

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
U S) OAH No. 17-0806-SNA
) Agency No.
_____)

DECISION

I. Introduction

U S receives food stamp benefits from the Division of Public Assistance. He has two daughters, who live with him part of the time and are included in his food stamp household. Mr. S and his daughters also receive social security disability benefits. The daughters' benefits are payable to their mother. The division had not been counting those benefits in the household's income when calculating eligibility for food stamps. The division notified Mr. S that it had overpaid his food stamp benefits and that he would be held liable for repayment. Mr. S requested a fair hearing.

The division's decision that Mr. S's food stamp benefits were overpaid and that he is liable for repayment of \$3,096 is upheld. However, nothing in this decision prevents Mr. S from requesting a compromise of this amount from the division's benefit issuance and recovery unit.

II. Facts

U S suffered a traumatic brain injury in 2010. His mother is his guardian.¹ He has two daughters, F and N. F and N stay with him every other weekend and Monday evenings. E J, the girls' mother, has primary custody.²

Mr. S receives monthly social security disability insurance (SSDI) benefits from the social security administration. F and N also receive SSDI benefits based on Mr. S's disability.³ F and N's SSDI benefits are paid to Ms. J. After Mr. S's injury, his mother and Ms. J agreed that Ms. J would receive the daughters' SSDI benefits in lieu of child support payments, since Mr. S is no longer able to work.⁴

Mr. S also receives food stamp benefits for himself and his daughters. Ms. S submitted food stamp recertification applications for Mr. S in November 2016 and again in May 2017, as required by the program. When the division processed the May 2017 application, the eligibility technician realized

¹ Testimony of U. S.
² Exhibit 8.
³ Exhibit 3, 4.
⁴ Testimony of U. S.

that the division had previously failed to include F and N's SSDI benefits in calculating Mr. S's household income.⁵ The division calculated that it had overpaid Mr. S's food stamp benefits by \$4,151. On June 30, 2017, it notified Mr. S that he would need to repay this amount, acknowledging that an inadvertent agency error caused the overpayment.⁶ Mr. S requested a fair hearing.⁷

The division then reviewed its calculations. It concluded that benefits overpaid in May 2016 could no longer be recovered since more than a year had passed. It also corrected Mr. S's rent deduction, further decreasing the amount of the overpayment.⁸ The division sent Mr. S a revised notice of overpayment on August 14, 2017, indicating that Mr. S would need to repay \$3,268.⁹ In preparation for hearing, the division further adjusted its overpayment calculation, reducing the total amount of the overpayment it seeks to recover to \$3,069.¹⁰

A telephonic hearing was held on August 29, 2017. W S, Mr. S's mother and guardian, represented Mr. S. Jeff Miller, a Public Assistance Analyst with the division, represented the division.

IV. Discussion

Ms. S argued that it was not fair to recover the overpayment from Mr. S because the overpayment was caused by a division error, that SSDI payments paid for the benefit of Mr. S's daughters should not be counted as income accruing to Mr. S's food stamp household, and that the social security payments to the daughters should be considered child support payments. Finally, she argued that it would be impossible for Mr. S to repay the full amount of the overpayment with a 10 percent reduction in his monthly benefits over a three-year period, and that attempting to repay the overpayment would result in hardship to Mr. S.

A. Social Security payments as income to Mr. S's household

Ms. S takes issue with the inclusion of F and N's SSDI payments in Mr. S's household income because that money is paid directly to Ms. J, not to Mr. S. Furthermore, Ms. S's understanding is that this money is being paid in lieu of child support, since Mr. S is no longer able to work.

Before the overpayment notice, the division had been counting only Mr. S's SSDI income in his household income to determine his food stamp eligibility. According to Social Security Administration

⁵ Exhibit 4.

⁶ Exhibit 6.

⁷ Exhibit 7.

⁸ Position Statement at 2.

⁹ Exhibit 20 - 20.1.

¹⁰ Position Statement at 2.

records accessed by the division, Mr. S received payments of \$1251 a month through November 2016, and \$1255 a month beginning in December 2016.¹¹

After the agency discovered its error, it added F and N's SSDI payments to Mr. S's household income. F and N received \$312 a month each through November 2016, and \$313 a month each beginning in December 2016.

Mr. S's application listed F and N as household members. The division did not dispute that F and N are members of Mr. S's household for purposes of the food stamp program.¹² Because F and N are members of Mr. S's food stamp household, the division counted F and N's unearned income as household income, including the SSDI payments derived from Mr. S's disability but payable to their mother.

Ms. S argued that F and N's SSDI payments should not be counted towards Mr. S's household income for food stamp purposes because Ms. J is responsible for paying federal income taxes on those benefits, and for reporting on them to the Social Security Administration. However, the definitions of household and income applicable to these programs may be different than the definitions applicable to the food stamp program, and the definitions that control for purposes of this case are the food stamp definitions.

The definition of household income for food stamp purposes is broad. It includes "all income from whatever source."¹³ It includes payments from need-based assistance programs such as temporary assistance for needy families and supplemental security income.¹⁴ It also includes payments from "Government-sponsored programs . . . and all other direct money payments from any source which can be construed to be a gain or benefit."¹⁵ The income at issue in this case is not supplemental security income, but rather social security disability insurance payments.¹⁶ These benefits are based on Mr. S's participation in the social security system rather than need, but they are government payments that benefit Mr. S's household. They benefit his household because they are paid for the benefit of his daughters, who are included in the food stamp household. Therefore, they fit within the definition of household income applicable to the food stamp program.

¹¹ Exhibit 8.5 - 8.6.

¹² See 7 CFR 273.1(a) (defining household concept for the food stamp program).

¹³ 7 U.S.C. 2014(d); 7 CFR 273.9(b) (Exhibit 14.1).

¹⁴ 7 CFR 273.9(b)(2)(i) (Exhibit 14.1 - 14.2).

¹⁵ 7 CFR 273.9(b)(2)(v) (Exhibit 14.2).

¹⁶ Exhibit 8.3 - 8.6.

Federal law provides a short list of exclusions from income, including an exclusion for “moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member and child support payments made by a household member to or for an individual who is not a member of the household if the household member is legally obligated to make the payments.”¹⁷ F and N’s SSDI payments do not fit within this exclusion. F and N’s SSDI payments are neither payments for the benefit of a third party, nor child support payments. First, they are not “moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member” because the money is received by a third party (Ms. J), but it is to be used for the care of F and N. F and N are household members, not third parties. Second, although Ms. S argues that the SSDI payments should be characterized as child support payments, they are not payments made by a household member. They are payments made by the federal government because of Mr. S’s participation in the social security disability insurance program. Thus, F and N’s SSDI payments are neither payments for a third-party beneficiary nor child support payments for purposes of the exclusion from income. The division correctly included F and N’s SSDI payments as income to Mr. S’s household.¹⁸

B. Relationship between cause of the overpayment and repayment obligation

Ms. S also argued that Mr. S should not have to repay the overpayment because the agency made the error that caused the overpayment, not Mr. S. The food stamp program is a federally funded program administered by the state. When the state overpays a person’s food stamp benefits, federal law requires the state to attempt to recover the amount of the overpayment.¹⁹ This is the case even where the overpayment was caused by the division, not the recipient.²⁰

The Alaska Supreme Court confirmed this in the case of *Allen v. State, Department of Health and Social Services*. In that case, two food stamp recipients received excess

¹⁷ 7 U.S.C. 2014(d)(6).

¹⁸ This conclusion is consistent with *In re S.U.*, OAH No. 17-0497-SNA at 2 (Commissioner of Health and Social Services 2017) (Exhibit 2.3). *See also Stevens v. Jackson*, 800 F. Supp. 344 (W.D. Va. 1992) (holding that both the receipt and use of the money must be for the care of a third-party beneficiary who is not a household member to qualify for exclusion); *Sabbia v. State, Department of Health and Rehabilitative Services*, 645 So.2d 148 (Fla. Dist. Ct. App. 1994) (holding that father’s SSDI payments that were being directly deposited into ex-wife’s bank account for court-ordered child support were correctly included as income of the father for purposes of food stamp eligibility determination).

¹⁹ 7 U.S.C. 2022(b)(1) (the “state agency shall collect any overissuance of benefits issued to a household”); 7 C.F.R. §273.18(a)(2) (“the state agency must establish and collect any claim”).

²⁰ *See* OAH 15-0001-SNA.

benefits due to agency error. The court held that this did not prevent the division from collecting the overpayment:

We are sympathetic to the argument that it is unfair to require indigent food stamp recipients to repay benefits that were overissued to them through no fault of their own, but Congress has already made the policy decision that a ten dollar or ten percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness. Alaska's doctrine of equitable estoppel cannot be used to effectively override this policy decision.²¹

Thus, even where an overpayment is the division's fault, federal law requires the division to attempt to recover the amount of the overpayment.

C. Hardship

Federal law also permits the division to compromise an overpayment claim if it determines that "the household's economic circumstances dictate that the claim will not be paid in three years."²² Ms. S stated that even if Mr. S pays 10 percent of his household's food stamp benefits towards the overpayment, that he will not be able to repay the total debt of \$3,069 in three years. She argued that repaying the money would impose a hardship on Mr. S.

The division has a separate administrative process for requests to compromise an overpayment claim. According to Mr. Miller, the division has not yet received an application to compromise the overpayment claim at issue in this case. A ruling on the compromise issue is therefore not within the scope of this decision. However, nothing in this decision prevents Ms. S from seeking a compromise of the overpayment claim on behalf of Mr. S.

V. Conclusion

The division correctly determined that F and N's SSDI benefits counted towards Mr. S's household income for purposes of the food stamp program. Because of the division's failure to include

²¹ *Allen v. State, Dep't of Social Services, Division of Public Assistance*, 203 P.3d 1155, 1164 (Alaska 2009).

²² 7 C.F.R. §273.18(e)(7).

this income in calculating Mr. S's benefits, Mr. S's benefits were overpaid from June 2016 through May 2017. The division's decision that there was an overpayment subject to recoupment is upheld.

Dated: September 5, 2017.

Signed _____

Kathryn L. Kurtz

Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of September, 2017.

By: *Signed* _____

Name: Kathryn L. Kurtz

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]