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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-328  
\_\_\_\_\_  
Claimant. ) Division Case No. [REDACTED]

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED] (Claimant) was a recipient of the Food Stamp Program<sup>1</sup> (Program). (Ex. 1) On August 17, 2011, the Division of Public Assistance (Division) notified Claimant in writing that she had been overpaid \$766 of Program benefits for the months of April 2011 through July 2011 and it was seeking reimbursement of \$766. (Ex. 3)

On September 12, 2011, Claimant requested a Fair Hearing. (Ex. 4) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 AAC 49.010 and 7 C.F.R. § 273.15.

Claimant's Fair Hearing was held on October 6, 2011 and concluded on November 16, 2011. On both days, Claimant appeared telephonically, represented herself, and testified on her own behalf. Mr. [REDACTED], the Division's Public Assistance Analyst, appeared in person, represented the Division, and testified on its behalf. All offered exhibits were admitted.

**ISSUE**

Was the Division correct to seek reimbursement from Claimant of \$766 of Food Stamp benefits which allegedly were overpaid to her household for the months of April 2011 through July 2011?

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<sup>1</sup> 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 such in this decision.

## FINDINGS OF FACT

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

1. Claimant's household was receiving Food Stamp Program (Program) benefits. (Ex. 1) Claimant's household consisted of herself and her two sons, ages 9 and 7. (Claimant's testimony)
2. On March 11, 2011 the Division of Public Assistance (Division) received a Change Report Form signed that same day by Claimant. (Exs. 2.2-2.3)
3. On the Change Report Form, Claimant advised the Division that the father of her two sons (Dad) had moved into her household and that she wanted him included in the household's Food Stamp case.<sup>2</sup> (Exs. 2.2-2.3)
4. On March 11, 2011 the Division discussed the reported changes with Claimant and learned that Dad had just been released from 4 years of incarceration. (Ex. 2.1) The Eligibility Technician talking with Claimant did not ask if Dad had been convicted of a drug related felony. (Claimant's testimony)
5. The Division added Dad to Claimant's household effective April 1, 2011. (Ex. 2.1) Claimant's household received additional benefits each month between April 2011 and July 2011, as a result of Dad being included in the household. (Ex. 5)
6. On July 8, 2011 the Division learned that Dad had been convicted of a drug related felony which the Division believed to be a felony charge from December 29, 2005. (Ex. 2) The Division could not acquire documentary proof of a conviction in Sitka, AK in time for the Fair Hearing on November 16, 2011. (Division's Hearing Representative) On April 11, 1997, Dad was convicted of Misconduct Involving a Controlled Substance in the Third Degree for behavior occurring on October 8, 1996. (Exs. 17-17.4) On February 8, 2008 Dad was convicted of Third Degree Misconduct Involving A Controlled Substance in violation of AS 11.71.030(a)(1) for behavior occurring on March 9, 2005. (Exs. 17.5-17.6)
7. On July 8, 2011 the Division determined Claimant had been overpaid \$194 in April 2011 and May 2011 and \$189 in June 2011 and July 2011, for a total of \$766, because of the erroneous issuance of Food Stamps to Dad as the fourth member of the household. (Exs. 3.5-3.7, 3.11-3.12)
8. On August 17, 2011 Claimant was notified in writing she had been issued \$766 in overpaid Food Stamp benefits for the months of April through July 2011. (Ex. 3) This notice also informed Claimant the overpayment was the result of "Inadvertent Agency Error" and that the Division was seeking to recover \$766 according to federal law. (Ex. 3)
9. Claimant did not dispute the Division's calculations of the overpayment amount. (Claimant's testimony) Claimant asserted she did not ask Dad about the details of Dad's incarceration, had been separated from him since their children were about 3-4 years old, and therefore did not know he had been convicted of a drug related felony. (Claimant's testimony)

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<sup>2</sup> Claimant's change report requested the change apply to the household's Medicaid benefits and also declared new housing costs and a new home address. (Ex. 2.3)

## 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. *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)).

### III. Food Stamp Program

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.

Alaska regulation 7 AAC 46.010, in part also provides: “Federal food stamp program regulations, including subsequent changes, at 7 C.F.R. 271-274 are adopted by reference.” “The division administers the [Alaska] food stamp program in accordance with the Food stamp Act of 1977, as amended (7 U.S.C. 2011 – 2029) and federal regulations promulgated under the Food Stamp Act of 1977, as amended....” 7 AAC 46.010.

#### A. Persons convicted of drug related felonies are not eligible for Food Stamps.

Food Stamp regulation 7 C.F.R. § 273.1(b)(7)(vii) states: “Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction ” may not receive Food Stamp benefits.

Regulation 7 C.F.R. § 273.11(m) states, in relevant part:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting

the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to conviction based on behavior which occurred after August 22, 1996.

7 C.F.R. § 273.11(m) (emphasis in original).

The Alaska State legislature has not enacted legislation limiting the lifetime disqualification from Food Stamp benefits which applies to individuals convicted of drug related felonies that occurred after August 22, 1996.

Alaska Statute 11.71.030(a)(1) “Misconduct Involving a Controlled Substance in the Third Degree” criminalizes the manufacture or delivery of any amount of a schedule IIA or IIIA controlled substance or possession of any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver it. “Misconduct involving a controlled substance in the third degree is a class B felony.” AS 11.71.030(c).

### B. Overpaid benefits.

When Food Stamp benefits are paid 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 identifies three sources from which a Federal claim may arise: 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 C.F.R. § 273.18(b).

Under Food Stamp regulation 7 C.F.R. § 273.18, it does not matter why the overpayment occurred: fault is immaterial. Regulation 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. 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).

## ANALYSIS

### I. Issue

Claimant argues she should not have to repay Food Stamps overpaid to her household because she did not know Dad was not eligible for Food Stamps. 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 \$766 of Food Stamp benefits which were overpaid to Claimant household between April 2011 and July 2011.

## 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. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits and that she must reimburse the State in the amount of the benefits she was overpaid.

## III. Repayment of Overpaid Food Stamp Program Benefits.

The parties did not dispute that: 1) Claimant was overpaid Food Stamp benefits in the amount of \$766; and 2) the overpayment resulted from the Division’s inadvertent error of issuing Food Stamps for Claimant’s son’s father (Dad), as a fourth member of the household, in the months of April 2011, May 2011, June 2011 and July 2011, when Dad was not eligible to receive Food Stamps. It is undisputed the Division’s Eligibility Technician did not ask if Dad had been convicted of a drug related felony and that Claimant did not disclose that fact.

The Division asserts it has no choice but to collect the overpaid Food Stamps because recovery of the overpayment is required by the federal Food Stamp regulations. The Division asserts that Dad has been convicted of at least two drug related felony crimes for behavior occurring after August 22, 1996.

Claimant asserts the overpayment was not her fault because she did not know that Dad had been jailed because he was convicted of a drug related felony crime. Claimant seeks to avoid repaying the \$766 of overpaid benefits for these reasons.

The issue is can Claimant be required to repay the \$766 of overpaid Food Stamp Program benefits notwithstanding that the overpayment was the result of the Division’s inadvertent error?

### A. Dad is permanently disqualified from eligibility to receive Food Stamps as an individual or as a member of a household.

Regulation 7 C.F.R. § 273.11(m) provides that persons convicted of drug related felony crimes for behavior occurring after August 22, 1996 are disqualified from receiving Food Stamps permanently, unless the legislature of the state of their residence has enacted legislation limiting the period of disqualification.

The Division provided documentary proof that Dad had been convicted in Alaska of two drug related felony crimes for Misconduct Involved a Controlled Substance in the Third Degree. The first conviction was a class B drug related felony on April 11, 1997, for behavior occurring on October 8, 1996. (Exs. 17- 17.4) The second conviction was a class B drug related felony on February 8, 2008, for behavior occurring March 9, 2005. *See* Finding of Fact 6. Both of these convictions are of the type identified in 7 C.F.R. § 273.11(m), which permanently disqualify the convicted person from eligibility for Food Stamps.

Therefore, the Division was correct to determine that Dad was not eligible to receive Food Stamps during the months of April 2011 through July 2011.

B. The Division was correct to seek repayment of Food Stamp benefits paid in error.

Because the Division was incorrect to pay Food Stamp benefits for Dad, Claimant's household received benefits to which it was not entitled. Claimant argued that she did not know Dad had been convicted of a drug-related felony when she requested he receive Food Stamp benefits as a member of her household. Claimant argued that until he returned to the household, she had lost contact with him for about 4 ½ years. Because federal law is clear that the reason for occurrence of an overpayment is immaterial, Claimant's argument does not overcome the Division's evidence of overpaid benefits. Moreover, the Division admitted the overpayment resulted from its inadvertent error.

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). Food Stamp regulation 7 C.F.R. § 273.18(a)(1) states: "[a] recipient claim is an amount owed because of: (i) [b]enefits that are overpaid ...." Here, it is undisputed Claimant was overpaid a total of \$766 for the months of April through July 2011. The overpaid benefits are a federal claim that must be repaid, and the State agency must establish and collect any claim arising from overpayment of Food Stamp benefits. 7 C.F.R. § 273.18(a). 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).

The Division is required to seek reimbursement of overpaid Food Stamps. 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.<sup>3</sup> 7 C.F.R. § 273.18(a)(2).

Therefore, the Division did not err in seeking Claimant's reimbursement of the \$766 of Food Stamps overpaid.

**CONCLUSIONS OF LAW**

1. The Division has met its burden of proving by a preponderance of the evidence that Claimant was overpaid a total of \$766 in Food Stamps for the months of April 2011, May 2011, June 2011 and July 2011 because it issued Food Stamp benefits to Claimant's son's father as a member of the household, when he was not eligible to receive Food Stamps. 7 C.F.R. § 273.11(m)

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 her, irrespective of why the overpayment occurred.

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<sup>3</sup> Once a reimbursement claim has been established, the claim may be compromised if special circumstances are shown to exist. 7 C.F.R. § 273.18(e)(7), (8).

## DECISION

The Division was correct to seek reimbursement from Claimant of \$766 of excess Food Stamps paid to Claimant's household in April 2011, May 2011, June 2011 and July 2011.

## 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 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

DATED December 19, 2011.


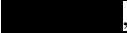
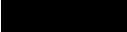
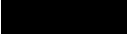
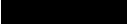
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Claire Steffens  
Hearing Authority

## CERTIFICATE OF SERVICE

I certify that on December 19, 2011 true and correct copies of the foregoing were sent to:

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

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

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