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

In the Matter of	)	
	)	
<span style="background-color: black; color: black;">[REDACTED]</span> ,	)	OHA Case No. 11-FH-474
	)	
Claimant.	)	Division Case No. <span style="background-color: black; color: black;">[REDACTED]</span>
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) is a Food Stamp<sup>1</sup> recipient. (Ex. 1) On November 8, 2011, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$379 in Food Stamp benefits that she had allegedly mistakenly received during the months of July and August 2011. (Exs. 5.1 – 5.12) The Claimant requested a fair hearing on November 17, 2011. (Ex. 6.2)

The Division sent the Claimant a supplemental notice on December 6, 2011, that it was requesting repayment of \$470 (after an offset of \$68) in Food Stamp benefits that she had allegedly mistakenly received during the months of June, July and August 2011. (Exs. 9.0 – 9.5)

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

The Claimant's hearing was held on January 3, 2012. The Claimant appeared telephonically; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

**STATEMENT OF ISSUES**

The overall issue in this case is whether the Division was correct to request that the Claimant repay it \$470 (after application of a \$68 offset) in Food Stamp benefit payments that were

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). However, the common usage refers to the program as the Food Stamp program, which usage this decision also follows.

allegedly mistakenly overpaid to the Claimant during the months of June, July and August 2011. The Division agreed that the overpayment was caused by its own error, not the Claimant's. The Division agreed, both prior to the hearing and at hearing, to reduce the amount due to \$360.

The Claimant disagreed with the Division and raised several arguments in response. Her arguments raised the following sub-issues:

1. What amount of Food Stamp benefits, if any, were overpaid to the Claimant?
2. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were allegedly overpaid to the Claimant during June, July and August 2011, even though the overpayment was caused by the Division's mistake?
3. Does the fact that the Claimant is a diabetic, who requires a special diet, entitle her to have the alleged overpayment forgiven?

### **FINDINGS OF FACT**

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

1. The Claimant was receiving Food Stamp benefits for her one-person household in May 2011. (Ex. 1)
2. On May 16, 2011, the Claimant notified the Division that she moved and that her rent had decreased. (Ex. 2) The Division contacted the landlord on May 16, 2011 and verified that the Claimant's monthly rent, which included utilities, was \$267. *Id.*
3. The Division was informed, on August 17, 2011, that the Claimant's monthly Social Security Supplemental Security Income (SSI) had increased from \$449.34 to \$674 beginning with the month of August 2011. (Ex. 3)
4. The Division reviewed the Claimant's Food Stamp case on September 26, 2011. (Exs. 4.0, 5.11) In its review, the Division determined that it had not acted on the Claimant's financial changes (rental decrease and SSI increase), which then caused the Claimant to receive \$159 more in Food Stamp benefits than she should have for July 2011 and \$220 more in Food Stamp benefits than she should have for August 2011. *Id.*
5. On November 9, 2011, the Division sent the Claimant written notification that it was requesting repayment of \$379 in Food Stamp benefits that she had allegedly mistakenly received during July and August 2011. (Exs. 5.1 – 5.12) The Division's notice explained that the overpayment was caused "because the agency did not act on the report of a rent decrease or a report of your social security increasing." (Ex. 5.1) The Division's notice contained the following information supporting its calculation of the amount allegedly overpaid:

<u>Month</u>	<u>Income</u> <sup>2</sup>	<u>Shelter Cost Deduction</u>	<u>Food Stamp Amt Rec'd</u>	<u>Food Stamp Amt Entitled</u>	<u>Food Stamp Amt Overpaid</u>
July 2011	\$ 817	\$6 <sup>3</sup>	\$227	\$68	\$159
August 2011	\$1,042	\$-0 <sup>-4</sup>	\$239	\$19	\$220

(Ex. 5.6) The notice proposed that the Division repay itself the amount due by reducing the Claimant's monthly Food Stamp allotment by "10% or \$10, whichever is more and apply this to your overpayment balance." (Ex. 5.1)

6. The Division received both a hearing request and a request that the Division reduce the amount allegedly due from the Claimant on November 18, 2011. (Exs. 7.0 – 7.5)

7. On November 18, 2011, the Division agreed to compromise the amount allegedly due and reduce it to \$360. (Ex. 7.6)

8. A computer printout generated by the Division on December 5, 2011 showed the Claimant had been underpaid benefits as follows:

<u>Month</u>	<u>Amount</u>
February 2011	\$22
March 2011	\$22
April 2011	\$12
May 2011	\$12
June 2011	<u>\$12</u>
Total	\$80

(Ex. 8.4)

9. On December 6, 2011, the Division sent the Claimant written notification, which replaced its early November 9, 2011 notice. (Exs. 9.0 – 9.4) The December 6, 2011 notice indicated that the Claimant had been overpaid a total of \$538 for the months of June, July, and August 2011. (Ex. 9) However, the notice further stated that the Claimant had been underpaid in February through May of 2011 in the amount of \$68, which resulted in a net alleged overpayment of \$470. *Id.* The Division's December 6, 2011 notice did not contain its

<sup>2</sup> Alaska Adult Public Assistance income and SSI income.

<sup>3</sup>The actual calculations resulting in the shelter cost deduction for July 2011 are contained in the Division's Exhibit 4.16. They are based on rent of \$267 and a telephone allowance of \$27. The shelter cost deduction is correct based upon total monthly income of \$817 (SSI of \$449 and Adult Public Assistance of \$368). *See* Ex. 8.3.

<sup>4</sup> The actual calculations resulting in the shelter cost deduction for August 2011 are contained in the Division's Exhibit 4.22. They are based on rent of \$267 and a telephone allowance of \$27. The shelter cost deduction is correct based upon total monthly income of \$1,042 (SSI of \$674 and Adult Public Assistance of \$368). *See* Exs. 8.3.

calculations, nor did it contain an amount specifically attributable to the month of June 2011. (Exs. 9.0 – 9.4) The notice proposed that the Division repay itself the amount due by reducing the Claimant’s monthly Food Stamp allotment by “10% or \$10, whichever is more and apply this to your overpayment balance.” (Exs. 9.0 – 9.1)

10. The Claimant did not dispute the income and expense figures used by the Division in its overpayment calculations. Nor did she dispute that she received the Food Stamp benefits listed by the Division. The Claimant, however, is a diabetic who requires a special diet which is expensive. (Claimant testimony) Requiring her to repay the Division would be a hardship for her. *Id.*

### **PRINCIPLES OF LAW**

A party who is 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 normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *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).

A party who raises an affirmative defense to a claim has the burden of proof with regard to that affirmative defense. *Agen v State, Dept of Revenue, Child Support Enforcement Div*, 945 P.2d 1215, 1220 (Alaska 1997).

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 and upon the number of people living in the household. 7 C.F.R. § 273.9(e); 7 C.F.R § 273.10(e)(2)(ii)(a).

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, 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 overpaid Food Stamp benefits. 7 C.F.R. § 273.18(a)(4)(i).

The federal Food Stamp regulations provide the Division with the ability to compromise (reduce) Food Stamp repayment claims:

(7) *Compromising claims.* (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household’s economic circumstances dictate that the claim will not be paid in three years.

7 C.F.R. § 273.18(e)(7) (emphasis in original). The term “may” used in the regulation means that the decision whether to compromise an overpayment claim is subject to the Division’s discretion.

The normal collection process requires that if the Division elects to pursue an overpayment claim resulting from agency error, the Division may collect the claim by reducing ongoing benefit payments by “the greater of \$10 per month or 10 percent of the household’s monthly allotment.” 7 C.F.R. § 273.18(f)(1) and (g)(1)(iii).

### ANALYSIS

The primary issue in this case is whether the Division was correct to request the Claimant to repay \$470 (after an offset of \$68) in Food Stamp benefits that she had allegedly mistakenly received during the months of June, July, and August 2011. There are three sub-issues, each of which is addressed separately below:

1. What amount of Food Stamp benefits, if any, were overpaid to the Claimant?
2. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were allegedly overpaid to the Claimant during June, July and August 2011, even though the overpayment was caused by the Division’s mistake?
3. Does the fact that the Claimant is a diabetic, who requires a special diet, entitle her to have the alleged overpayment forgiven?

1. What amount of Food Stamp benefits, if any, were overpaid to the Claimant?

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. *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).

#### A. June 2011.

The Division sent the Claimant notice on December 6, 2011 that she had been overpaid Food Stamp benefits for June 2011. *See* Finding of Fact 9 above. The Division’s December 6, 2011 notice did not contain its calculations, nor did it contain an amount specifically attributable to the month of June 2011. *Id.*

It is possible to arrive at the alleged overpayment for June 2011 by taking the amount allegedly overdue for June, July, and August 2011 (\$538) and subtracting the amount allegedly overdue for July and August 2011 (\$379). *See* Findings of Fact 5 and 9 above. This amount is \$159 (\$538 - \$379 = \$159). However, the Division has a printout dated December 5, 2011, just the day before the Division’s December 6, 2011 repayment notice, indicating that the Claimant was underpaid Food Stamp benefits for June 2011 in the amount of \$12. *See* Finding of Fact 8 above.

In other words, the Division’s own evidence contains a significant discrepancy. In a December 5, 2011 printout, the Division has an underpayment of \$12 for June 2011. The Division’s December

6, 2011 repayment notice, which does not contain calculations, then states there is an overpayment for June 2011, but does not specify the amount due. *See* Findings of Fact 8 and 9 above. This discrepancy between an underpayment (\$12) and an overpayment (unspecified), results in the Division quite simply not meeting its burden of proof with regard to June 2011. As a result, the Division has not established that the Claimant was overpaid Food Stamp benefits during June 2011.<sup>5</sup>

B. July 2011.

The Division sent the Claimant written notification on November 9, 2011, that she had received \$227 in Food Stamp benefits for July 2011, when she was only entitled to receive \$68, which resulted in an overpayment of \$159 in Food Stamp benefits for that month. *See* Finding of Fact 5 above. The Division's notice contained both the reason for the overpayment, the amount of the overpayment, and the Division's calculations. *Id.*

The Claimant did not dispute that she received the Food Stamp benefits. Nor did she disagree with the figures the Division used in its calculations of the Food Stamp benefit actually due. *See* Finding of Fact 10 above. The Division therefore met its burden of proof with regard to the month of July 2011.<sup>6</sup> It established that the Claimant received an overpayment of \$159 in Food Stamp benefits for July 2011, because she received \$227 when she was only entitled to receive \$68.

C. August 2011.

The Division sent the Claimant written notification on November 9, 2011, that she had received \$239 in Food Stamp benefits for August 2011, when she was only entitled to receive \$19, which resulted in an overpayment of \$220 in Food Stamp benefits for that month. *See* Finding of Fact 5 above. The Division's notice contained both the reason for the overpayment, the amount of the overpayment, and the Division's calculations. *Id.*

The Claimant did not dispute that she received the Food Stamp benefits. Nor did she disagree with the figures the Division used in its calculations of the Food Stamp benefit actually due. *See* Finding of Fact 10 above. The Division therefore met its burden of proof with regard to the month of August 2011.<sup>7</sup> It established that the Claimant received an overpayment of \$220 in Food Stamp benefits for August 2011, because she received \$239 when she was only entitled to receive \$19.

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<sup>5</sup> The Division is also advised that its December 6, 2011 notice in this case was procedurally defective. It failed to meet the notice standards enunciated in *Allen v. State, DHSS*, 203 P.3d 1155, 1169 - 1170 (Alaska, 2009), specifically providing how the amount allegedly due was calculated before the hearing was requested. As the Alaska Court stated "giving notice that complies with the regulations is a **prerequisite** to bringing a recoupment action." *Id.* at 1169 (emphasis supplied).

<sup>6</sup> The undersigned has independently reviewed the Division's calculations of what Food Stamp benefits the Claimant was entitled to receive in July 2011, as contained in the Division's Exhibit 4.16, and found them to be correct.

<sup>7</sup> The undersigned has independently reviewed the Division's calculations of what Food Stamp benefits the Claimant was entitled to receive in August 2011, as contained in the Division's Exhibit 4.22, and found them to be correct.

#### D. Overpayment Summary

As the above discussion demonstrates, the Division established that the Claimant was overpaid a total of \$379 in Food Stamp benefits for the months of July and August 2011. The Division did not establish that the Claimant was overpaid Food Stamp benefits for June 2011.

In its December 6, 2011 collection notice, the Division acknowledged the Claimant was underpaid a total of \$68 for the months of February through May 2011. *See* Findings of Fact 8 and 9 above. The Claimant is therefore entitled to a \$68 deduction from the \$379 due for July and August 2011.<sup>8</sup> This results in the Division having a net \$311 Food Stamp overpayment claim against the Claimant for July and August 2011.

2. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were overpaid to the Claimant during July and August 2011, even though the overpayment was caused by the Division's mistake?

The Division has the burden of proof on this issue, because it is the party seeking to change the status quo by recovering an overpayment. *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).

The Division acknowledged that the Food Stamp benefit overpayments occurred due to its mistake, when it failed to timely act when it was informed that Claimant's rent had decreased and her SSI monthly income had increased. *See* Finding of Fact 5 above. The Claimant argued she should not be required to repay excess Food Stamp benefits she received because the Division made a mistake.

This argument raises a purely legal question. The federal Food Stamp regulations are clear that the Division is required to collect Food Stamp overpayments: 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). The Alaska Supreme Court has also dealt with this issue and ruled that the Division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is caused by Division's error. *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

As a result, the Division was correct to require that the Claimant repay Food Stamp benefits that were overpaid to her, even though the overpayment was caused by the Division's mistake.

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<sup>8</sup> It must be noted that the Division's December 5, 2011 printout also shows a \$12 underpayment for June 2011. *See* Finding of Fact 8 above. However, because the record contains information from the Division showing both an underpayment and an overpayment for June 2011, this Decision declines to award the Claimant a setoff of \$12 for June 2011.

3. Does the fact that the Claimant is a diabetic, who requires a special diet, entitle her to have the alleged overpayment forgiven?

The Claimant is requesting that an overpayment claim be compromised or forgiven due to her special circumstances. This is an affirmative defense to the Division's collection claim. The Claimant therefore has the burden of proof by a preponderance of the evidence on this issue. *Agan v State, Dept of Revenue, Child Support Enforcement Div*, 945 P.2d 1215, 1220 (Alaska 1997).

The Division agreed to compromise its overpayment claim to \$360 on November 18, 2011. *See* Finding of Fact 7 above. This was before the Division discovered that the Claimant had been underpaid \$68 in benefits for the months of February through May 2011. *See* Findings of Fact 8 and 9 above.

The federal Food Stamp regulations clearly provide the Division with discretion to compromise a claim:

As a State agency, you **may** compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

7 C.F.R. § 273.18(e)(7) (emphasis supplied).

The Claimant presented no evidence that the Division's agreement to compromise its total claim to \$360 was arbitrary or capricious. Nor did she show that the Division's policy was legally contrary to federal regulation 7 C.F.R. § 273.18(e)(7). Instead she testified that repayment would be a hardship for her because she required a special expensive diet as a result of her diabetes. *See* Finding of Fact 10 above.

The federal Food Stamp regulation, 7 C.F.R. § 273.18(e)(7), uses the term "may." The term "may" indicates discretion. The regulation further only requires the Division to **consider** compromise if "the claim will not be paid in three years." However, if the Claimant's monthly Food Stamp benefit amount is reduced by a minimum of \$10 per month, as indicated in both of the Division's collection letters (November 9, 2011 and December 6, 2011; Exs. 5.1, 9.0 – 9.1), this would pay off the debt in three years. As a result, the Division was not required to consider compromising the debt below \$360.

In summary, the Claimant did not meet her burden of proof on this issue. The Division was correct when it denied the Claimant's request for a compromise of the overpayment amount below \$360.<sup>9</sup>

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<sup>9</sup> The Claimant should be aware that the compromise issue may be not applicable to this case because, as found above, the total amount due and owing has been reduced, after application of the \$68 offset for February through May 2011 underpayments, to \$311.

## CONCLUSIONS OF LAW

1. The Division did not meet its burden of proof by a preponderance of the evidence with regard to the alleged overpayment of Food Stamp benefits for the month of June 2011. Accordingly, the Division is not entitled to collect a Food Stamp overpayment amount from the Claimant for the month of June 2011.
2. The Division met its burden of proof by a preponderance of the evidence and established that it was entitled, after application of a \$68 offset for February through May 2011 underpayments, to recover overpaid Food Stamp benefits from the Claimant in the net amount of \$311 for the months of July and August 2011.
3. The Division, as a matter of law, is entitled to recover July and August 2011 Food Stamp overpayments, even though the overpayment was caused by the Division's mistake.
4. The Claimant had the burden of proof by a preponderance of the evidence to establish that the Division abused its discretion in refusing to compromise her Food Stamp overpayment to an amount less than \$360. She did not meet her burden of proof.

## DECISION

The Division was not correct to require the Claimant to repay it for Food Stamp benefits she received in June 2011. The Division, however, was correct to require the Claimant to repay it for Food Stamp benefits she received in July and August 2011. The net amount due the Division, after application of a \$68 offset for Food Stamp benefits she was underpaid in February through May 2011, is \$311.

## 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 11th day of January 2012.

/Signed/  
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Larry Pederson  
Hearing Authority

