

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907)-334-2239  
Fax: (907)-334-2285

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

In the Matter of )  
 )  
 [REDACTED] ) OHA Case No. 11-FH-155  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] [REDACTED] (Claimant) began receiving Food Stamp benefits in February 2011. (Ex. 1) On April 14, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$597 in Food Stamp benefits that she had allegedly improperly received during the months of February, March, and April 2011. (Ex. 6) Claimant requested a fair hearing on April 20, 2011. (Ex. 7.1)

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

The Claimant's hearing was held on May 24, 2011 and July 5, 2011. The Claimant attended the hearing in person; she represented herself, and testified on her own behalf. [REDACTED] [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

**STATEMENT OF ISSUES**

The Division argued that it had made a mistake when it determined the Claimant was eligible for Food Stamp benefits during the months of February, March, and April 2011, and that as a result she received \$597 in Food Stamp benefits to which she was not entitled. The Division therefore maintains it is entitled to recover the overpayment from the Claimant.

The Claimant argued that she should not be liable to repay benefits, when she did not make the mistake. The resulting issue is:

Was the Division correct to request the Claimant to repay \$597 in Food Stamp benefit payments that were overpaid to the Claimant during the months of

February, March, and April, 2011, even though the overpayment was caused by the Division's mistake?

### FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp benefits for her two person household, which consisted of her and her minor child, on January 5, 2011. (Ex. 1)
2. The Claimant's only household income is \$415.68 in monthly Social Security benefits paid for her minor child. (Ex. 15.2; ██████ testimony)
3. At the time the Claimant applied for Food Stamp benefits, the Claimant was living in a shelter and her monthly rent was \$25. (██████ testimony)
4. The Claimant provided her identification as part of the Food Stamp application process and the Division approved her Food Stamp application. (Ex. 2.1; ██████ testimony)
5. The Claimant received Food Stamp benefits, for a two person household, in the amount of \$386 per month during the months of February, March, and April 2011. (Ex. 8)
6. The Claimant applied for Medicaid and Temporary Assistance benefits on March 24, 2011. (Ex. 2) As part of that application process, she provided the Division with identification consisting of both her Alaska driver's license and her United States Permanent Resident card. (Exs. 2. – 2.1) The United States Permanent Resident card shows that the Claimant is not a United States citizen; she was born in ██████ and did not become a permanent resident of the United States until February 18, 2011. (Ex. 2.1)
7. On April 5, 2011, the Division sent the Claimant notice that her monthly Food Stamp benefit amount would be reduced to \$187 beginning with the month of May 2011. (Ex. 5) The Division's April 5, 2011 notice explained the reason for the reduction was that the Claimant was not eligible for Food Stamp benefits because she had not been a "lawful permanent residence (sic) for five years." *Id.*
8. The Division calculated the Claimant was only entitled to receive \$187 per month in Food Stamp benefits for the months of February, March, and April 2011 for a household of one person, the Claimant's minor child; its calculations were based on monthly household income of \$415.68, specifically unearned Social Security income, and monthly shelter costs of \$25. (Exs. 6.6 – 6.7, 15 – 15.1; ██████ testimony)
9. On April 14, 2011, the Division sent the Claimant notice that she had been overpaid \$597 (\$199 per month) total in Food Stamp benefits for the months of February, March, and April 2011. (Ex. 6 – 6.1) The Division's notice explained that the overpayment was due to an "inadvertent agency error" and that she received a total of \$1,158 (\$386 per month) in benefits when she should have only received \$561 (\$187 per month) in benefits. (Exs. 6, 6.5) The notice further explained that the reason the Claimant was overpaid was that "she was not a lawful permanent resident." (Exs. 6, 6.3)

10. The Claimant did not disagree with any of the income and expense figures used by the Division. She also did not dispute having received Food Stamp benefits totaling \$1,158 in the months of February, March, and April 2011.

### **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, Alcoholic 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 determining whether an individual is eligible to receive Food Stamp benefits. One of those rules is that a qualified alien is not eligible to receive Food Stamp benefits for a period of five years after the date he or she physically entered the United States. 7 CFR 273.4(a)(2); 62 FR 61344. Federal statute 8 U.S.C. 1641(b)(1) defines a qualified alien as “an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act.”

Food Stamp benefits are calculated, in part, based upon the number of eligible persons in the household. 7 CFR 273.10(e)(2)(ii)(a). If the household contains a person who is not eligible for Food Stamp benefits because she is an alien, the ineligible alien is not counted as part of the household in determining the household’s financial eligibility and benefit amount. 7 CFR 273.11(e)(3).

An agency “must establish and collect any claim” including a claim for overpaid Food Stamp 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 the question of whether or not the Division was correct to request that the Claimant repay \$597 of Food Stamp benefits, when the alleged overpayment was due to the Division’s error. Because this case involves the Division’s request for repayment, the Division has the burden of proof by a preponderance of the evidence.

There are no factual disputes in this case. It should also be noted the applicable law is clear that the Division is required to recover overpaid Food Stamp benefits from an adult Food Stamp recipient, even when the overpayment is caused by the Division’s error and not caused by any act on the part of a Food Stamp recipient. 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 basis for the Division's repayment action is that it incorrectly provided the Claimant with Food Stamp benefits for a two person household. The Division argued that the Claimant, because she is an alien, i.e. not a United States citizen, and has only been admitted as a United States permanent resident since February 18, 2011, was not eligible for Food Stamp benefits. The Division's analysis is correct; Food Stamp benefits are only available to qualified aliens who have been legal permanent residents for more than five years. 7 CFR 273.4(a)(2); 62 FR 61344. Because the Claimant has only been a legal permanent resident of the United States since February 18, 2011, i.e. for less than five years, she is not eligible to receive Food Stamp benefits.

The direct result of the Claimant not being eligible to receive Food Stamp benefits is that she is not counted as part of her Food Stamp household in determining Food Stamp benefit amounts. 7 CFR 273.11(e)(3). This means that the Claimant has a one person Food Stamp household consisting of her minor child.

The Claimant was only eligible for \$187 per month in Food Stamp benefits for the months of February, March, and April 2011 for a household of one person, the Claimant's minor child, with monthly household income of \$415.68, specifically unearned Social Security income, and monthly shelter costs of \$25. *See* Finding of Fact 8 above.<sup>1</sup>

However, the Claimant did not receive Food Stamp benefits of \$187 per month for the months of February, March, and April 2011. She received \$386 in Food Stamp benefits for each of the months of February, March, and April 2011. *See* Finding of Fact 5 above. This was an overpayment of \$199 per month for each of the months of February, March, and April 2011. This amounts to a total overpayment of \$597 (\$199 times 3 equals \$597) in Food Stamp benefits.

The Claimant argued that she should not be responsible for paying back the overpaid Food Stamp benefit since the overpayment Division's mistake caused the overpayment. However, the regulations are clear that the adults in the Food Stamp household are the parties responsible for repaying the Food Stamp benefits, even if the overpayment was caused by the Division's mistake. 7 CFR 273.18(a)(2); 7 CFR 273.18(a)(4)(i); 7 CFR 273.18(b)(3). *Also see Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)*. This means that even though the Division made the mistake that resulted in the Claimant's household receiving benefits it was not entitled to, the Claimant is responsible for repaying those benefits.

In summary, the Division has met its burden of proof by a preponderance of the evidence. It has established that it provided the Claimant with Food Stamp benefits, during the months of February, March, and April 2011, for a two person household when it should have only provided the Claimant with Food Stamp benefits for a one person household. As a result, the Claimant's household received \$597 in Food Stamp benefits it should not have received. The Claimant is responsible to repay the Division for the overpaid Food Stamp benefits.

---

<sup>1</sup> The Division's calculations are contained in Ex. 15 – 15.1. A review of the calculations shows that they were correctly performed based upon the Claimant's undisputed income and shelter costs.

The Division was therefore correct to require that the Claimant repay the Division a total of \$597 in Food Stamp benefits that she was overpaid in the months of February, March, and April, 2011, despite the fact that the overpayment was not caused by the Claimant.

### **CONCLUSIONS OF LAW**

1. The Division met its burden of proof and demonstrated that the Claimant was overpaid a total of \$597 in Food Stamp benefits for the months of February, March, and April 2011.
2. The Division is legally entitled to recover the overpaid Food Stamp benefits, even though the overpayment was caused by the Division's mistake. 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)*

### **DECISION**

The Division was correct to require the Claimant to repay \$597 in Food Stamp benefit payments that were overpaid to the Claimant during the months of February, March, and April 2011, even though the overpayment was caused by the Division's mistake.

### **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:

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 this 29th day of July, 2011.

\_\_\_\_\_  
*/Signed/*  
Larry Pederson  
Hearing Authority

Certificate of Service

I certify that on this 29th day of July, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst  
[REDACTED], Public Assistance Analyst  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

\_\_\_\_\_  
*/signed/*  
J. Albert Levitre, Jr.  
Law Office Assistant I