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

In the Matter of	)	
	)	
<b>[REDACTED]</b> ,	)	OHA Case No. 11-FH-305
	)	
Claimant.	)	Division Case No. <b>[REDACTED]</b>
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

**[REDACTED]** (Claimant) is a Food Stamp recipient. (Ex. 1) On May 31, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$867 in Food Stamp benefits that he had allegedly improperly received during October, November, and December 2010. (Exs. 3.0 – 3.11) The Claimant requested a fair hearing on August 26, 2011. (Ex. 4)

This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 C.F.R. 273.15.

On September 13, 2011, the Division sent the Claimant written notice that it had not calculated the overpayment amount correctly and that it was instead seeking repayment in the total amount of \$1,203 for the months of October, November, and December 2010. (Exs. 5.0 – 5.7)

The Claimant's hearing was held on September 20 and October 25, 2011. The Claimant attended the hearing telephonically; he represented himself, and testified on his own behalf. **[REDACTED]**, a Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

On October 25, 2011, after the hearing, the Division withdrew its claim for repayment of October 2010 benefits, which reduced its overpayment claim to \$1,095 for benefits allegedly overpaid to the Claimant for the months of November and December 2010. (Exs. 18.0 – 18.1)

**STATEMENT OF ISSUES**

The issue in this case is whether the Division was correct to request the Claimant to repay \$1,095 in Food Stamp benefit payments that were allegedly overpaid to the Claimant during November

and December 2010. The Claimant disputed both the necessity to repay and the calculation of the benefit amount allegedly overpaid.

### FINDINGS OF FACT

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

1. The Claimant, his wife, and their two children were receiving Food Stamp benefits in October 2010. (Ex. 1)
2. The Claimant's wife began working on October 9, 2010. (Ex. 2.19)
3. The Division received a Food Stamp recertification application from the Claimant on October 11, 2010. (Exs. 2.6 – 2.11) That recertification application stated that no one in the household was employed, i.e. it did not inform the Division that the Claimant's wife began working on October 9, 2010. (Ex. 2.7)
4. The Claimant participated in an October 13, 2010 intake interview with regard to his Food Stamp recertification application. (Ex. 2.5) During that interview, he stated that his wife was not working. *Id.*
5. The Claimant notified the Division on November 1, 2010 that his wife was employed part-time. (Ex. 2.13)
6. The Claimant was receiving \$584.80 per month in unemployment benefits in October 2010 through December 2010. (Exs. 2.0, 2.5) During this same period of time, the Claimant had no rental or mortgage payment and his monthly real estate taxes were \$2.61 (\$31.34 per year). (Ex. 2.0) His home was heated with propane and the household used a generator for electricity. *Id.*
7. The Division issued the Claimant monthly Food Stamp benefits in the amount of \$741<sup>1</sup> during each of the months of November and December 2010. (Ex. 18.1) Those benefits were issued for a four person household with monthly unemployment income of \$584 and monthly excess shelter costs<sup>2</sup> (rent/mortgage/taxes/utilities) of \$155. (Ex. 3.5)
8. The Claimant's wife earned actual gross wages of \$1,330.35 in November 2010. (Ex. 2.2) She earned actual gross wages of \$2,006.69 in December 2010. *Id.*

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<sup>1</sup> The Claimant testified that he did not believe that he received this amount of Food Stamp benefits. However, the Division submitted a computer printout proving the Claimant's household was issued \$741 in Food Stamp benefits on both November 1, 2010 and December 1, 2010. (Ex. 18.1)

<sup>2</sup> A Food Stamp recipient is entitled to an income deduction for Food Stamp benefit calculation purposes if his total shelter costs are greater than one-half of his adjusted income. *See* 7 C.F.R. 27310(e)(1)(i)(H) and (I).

9. On May 31, 2011, the Division sent the Claimant notice that he had been overpaid \$780 (\$390 per month) total in Food Stamp benefits during November and December 2010.<sup>3</sup> (Exs. 3.0 – 3.11) The Division’s notice explained that the overpayment was caused “because [the Claimant] did not report that [his wife] was working” and that he received a total of \$1,482 (\$741 per month) in benefits when he should have only received \$702 (\$351 per month) in benefits. (Exs. 3.0, 3.5)

The Division’s calculations of the amount allegedly overpaid were based upon a household of 4 persons with total monthly household income of \$2,014 (husband’s unemployment income of \$584 and the wife’s averaged gross monthly employment income based upon November 2010 average wages of \$1,430.13) and no excess shelter costs for each of the months of November and December 2010. (Exs. 2.1, 2.18, 3.5) In that calculation, the Division provided the Claimant with a 20 percent earned income deduction (\$286) during each of the months of November and December 2010. (Ex. 3.5)

10. The Claimant requested a fair hearing on August 26, 2011. (Ex. 4)

11. The Division scheduled the Claimant’s hearing for September 20, 2011.

12. On September 13, 2011, the Division sent the Claimant a corrected notice that he had been overpaid \$1,095 total in Food Stamp benefits during November (\$446) and December (649) 2010.<sup>4</sup> (Exs. 5.0 – 5.7, 5.18 – 5.19, 5.24 – 5.25) The Division’s notice explained that the overpayment was caused “because [the Claimant] did not report that [his wife] was working” and that he received a total of \$1,482 (\$741 per month) in benefits when he should have only received \$387 (\$295 for November 2010 and \$92 for December 2010) in benefits. (Exs. 5.0, 5.7)

The Division’s calculations of the amount allegedly overpaid were based upon a household of 4 persons with total gross monthly household income for November 2010 of \$1,915.15 (Claimant’s unemployment income of \$584.80 and the wife’s actual gross wages of \$1,330.35) and total gross monthly household income for December 2010 of \$2,591.49 (Claimant’s unemployment income of \$584.80 and the wife’s actual gross wages of \$2,006.69) and no excess shelter costs for either month (Exs. 5.9, 5.7, 5.18, 5.24) In that calculation, the Division did not provide Claimant with a 20 percent earned income deduction (\$286) during either of the months of November and December 2010. (Exs. 5.18, 5.24)

13. The Claimant did not disagree with either the underlying income or expense figures used by the Division in its calculations.

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<sup>3</sup> The Division originally alleged that the Claimant had also received excess Food Stamp benefits for the month of October 2010. (Ex. 3.0) However, the Division withdrew the October 2010 claim after the October 25, 2011 hearing. (Ex. 18.0)

<sup>4</sup> The Division originally alleged that the Claimant had also received excess Food Stamp benefits for the month of October 2010. (Ex. 5.0) However, the Division withdrew the October 2010 claim after the October 25, 2011 hearing. (Ex. 18.0)

## 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 C.F.R. 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining whether a Food Stamp household is eligible to receive Food Stamp benefits. Food Stamp benefit amounts are calculated based upon the gross amount of monthly income received by all household members. 7 C.F.R. 273.9(e).

A household is entitled to certain deductions from income when Food Stamp benefit amounts are calculated. Those deductions include a standard deduction of \$243 and a deduction equal to 20 percent of the household’s earned income.<sup>5</sup> 7 C.F.R. 273.9(e)(1)(B) and (C); *Alaska Food Stamp Manual Addendum 4*. If a household’s shelter costs (rent/mortgage/taxes/utilities) are greater than 50 percent of household’s income after the other deductions (standard deduction and earned income deduction), then the household is entitled to a deduction for the amount of shelter costs that exceed that 50 percent figure (excess shelter costs). 7 C.F.R. 273.9(e)(1)(H).

An agency “must establish and collect any claim” for overpaid Food Stamp benefits issued. 7 C.F.R. 273.18(a)(1)(i); 7 C.F.R. 273.18(a)(2). *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). Adult members of the Food Stamp recipient’s household are the persons responsible for repaying overpaid Food Stamp benefits. 7 C.F.R. 273.18(a)(4)(i).

If a Food Stamp benefit overpayment claim is based upon a Food Stamp household’s failure to timely report its earned income, the household is not allowed the 20 percent earned income deduction when the overpayment amount is calculated. 7 C.F.R. 273.18(c)(ii)(B). However, the 20 percent earned income deduction is allowed for the months after the Division becomes aware of the household’s earned income, as the following example from the Division’s *Food Stamp Manual* demonstrates:

A household is approved in November and benefits are based on Jane’s unemployment benefits (\$100 weekly x 4.3). In January the caseworker learns that Pete had been working since October. When determining the correct benefits for November, December and January, count Pete’s actual earned income received during November and December and the estimated income he expects to receive in January, Add these amounts to the \$430 monthly unemployment benefits. The household is not entitled to the 20% earned income deduction for

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<sup>5</sup> There are a number of deductions allowed from gross income. The deductions are listed in 7 C.F.R. 273.9(e). The only deductions applicable to this case are the standard deduction of \$243, the earned income deduction, and the excess shelter cost deduction.

Pete's earnings in determining the overpayment amount for November, December and January. The 20% earned income deduction is allowed beginning February.

*Alaska Food Stamp Manual Section 607-1A.*

### ANALYSIS

The issue in this case is whether the Division was correct to request the Claimant to repay \$1,095 in Food Stamp benefit payments that were allegedly overpaid to the Claimant during November and December 2010.

The Division has the burden of proof, by a preponderance of the evidence, on this issue because it is the party seeking to change the status quo by requesting repayment.

The established facts relevant to this case are as follows:

- a. The Claimant has a four person household. The Claimant's wife began working on October 9, 2010. Prior to that time, the only household income was the Claimant's monthly unemployment payment of \$584.80. *See Findings of Fact 1, 2, and 6 above.*
- b. The Claimant did not tell the Division that his wife was working until November 1, 2010. *See Finding of Fact 5 above.*
- c. The household's total gross monthly income for November 2010 was \$1,915.15 (Claimant's unemployment income of \$584.80 and the wife's actual gross wages of \$1,330.35). *See Findings of Fact 6 and 8 above.*
- d. The household's total gross monthly household income for December 2010 was \$2,591.49 (Claimant's unemployment income of \$584.80 and the wife's actual gross wages of \$2,006.69) *See Findings of Fact 6 and 8 above.*
- e. The Division issued the Claimant Food Stamp benefits in the amount of \$741 per month during November and December 201. That amount was the benefit level for a four person household with household income of only \$584 per month (the Claimant's unemployment income). *See Finding of Fact 7 above.*

#### I. Repayment

The facts, as stated above, show that the Division issued the Claimant Food Stamp benefits for November and December 2010 based only on his income of \$584.80 per month. Because Food Stamp benefits are calculated upon the entire household income, this means that the Claimant should have received Food Stamp benefits based upon his total household income, i.e. \$1,915.15 for November 2010 (Claimant's unemployment income of \$584.80 and the wife's actual gross wages of \$1,330.35), and \$2,591.49 for December 2010 (Claimant's unemployment income of \$584.80 and the wife's actual gross wages of \$2,006.69). This means that the Division over

issued benefits to the Claimant because it did not take the entire household's income into account for those two months.

On its face, the Claimant received too much in Food Stamp benefits for the months of November and December 2010. The Division is therefore required to recover the overpaid amount. 7 C.F.R. 273.18(a)(1)(i); 7 C.F.R. 273.18(a)(2).

## II. Repayment Amount.

### A. November 2010.

The Division determined the Claimant's repayment obligation by first calculating the Claimant's household's total income for November 2010. That amount was \$1,915.15 (Claimant's unemployment income of \$584.80 and the wife's actual gross wages of \$1,330.35). The Division then calculated that the Claimant should have received only \$295 in Food Stamp benefits whereas he received \$741. *See* Finding of Fact 12 above. This is an overpayment of \$446.

In its calculations, the Division did not allow the Claimant either a 20 percent earned income deduction or an excess shelter cost deduction. *See* Finding of Fact 12 above. The Division was correct to not allow the Claimant a 20 percent earned income deduction because the November 2010 overpayment was caused by the Claimant's failure to timely report his wife's employment income.<sup>6</sup> *See* 7 C.F.R. 273.18(c)(ii)(B) (If a Food Stamp benefit overpayment claim is based upon a Food Stamp household's failure to timely report its earned income, the household is not allowed the 20 percent earned income deduction when the overpayment amount is calculated).

The Division was also correct to not provide the Claimant with an excess shelter cost deduction. This is because the Division's calculations for November 2010 (contained in Ex. 5.18 – 5.19), show that the Claimant was not entitled to an excess shelter cost deduction because the shelter costs did not exceed one-half of his household income after other deductions were applied. *See* 7 C.F.R. 273.9(e)(1)(H).

Because the Claimant's gross household income for November 2010 was \$1,915.15, and because he was not entitled to either an earned income deduction or an excess shelter cost deduction, the Claimant was only entitled to receive a total of \$295 in Food Stamp benefits for the month of November 2010. *See* Ex. 5.18 – 5.19. However, the Claimant received a total of \$741 in Food Stamp benefits for the month of November 2010. The Division has therefore met its burden of proof by a preponderance of the evidence and established that the Claimant was overpaid \$446 ( $\$741 - \$295 = \$446$ ) in Food Stamp benefits for the month of November 2010.

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<sup>6</sup> If the Claimant had reported his wife's October 9, 2010 employment start date on either his October 11, 2010 Food Stamp recertification application or during his October 13, 2010 intake interview, the Division would have time to calculate the correct amount of his November 2010 Food Stamp benefits before they were issued.

B. December 2010.

The Division determined the Claimant's repayment obligation by calculating the Claimant's household's total income for December 2010. That amount was \$2,591.49 (Claimant's unemployment income of \$584.80 and the wife's actual gross wages of \$2,006.69). The Division calculated that the Claimant should have received only \$92 in Food Stamp benefits whereas he received \$741. *See* Finding of Fact 12 above. This is an overpayment of \$649.

In its calculations, the Division did not allow the Claimant either a 20 percent earned income deduction or an excess shelter cost deduction. *See* Finding of Fact 12 above. The Division was not correct to disallow the Claimant a 20 percent earned income deduction because the Claimant notified the Division of his wife's employment on November 1, 2010. This gave the Division ample time to calculate the correct amount of his December 2010 Food Stamp benefits before they were issued. *See Alaska Food Stamp Manual* Section 607-1A.

When the Claimant is provided with the 20 percent earned income deduction, his monthly net income comes to \$1,947.15. The undersigned's calculations are contained in Appendix 1. The Claimant is not eligible for an excess shelter cost deduction because the shelter costs did not exceed one-half of his household income after other deductions were applied. *See* Appendix 1, p. 1. As a result, the Claimant should have received \$212 in Food Stamp benefits for the month of December 2010.<sup>7</sup> *See* Appendix 1, p. 2.

Because the Claimant's gross household income for December 2010 was \$2,591.49, and because he was entitled to an earned income deduction, but not an excess shelter cost deduction, the Claimant was only entitled to receive a total of \$212 in Food Stamp benefits for the month of December 2010. *See* Appendix 1. However, the Claimant received a total of \$741 in Food Stamp benefits for the month of December 2010. The Division has therefore met its burden of proof by a preponderance of the evidence and established that the Claimant was overpaid Food Stamp benefits for the month of December. However, the amount of the overpayment was \$529 (\$741 - \$212 = \$529) rather than the \$649 amount asserted by the Division.

### **CONCLUSIONS OF LAW**

1. The Division met its burden of proof and demonstrated that the Claimant was overpaid Food Stamp benefits for the months of November and December 2010.
2. The Division is legally required to recover the overpaid Food Stamp benefits. 7 C.F.R. 273.18(a)(1)(i); 7 C.F.R. 273.18(a)(2). *Also see Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)
3. The Division was correct to not provide the Claimant with either a 20 percent earned income deduction or an excess shelter cost deduction for the month of November 2010. As a result, the Food Stamp benefit overpaid amount for November 2010 was \$446.

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<sup>7</sup> If the Division disagrees with the December 2010 benefit calculations contained in Appendix 1, it may file a Motion for Reconsideration within 10 days of the date of this Decision.

4. The Division was not correct when it did not provide the Claimant with a 20 percent earned income deduction for the month of December 2010. However, the Claimant was not entitled to an excess shelter deduction for the month of December 2010. As a result, the Food Stamp benefit overpaid amount for December 2010 was \$529.
5. The Claimant is required to repay the Division a total of \$975 ( $\$446 + \$529 = \$975$ ) for Food Stamp benefits that he was overpaid in the months of November and December 2010.

### DECISION

The Division was correct to require the Claimant to repay Food Stamp benefit payments that were overpaid to the Claimant during the months of November and December 2010. The repayment amount is \$975.

### 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. 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. To appeal, 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

DATED this 29th day of November, 2011.

    /Signed/      
Larry Pederson  
Hearing Authority

#### Certificate of Service

I certify that on this 29th day of November, 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:

██████████, Public Assistance Analyst  
██████████, Public Assistance Analyst  
██████████, Policy & Program Development  
██████████, Staff Development & Training  
██████████, Administrative Assistant II

    /signed/      
Larry Pederson