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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-12
 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 of Public Assistance (Division) notified Claimant in writing that he had been overpaid \$1,074 of Program benefits in September 2010, October 2010 and November 2010, and it was seeking reimbursement of \$1,074.² (Ex. 7-7.14)

On January 10, 2011, the Division received Claimant's request for a Fair Hearing. (Ex. 8) 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 February 3, 2011. Claimant appeared in person, represented himself and testified on his own behalf. Claimant was assisted by Ms. [REDACTED], who appeared telephonically and provided translation under oath for Claimant's benefit. Mr. [REDACTED], the Division's Public Assistance Analyst (Hearing Representative) appeared in person representing the Division and testified on behalf of the Division. Ms. [REDACTED], Eligibility Technician with the Division, appeared telephonically and testified on behalf of the Division.

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.

² At the hearing, the Division sought reimbursement of \$855 because its Hearing Representative had found an error in the Eligibility Technician's calculation of the amount of overpaid benefits. (Ex. 10a-10a.3; Hearing Representative's testimony)

ISSUE

Was the Division correct to seek reimbursement from Claimant a total of \$855 of Food Stamp benefits which allegedly were overpaid to his household in September, October and November 2010?

FINDINGS OF FACT

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

1. Claimant was a recipient of Food Stamp Program (Program) benefits and on July 26, 2010 the Division asked him to submit a "Food Stamp Recertification Application." (Ex. 22a) On July 20, 2010, Claimant and his wife signed the Eligibility Review Form (Application), which was date stamped as received by the Division on July 29, 2010. (Ex. 9-9.5) On this Application, Claimant wrote he was the only household member earning employment income. (Ex. 9.1)
2. On August 12, 2010, the Division date stamped, as received, copies of Claimant's July 16, 2010 and July 30, 2010 wage statements. (Ex. 6.1-6.2) Also on August 12, 2010, Claimant participated in a telephonic eligibility interview. (Ex. 6) The Eligibility Technician discussed Claimant's employment income, calculated he earned an average of \$2,125.27 monthly and learned the household received \$200 monthly rental income from an adult relative residing in the household. (Ex. 6) The Eligibility Technician determined Claimant's rental expense was \$850 monthly. (Ex. 6)
3. Subsequently, Claimant was recertified for Food Stamps and was issued \$804.00 of Food Stamps in each of September 2010, October 2010, and November 2010. (Ex. 7.14)
4. On September 16, 2010, the Division received Claimant's wage statement showing his wife had been paid employment income on September 10, 2010. (Ex. 2.1-2.2) The wage statement spanned the work period of August 22, 2010 through September 4, 2010. (Ex. 2.1-2.2) The wage statement indicated wages had been earned prior to August 22, 2010 because it showed a year-to-date total wage amount larger than the "current" pay period amount. (Ex. 2.1)
5. The Division did not process this income information until October 9, 2010. (Ex. 2) The Division's Eligibility Technician noted the wage statement was not for the first pay period that Claimant's wife worked. (Ex. 2) On October 11, 2010, the Division wrote Claimant requesting additional verification of his wife's employment and income and included an employment statement form for him to complete and return. (Ex. 3-3.1)
6. Claimant returned the completed employment statement form showing his wife had begun employment on August 9, 2010. (Ex. 4.1) The employment statement form showed she received her first pay check on August 27, 2010, for the period ending August 21, 2010. (Ex. 4.1) The Division date stamped the form as received on October 20, 2010. (Ex. 4.1)
7. On October 26, 2010, the Division's Eligibility Technician re-calculated Claimant's Food Stamp benefit amount, including his wife's income, and determined he was overpaid Food Stamp benefits in September 2010, October 2010 and November 2010. (Ex. 4; Ex. 5)
8. The Division notified Claimant, in a writing dated December 27, 2010, that it had reviewed its records and determined that he was overpaid Food Stamp benefits in the amount of \$1,074.00 for

the months of September through November 2010. (Ex. 7-7.14) The letter informed Claimant the overpayment resulted because he did not report income soon enough and the claim arose due to “inadvertent household error.” (Ex. 7)

9. Before the hearing, the Division’s Hearing Representative reviewed the Eligibility Technician’s calculations (Exs. 10-10.3) and found Claimant was not credited with the child support he paid. (Exs. 10a-10a.3) The Hearing Representative re-calculated and gave Claimant credit for \$224 of child support he paid monthly. (Ex. 7a.8-7a.10) The re-calculation resulted in a reduction from \$1,074 to \$855 of Food Stamp benefits that the Division alleged was overpaid, and for which it was seeking reimbursement. (Ex. 7a.8-7a.10)

10. On February 1, 2011, the Division notified Claimant in writing that it again reviewed its records and re-calculated the amount it alleged he was overpaid, and that this letter replaced its letter of December 27, 2010. (Ex. 7a-7a.11) The Division’s letter notified Claimant he was required to repay the overpaid Food Stamp benefits of \$855. (Ex. 7a)

11. The parties agreed they do not dispute the calculations of Claimant’s income, his wife’s income or the amount of deductions from income which the Division applied to reach its determination that Claimant was overpaid Food Stamp benefits in the total amount of \$855. (Ex. 10a—10a.3; Claimant’s testimony; Hearing Representative’s testimony)

12. On July 20, 2010, when Claimant and his wife signed their Application for continued Food Stamp benefits, Claimant’s wife was not employed. (Ex. 9.1) At the time Claimant’s wife was hired, Claimant was away hunting and did not know she had obtained a job. (Claimant’s testimony) On August 12, 2010, during the eligibility interview, Claimant did not know his wife’s income and she had not yet been paid any income. (Ex. 4-4.1; Claimant’s testimony)

13. The Division received Claimant’s notice of his wife’s income on September 16, 2010, which was 20 days after she received her first paycheck on August 27, 2010. (Ex. 2.1-2.1; *see* Ex. 4.1) Claimant provided the information requested by the Division promptly and believes the Division’s delay in processing his information caused the overpayment of Food Stamp benefits. (Claimant’s testimony)

14. The Division of Public Assistance did not act on Claimant’s September 16, 2010 report of his wife’s income in time to change Claimant’s October 2010 or November 2010 Food Stamp benefit amount. (Ex. 5; Claimant’s testimony)

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.

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.

“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)).

III. Food Stamp Program

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 273.18. Subsection (b) of 7 C.F.R. § 273.18(b) identifies three types of federal claims: 1) Intentional Program Violations; 2) inadvertent household error; and 3) agency error. An inadvertent household error is “any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.” 7 C.F.R. § 273.18(b)(2). An agency error is “any claim for an overpayment caused by an action or failure to take action by the State agency.” 7 C.F.R. § 273.18(b)(3).

Under 7 C.F.R. § 273.18, it does not matter why the overpayment occurred: fault is immaterial. 7 C.F.R. § 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. 7 C.F.R. § 273.18(a)(3). Regulation 7 C.F.R. § 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 C.F.R. § 273.18(a)(4)(1).

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 because it did not process his information fast enough to prevent the overpayment. The Division asserts that the excess benefits resulted from inadvertent household error because Claimant did not disclose his wife’s employment in a timely manner. The Division also 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 \$855 of Food Stamp benefits which were overpaid to Claimant in September 2010, October 2010, and November 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 September, October and November 2010. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits. If the Division meets this burden of proof, the law requires Claimant to reimburse the State in the amount of the benefits he was overpaid.

III. Repayment of Overpaid Food Stamp Program Benefits.

The central question to be resolved is whether Claimant was overpaid \$855 of Food Stamp Program benefits.

The parties do not dispute the calculations of Claimant’s income, his wife’s income or the amount of deductions from income which the Division applied to reach its determination that Claimant was overpaid Food Stamp benefits in the total amount of \$855. Thus, the Division has proved Claimant was overpaid Food Stamp benefits of \$855.

The parties do dispute why the overpayment of benefits occurred. Claimant asserts he timely provided the information about his wife’s income to the Division but the Division delayed in processing the income and did not make the changes needed in time to prevent overpayment of benefits. The Division argues Claimant was not timely because he did not tell the Eligibility Technician his wife was employed during the interview on August 12, 2010. In this case, it does not matter which party is at fault for the overpayment of Food Stamp benefits.³

³ In Alaska, recipients of Food Stamps are not required to report income changes to the household unless the income causes the household’s gross monthly income to exceed the Food Stamp monthly income limit for the household. 7 C.F.R. § 273.12(a)(1)(vii) & (2) In that event, a recipient must report within ten (10) days of when he or she knows their gross monthly household income exceeds the monthly income limit of the Food Stamp Program for their household. 7 C.F.R. § 273.12(a)(1)(vii) & (2). Because the Division did not allege Claimant’s wife’s income had caused the household to exceed its gross monthly income limit for receiving Food Stamps, there is no information in the hearing record as to what was Claimant’s household’s monthly income limit was during the recertification period that included September 2010 through November 2010, or whether he had to disclose her income sooner than he did. Therefore, the fact Claimant reported 20 days after learning his wife’s income does not make his report to the Division untimely.

However, the fact that Claimant’s wife was hired for employment on August 9, 2010, three days before the August 12, 2010 eligibility interview and before Claimant had been notified his household was recertified as eligible for Food Stamps, required Claimant to disclose to the Division that his wife had been hired, even though she might not have yet received income. 7 C.F.R. § 273.12(a)(3) The regulations require Claimant to report at the eligibility interview, and if occurring after the interview but before notification of re-certification, then within 10 days after receiving notification of re-certification. 7 C.F.R. § 273.12(a)(3). Had Claimant disclosed this fact, the Division was required to verify his wife’s income and possibly no overpayment of Food Stamp benefits would have resulted. Claimant’s absence from the home while hunting delayed his learning of his wife’s employment. Claimant did not identify when he learned she had become employed and he delayed 20 days in providing wage information to the Division. Consequently, the Division was unable to process Claimant’s report of change in time to prevent some overpayment of Food Stamps. The large gap of time between the Division’s October 26, 2010 determination Claimant had been paid excess benefits (Ex. 5) and its December 27, 2010 notification of its reimbursement claim (Ex. 7-7.14) is harmless error under the circumstances.

The regulations concerning recovery of overpaid Food Stamp benefits clearly require the Division to recover overpaid benefits, regardless of the cause of overpayment. *See* 7 C.F.R. § 273.18(a)-(b). Here, it is undisputed Claimant was overpaid \$855 total between September and November 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 \$855 of Food Stamps overpaid to him in September 2010, October 2010 and November 2010.

CONCLUSIONS OF LAW

1. The Division has met its burden of proving by a preponderance of the evidence that Claimant was overpaid \$855 in Food Stamps in September 2010, October 2010 and November 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.
3. Therefore, the Division was correct to seek reimbursement from Claimant of \$855 in Food Stamps paid to him in September 2010, October 2010 and November 2010.

DECISION

The Division was correct to seek reimbursement from Claimant of \$855 in Food Stamps paid to him in September 2010, October 2010 and November 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 10th day of March 2011.

/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 10th 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:

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

/signed/

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