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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-483  
 ) Division Case No. [REDACTED]  
\_\_\_\_\_  
Claimant. )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Mr. [REDACTED] (Claimant) was a recipient of the Food Stamp Program<sup>1</sup> (Program). (Ex. 1) On October 20, 2011, the Division notified Claimant in writing that he had been overpaid \$1,050.00 of Program benefits for the months of July, August and September 2011 and it was seeking reimbursement of \$1,050.00. (Ex. 5.0-5.11) On November 23, 2011, Claimant requested a compromise of the overpaid amount and on December 15, 2011, the Division notified Claimant it agreed to compromise its claim to \$720, for which it was seeking repayment. (Ex. 6.1; Ex. 7.0)

On November 23, 2011 the Division received Claimant's request for a Fair Hearing. (Ex. 6.0) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 AAC 49.010-.020; 7 C.F.R. § 273.15.

Claimant's Fair Hearing was begun on January 12, 2012 and continued to January 19, 2012 for Claimant's benefit. On both dates, Claimant participated telephonically, represented himself and testified on his own behalf. On both dates, Ms. [REDACTED], the Division's Public Assistance Analyst, participated in person representing the Division and testified on behalf of the Division. All offered exhibits were admitted and the evidentiary record closed on January 19, 2012.

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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 the Food Stamp Program in this decision.

## ISSUE

On October 20, 2011, was the Division correct to seek reimbursement from Claimant of \$720 of Food Stamp benefits which allegedly were overpaid to his household for the months of July, August, and September 2011?

## FINDINGS OF FACT

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

1. Claimant was receiving Food Stamp Program (Program) benefits. (Ex. 1) On May 24, 2011, Claimant reported a change in employment circumstances to the Division of Public Assistance. (Ex. 2.0-2.1)
2. The Division adjusted Claimant's Food Stamp benefit amount and notified him on May 25, 2011 that he would receive \$19.00 per month effective July 2011 because increased income from his new job resulted in lower benefits. (Ex. 3)
3. The Division did not send Claimant the amount of Food Stamps he was supposed to receive, i.e., \$19.00, because a Division staff member input an incorrect code in the computer. (Ex. 4.1; Hearing Representative's testimony)
4. Due to the incorrect computer coding, Claimant received \$350 per month more benefits than he was eligible to receive in the months of July 2011, August 2011 and September 2011, for a total of \$1,050.00. (Exs. 4.1, 4.2, 4.8, 4.9,4.15, 4.21; Ex. 5.5; Hearing Representative's testimony) Claimant agrees he was overpaid this amount. (Claimant's testimony)
5. On October 20, 2011, the Division notified Claimant it was seeking recovery of the overpaid amount of \$1,050.00. (Ex. 5.0-5.11; Hearing Representative's testimony)
6. On November 23, 2011, Claimant requested a compromise of the overpaid amount and on December 15, 2011, the Division notified Claimant it agreed to compromise its claim to \$720, for which it was seeking repayment. (Ex. 6.1; Ex. 7.0)
7. Claimant believes because the overpayment was not due to his fault, he should not have to repay the excess benefits he received. (Ex. 6.0; 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.

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 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.

The federal government has delegated its claims regarding Food Stamps to the states, subject to the standards established in 7 C.F.R. § 273.18. 7 C.F.R. § 273.4(b). The federal Food and Nutrition Service delegation to the state agency is “the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.” 7 C.F.R. § 273.4(b).

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 identifies three types of Federal claims: 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 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. 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 CFR § 273.18(a).

## ANALYSIS

### I. Issue

On October 20, 2011, was the Division correct to seek reimbursement from Claimant of \$720 of Food Stamp benefits which allegedly were overpaid to him household for the months of July, August, and September 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 his household for the months of July, August and September 2011. Therefore, the Division has the burden of proving by

a preponderance of the evidence that Claimant was overpaid Program benefits and that he must reimburse the State.

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

The parties agree: 1) Claimant was overpaid Food Stamp benefits in the amount of \$1,050; and 2) the overpayment resulted from the Division's failure to correctly code the computer for the right amount of benefits payable to Claimant. The Division has acknowledged the overpayment arose due to its error, solely. The parties agree the Division has compromised the amount for which it is claiming reimbursement to the amount of \$720. Claimant agrees he was overpaid and owes \$720. Claimant seeks to avoid repaying \$720 because it was not his fault he was overpaid. Thus, the parties do not dispute the relevant facts and this decision results from applying undisputed facts to applicable law.

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). Here, it is undisputed Claimant was overpaid a compromised total of \$720 for the months of July, August, and September 2011. The overpayment was in no way Claimant's fault, but this is immaterial according to regulations concerning Food Stamp benefits. The overpaid benefits are a federal claim that must be repaid. 7 C.F.R. 273.18(a)(2). Therefore, the Division is required to seek reimbursement according to regulation 7 C.F.R. 273.18. 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 compromised amount of \$720 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 \$720, which is the compromised amount of Food Stamps he was overpaid during July 2011, August 2011, and September 2011.

2. The Division properly applied federal regulation 7 C.F.R. § 273.18 and is required to recover from Claimant the amount of Food Stamps overpaid to his household, irrespective of why the overpayment occurred.

### DECISION

On October 20, 2011, the Division was correct to seek reimbursement from Claimant a total of \$720, representing the compromised amount of Food Stamps he was overpaid during July 2011, August 2011, and September 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.

