signed/

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of March 2011 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.
and to other listed persons (via e-mail), as follows:

, Hearing Representative
, Hearing Representative
, Chief, Policy & Program Dev.
, Administrative Assistant II
, Eligibility Technician I
, Staff Development & Training

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