

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. 12-FH-124  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) is a Food Stamp<sup>1</sup> recipient. (Ex. 1) On March 23, 2012, the Division of Public Assistance (Division) sent the Claimant written notification that it was requiring repayment of \$647 in Food Stamp benefits that she had allegedly been overpaid for the months of January and February, 2012. (Exs. 4.0 – 4.9) The Claimant requested a fair hearing on March 30, 2012. (Ex. 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 May 2, 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.

The record was left open after the hearing until May 11, 2011 for the parties to submit additional documentation.

**STATEMENT OF ISSUES**

1. The primary issue in this case is whether the Division was correct to request that the Claimant repay it \$647 in Food Stamp benefit payments that were allegedly overpaid to the Claimant during the months January and February 2012.

<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.

2. At hearing, the Claimant testified that she had asked the Division to compromise its claim against her, which had been denied. Consequently, there is a secondary issue of whether the Division should compromise its overpayment claim against the Claimant.

### **FINDINGS OF FACT**

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

1. The Claimant is a current Food Stamp recipient with a three person household, which consists of her and her two minor children. (Ex. 1) She received Food Stamp benefits in the months of January and February 2012 for a four person household, which then consisted of the Claimant, her domestic partner, and their two minor children. (Exs. 1, 4.11)
2. On February 7, 2012, the Claimant applied for and received a 20-day Domestic Violence Protective Order that required the Claimant's domestic partner to leave the Claimant's residence. (Ex. B, pp. 1 - 6) He left that same day. (Claimant testimony)
3. On February 16, 2012, the Claimant's domestic partner telephoned the Division and notified it that he was no longer residing with the Claimant. (Ex. 2.0)
4. After receiving the Claimant's domestic partner's February 16, 2012 telephone call, the Division reviewed the Claimant's Food Stamp case. In its review, it became aware that the Claimant was receiving \$80 per week in unemployment benefits, which the Division had inadvertently not taken into account when calculating her monthly Food Stamp benefit amount. (Ex. 2.0)
5. As a result of its review, the Division calculated that the Claimant had received \$739 in Food Stamp benefits for the month of January 2012 when she should have only received \$444, an overpayment of \$295. (Exs. 3.1 – 3.2, 4.4) The calculations for January 2012 were based upon a four person household with the following income and expenses:
  - a. The Claimant's actual unemployment income of \$320 for January 2012. (Exs. 2.1, 3.1, 3.4)
  - b. The Claimant's domestic partner's unemployment income of \$1,797.40<sup>2</sup> for January 2012. (Exs. 3.1, 3.4)
  - c. The Claimant's domestic partner's child support payment of \$383.90. (Exs. 3.1, 3.4)

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<sup>2</sup> There was an apparent factual issue regarding the domestic partner's unemployment income for January 2012. This apparent factual issue arose because the Division initially provided a partial printout of the domestic partner's unemployment income payments, showing that he began receiving unemployment benefits beginning January 29, 2012. (Ex. 3.16) The Division resolved this apparent factual issue when it supplemented the record with a complete unemployment income payment printout showing that the domestic partner received five weekly unemployment payments of \$418 each during the month of January 2012. (Ex. 3.16A) When his weekly unemployment payment of \$418 is multiplied by the regulatory factor of 4.3 (to account for the fact that there are 52 pay periods in a year – See 7 C.F.R. § 273.10(c)(2)), the result is \$1,797.40.

d. Housing costs totaling \$1,047, which consisted of rent (which included heat) of \$950, and standard deductions of \$27 and \$70 for telephone and electricity costs, respectively. (Ex. 3.1, 3.6).

6. As a result of its review, the Division calculated that the Claimant had received \$739 in Food Stamp benefits for the month of February 2012 when she should have only received \$387, an overpayment of \$352. (Exs. 3.8 – 3.9, 4.4) The calculations for February 2012 were based upon a four person household with the following income and expenses:

a. The Claimant's actual unemployment income of \$298 for February, 2012. (Exs. 2.1, 3.8, 3.11)

b. The Claimant's domestic partner's unemployment income of \$1,797.40<sup>3</sup> for February 2012. (Exs. 3.8, 3.11)

c. The Claimant's Temporary Assistance benefits in the amount of \$148, which she received in February 2012. (Exs. 3.11, 3.15)

d. The Claimant's domestic partner's child support payment of \$383.90. (Exs. 3.8, 3.13)

e. Housing costs totaling \$1,047, which consisted of rent (which included heat) of \$950, and standard deductions of \$27 and \$70 for telephone and electricity costs, respectively. (Ex. 3.8, 3.13)

7. On March 23, 2012, the Division sent the Claimant written notice that she was required to repay the \$647 (\$295 for January 2012 and \$352 for February 2012) in Food Stamp benefits that it had calculated she was overpaid. (Exs. 4.0 – 4.11) 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. 4.0)

8. The Claimant agreed with the housing costs used by the Division in its calculations.

9. The Claimant did not disagree with the other income (her unemployment income, her domestic partner's unemployment income, her Temporary Assistance income) and expenses (her domestic partner's child support payment) used by the Division in its calculations. However, she testified that the following should be taken into account when calculating any repayment:

a. She did not have access to her domestic partner's income after he moved out of the home on February 7, 2012, and that his unemployment income received thereafter should not be counted as part of her household income.

b. She incurred child care costs in February 2012, due to time spent pursuing her domestic violence complaint against her domestic partner. The Claimant provided receipts for child care costs in the total amount of \$164 which she incurred in February 2012. (Ex. A, p. 1) The Claimant also provided receipts in the total amount of \$189 for taxi cab costs incurred during February 2012. (Ex. A, p. 2)

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<sup>3</sup> See fn. 2 above for an explanation as to how this amount was arrived at.

10. The Claimant has limited income which does not even cover her rent. (Claimant testimony) Her former domestic partner is required to pay child support, but has not been making full payments. *Id.* She requested the Division to compromise or reduce the payment claimed overdue based upon economic hardship, and was refused. (Claimant testimony; Ex. 17) The Division's April 5, 2012 letter denying her compromise request notified the Claimant that her ongoing Food Stamp benefit amount would be reduced by "10% each month to repay the amount owed." (Ex. 17)

11. The Claimant was receiving Food Stamp benefits as of the date of May 2, 2012 hearing. (Ex. 1) The amount of Food Stamp benefits she was receiving was \$627 per month, beginning with the month of March 2012. (Ex. 4.11)

### 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).

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, the household's countable expenses, and 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). When calculating the Food Stamp benefit amount, an applicant/recipient is only allowed income deductions which are listed in 7 C.F.R. § 273.10(d). An applicant/recipient is allowed a deduction for child care expenses when they are necessarily incurred for employment purposes or employment training purposes. 7 C.F.R. § 273.10(d)(4). There is no deduction for transportation costs. *See* 7 C.F.R. § 273.10(d).

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

There are two issues in this case. The primary issue is whether the Division was correct to request the Claimant to repay \$647 in Food Stamp benefits that she had allegedly been overpaid during the months of January (\$295) and February 2012 (\$352). The secondary issue is whether the Division was correct when it denied the Claimant's request that it compromise (forgive or reduce) the allegedly overpaid benefits.

#### A. Overpayment

With regard to the first issue, 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).

##### 1. January 2012

The alleged overpayment for January 2012 was \$295. The alleged overpayment resulted because the Division did not take the Claimant's \$80 per week in unemployment income into account when it issued the Claimant her Food Stamp benefits for January 2012. The unemployment records show that the Claimant actually received a total of \$320 in unemployment income during January 2012.

The Division calculated, based upon the Claimant's unemployment income, her domestic partner's unemployment income, and their housing costs, that the household should have received \$444 in Food Stamp benefits during January 2012, instead of the \$739 it actually received.

The Claimant did not disagree with the income and expense figures used by the Division in its calculations. A review of the Division's calculations<sup>4</sup> shows that the Division correctly determined that the Claimant should have only received \$444 in Food Stamp benefits during January 2012. Because the Claimant received \$739 in benefits, the Division met its burden of

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<sup>4</sup> See Division Exhibits 3.1 – 3.2, 4.4.

proof, by the preponderance of the evidence, and demonstrated that the Claimant was overpaid \$295 in Food Stamp benefits during January 2012.

## 2. February 2012

The alleged overpayment for February 2012 was \$352. The alleged overpayment resulted because the Division did not take the Claimant's \$80 per week in unemployment income into account when it issued the Claimant her Food Stamp benefits for February 2012. The unemployment records show that the Claimant actually received a total of \$298 in unemployment income during February 2012. In addition, the Claimant received a total of \$148 in Temporary Assistance benefits during the month of February 2012, which the Division also took into account when it recalculated the Food Stamp benefits the Claimant should have received rather than the benefits she actually received.

As with the month of January 2012, the Claimant did not disagree with the income and expense figures utilized by the Division. However, she testified and argued that her domestic partner's entire February 2012 unemployment income should not have been counted as part of her household income, because he left the home on February 7, 2012 and as a result, she did not have access to his funds.

At first blush, the Claimant's argument makes sense. However, the Claimant received Food Stamp benefits for a four person household for the entire month of February. Food Stamp benefits are issued for a month based upon that month's anticipated income, expenses, and the number of persons in the household. 7 C.F.R. § 273.9(e); 7 C.F.R. § 273.10(c)(1); 7 C.F.R. § 273.10(e)(2)(ii)(a). Since the benefits were issued for the month of February, based upon the assumption that the Claimant's domestic partner was a member of the household, his unanticipated departure from the household later in the month, after benefits were issued, does not justify revisiting the household benefit amount for that month. The Division was therefore correct to count the Claimant's domestic partner's income (unemployment) and deduction (child support) into account when it calculated its repayment claim for February 2012.

The Claimant also requested that she receive a deduction for child care expenses that she incurred during February 2012 in the amount of \$154, due to time spent pursuing her domestic violence complaint against her domestic partner. In addition, she provided receipts for taxi cab expenses in the amount of \$189 that she incurred during February 2012. The Food Stamp regulations do not allow the Claimant an income deduction for either of these requested deductions. Child care expenses are only deductible if they are necessarily incurred for employment related purposes. 7 C.F.R. § 273.10(d)(4). There is no deduction for transportation costs. *See* 7 C.F.R. § 273.10(d).

In summary, the Division was correct to count the domestic partner's entire unemployment income for the month of February 2012 despite the fact he left the Claimant's household on February 7, 2012. In addition, the Claimant was not entitled to deductions for her February 2012

child care and taxi expenses. As a result, a review of the Division calculations<sup>5</sup> shows that the Division correctly determined that the Claimant should have only received \$387 in Food Stamp benefits during February 2012. Because the Claimant received \$739 in benefits, the Division met its burden of proof, by the preponderance of the evidence, and demonstrated that the Claimant was overpaid \$352 in Food Stamp benefits during February 2012.

B. Compromise

The Claimant requested that the Division compromise (forgive or reduce) its overpayment claim based upon economic hardship. The Division denied the Claimant's request.

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). That regulation 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 10 percent per month, as indicated in Division's April 5, 2012 letter, this would pay the amount off in less than one year.<sup>6</sup> As a result, the Division was not required to compromise its overpayment claim against the Claimant.

CONCLUSIONS OF LAW

1. The Division met its burden of proof by a preponderance of the evidence and established that the Claimant had been overpaid a total of \$647 in Food Stamp benefits during the months of January and February 2012.
2. Because the overpayment claim could be paid off in its entirety, by a 10 percent reduction in the Claimant's monthly Food Stamp benefit amount, within three years, the Division was not required to compromise its overpayment claim against the Claimant.
3. The Division was therefore correct when it required that the Claimant repay it a total of \$647 in Food Stamp benefits that she was overpaid in January and February 2012.

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<sup>5</sup> The February 2012 calculations are based on the Claimant's actual unemployment income of \$298, her domestic partner's unemployment income of \$1,797.40, her Temporary Assistance benefits in the amount of \$148, her domestic partner's child support payment of \$383.90, and housing costs totaling \$1,047, which consisted of rent (which included heat) of \$950, and standard deductions of \$27 and \$70 for telephone and electricity costs, respectively. *See* Division Exhibits 3.8 – 3.9, 3.11, 3.13 – 3.14, 4.4.

<sup>6</sup> The Claimant began receiving \$627 in Food Stamp benefits per month beginning with the month of March 2012. (Ex. 4.11) A 10 percent reduction per month would be \$62. This would pay the \$647 in overpaid benefits in 11 months.

**DECISION**

The Division was correct when it sent the Claimant written notification on March 23, 2012, that it was requiring repayment of \$647 in Food Stamp benefits that she had been overpaid for the months of January and February, 2012

**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 18th day of May, 2012.

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

**Certificate of Service**

I certify that on this 18th day of May, 2012, 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  
██████████, Policy & Program Development

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