

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

In the Matter of)
) OAH No. 12-0208-SNA
S B) Agency No.
)

DECISION

I. Introduction

During the winter of 2011-12, S B received benefits under the Supplemental Nutrition Assistance Program, commonly referred to as Food Stamps. The Division of Public Assistance (division) notified Ms. B that it had inadvertently paid her five months of benefits, totaling \$7,170, for which she was not eligible. The division indicated that it would require her to repay that amount. Ms. B requested a hearing.

A hearing was held on August 8, 2012. Ms. B appeared by telephone. The division was represented by Ms. Terri Gagne, who also appeared by telephone. As discussed below, the division's request for repayment should be upheld.

II. Facts

In late October of 2011, after her husband, X B, was laid off from his job, S B applied for Food Stamps on behalf of her eight-person household.¹ She disclosed on the application that X had been "laid off for 6 wks."² An employer verification attached to the application showed that X's employment would resume on December 6, 2011.³

The division approved a monthly Food Stamp benefit of \$1,434 beginning in November of 2011. The approval stated that the benefit was calculated based on a monthly income of \$1,708.40, and that "[i]f you remain eligible you will get food stamps through APRIL 2012."⁴ It cautioned that "You must tell us when the monthly income of all persons receiving food stamp benefits in your case totals more than \$5,099.00."⁵

¹ Ex. 2.3.

² Ex. 2.4.

³ Ex. 2.13.

⁴ Ex. 2.14.

⁵ *Id.*

In December of 2011, X earned \$4,522.40,⁶ and the household income was at least \$6,227.⁷ Ms. B did not inform the division of the income change, except insofar as she had disclosed in advance on her application that Mr. B's job would resume in December.

The agency continued to pay Food Stamp benefits at \$1,434 per month through April of 2012. Taking account of all household income and deductions (including a \$1,100 per month deduction for Mr. B's child support obligation for most months), the household was ineligible for any of these benefits for the five months between December and April.⁸

Although Ms. B's instructions had told her to notify the agency if household income climbed above \$5,099 and she did not do so, the division regards the overpayment error as partly its own. The division reasons that it should have realized, at the time of approval, that Mr. B's job was likely to resume in six weeks, and "set up an alert to follow up when the six week time period was set to expire."⁹ The division has assigned the cause of the overpayment to "Inadvertent Agency Error."¹⁰

III. Discussion

At the hearing, Ms. B questioned whether the agency eligibility calculation had accounted for her husband's obligation to pay child support of \$1,100 per month. This support obligation was not overlooked and the support paid was recorded as a potential deduction from his income.¹¹ However, it was irrelevant in this case, because what disqualified the B household was not their net income after deductions, but rather their gross income. For a household of eight, a gross income of more than \$5,099 per month makes the household ineligible for Food Stamps, regardless of deductions.¹²

Ms. B argued that the overpayment was not her fault, and that she should not be held responsible for it. The division acknowledges that the overpayment was due, at least in part, to agency error. However, that the overpayment was a government mistake does not, by itself, mean that Ms. B is not required to repay the excess benefits she received.

⁶ Ex. 2.15, 2.17 (the calculation on Ex. 2.15 is off by \$3 due to an apparent data entry error).

⁷ Ex. 3.5. Ms. B does not dispute the income figures.

⁸ See Ex. 3.5. Gross income in all these months exceeded \$5,099.

⁹ Division's Position Statement.

¹⁰ Ex. 3.0.

¹¹ Ex. 3.5.

¹² The gross limit can be found in the upper table on Ex. 3.4. *See also*, e.g., Alaska Food Stamp Program Manual § 603-2-A-3.

Food Stamp benefits are governed by federal law. The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C. § 2022. Subsection (b)(1) of that statute provides in relevant part that the “state agency *shall* collect any overissuance of benefits issued to a household . . .” [emphasis added]. This statute requires, on its face, that the division attempt to recover overpaid Food Stamp benefits.

The federal implementing regulation pertaining to the recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. Subsection (a)(2) of that regulation provides in relevant part that “the State agency *must* establish and collect any claim . . .” Subsection (e)(1) of that regulation also provides in relevant part that “state agencies *must* begin collection action *on all claims* unless [inapplicable].” Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, federal law requires the division attempt to recover overpaid Food Stamp benefits, even if the overpayment is the result of the division’s own error.

This was recently confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*.¹³ After holding that federal law requires the state to pursue repayment of all overpaid Food Stamp benefits, the court observed:

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.^[14]

The federal regulations and the *Allen* decision are binding on the Department of Health and Social Services.¹⁵

IV. Conclusion

Ms. B received an overpayment of Food Stamp benefits. Although the overpayment was not entirely her fault, she is still required to repay the excess benefits if she is able.

¹³ 203 P.3d 1155 (Alaska 2009).

¹⁴ *Id.* at 1164 (footnotes omitted).

¹⁵ As alluded to in the quoted language from *Allen*, Ms. B does have the right to request that the division compromise (write-off or forgive) all or part of the overpaid benefits. See 7 C.F.R. § 273.18(e)(7).

Accordingly, the division's decision to require repayment of \$7,170 is upheld.

Dated this 9th day of August, 2012.

Signed

Christopher Kennedy
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 28th day of August, 2012.

By: *Signed*
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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