

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

IN THE MATTER OF:)	
)	OAH No. 12-0515-SNA
B E. L)	Agency No.
<hr style="width:50%; margin-left:0;"/>		

DECISION

I. Introduction

This matter is a two-part appeal. First, B E. L is appealing the May 22, 2012, closure of his Food Stamp program¹ case by the Department of Health and Social Services, Division of Public Assistance (division) because he owned a commercial fishing permit that was worth more than the Food Stamp program's \$2,000 resource limit. Second, Mr. L is appealing the division's determination on June 6, 2012, that for the period from February 2012 through May 2012, he received food stamp benefits valued at \$8,070 in error and would have to repay that amount. He requested a Fair Hearing on June 11, 2012.

Mr. L's hearing was held on July 9, 2012, and August 7, 2012. He appeared by telephone. Jeff Miller, Public Assistance Analyst, represented the Division by telephone. Both sessions of the hearing were recorded.

Because Mr. L's fishing permit is a countable resource worth more than \$2,000, his resources exceed the food stamp program's \$2,000 resource limit, and the division correctly determined he was not eligible for the program. Second, Mr. L received \$8,070 in food stamp benefits that he should not have and he is required to repay that amount. The division's decisions to close Mr. L's case and require him to repay the \$8,070 in overpaid food stamp benefits are AFFIRMED.

II. Facts

On February 3, 2012, Mr. L applied for food stamps for his seven-person household, all of whom are younger than 60 years of age.² Included in his assets is a commercial salmon

¹ 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"). This decision follows the common usage of referring to SNAP as the Food Stamp program.

² Ex. 1.

gillnet fishing permit for the No Name region.³ The permit is valued at \$9,000 for 2011, and in the range of \$7,900 – \$8,500 on a monthly basis from January 2012 through May 2012.⁴ Mr. L has not used the permit since 2008.⁵ The division inadvertently did not count Mr. L’s fishing permit as a resource in analyzing his available assets. His household was determined to be eligible for food stamps and benefits were issued to him as of February 1, 2012.⁶ This determination was in error.

On May 21, 2012, a division caseworker was reviewing Mr. L’s case and discovered he was not using his fishing permit.⁷ The caseworker contacted Mr. L and verified that information, then informed Mr. L that since he hadn’t used the permit in 2011, it would count as a resource valued at approximately \$8,260-\$9,000.⁸ The caseworker also told Mr. L that the value of the permit is over the \$2,000 resource limit for the Food Stamp program and it would make him ineligible for food stamps.⁹ Upon learning this information, Mr. L requested that his Food Stamp program case be closed.¹⁰ The division notified him of the closure on May 22, 2012.¹¹

The division subsequently reviewed Mr. L’s case and determined that due to not counting his fishing permit as a resource, it had erroneously issued benefits to him beginning in February 2012. The monthly amounts he received were \$1,948 per month for a seven-person household for February 2012 through April 2012, and \$2,226 for an eight-person household for May 2012.¹² This is a total overpayment of \$8,070.¹³

III. Discussion

This case presents two issues: first, whether Mr. L’s fishing permit is a countable resource worth more than \$2,000; and second, whether Mr. L is required to pay back \$8,070 in Food Stamp benefits that were issued to him in error. Mr. L does not contest the value of the permit or the fact that, in general, it is a countable resource. Rather, he asserts that it should not

³ Ex. 2.1-2.5.
⁴ Ex. 2.5.
⁵ Ex. 2.
⁶ Ex. 1.
⁷ Exs. 2.1-2.5.
⁸ Exs. 2.1-2.5.
⁹ Exs. 2.1-2.5.
¹⁰ Ex. 3.
¹¹ Ex. 3.
¹² Exs. 5.4-5.5.
¹³ \$1,948 + \$1,948 + \$1,948 + \$2,226 = \$8,070.

be considered a countable resource in his case because he intended to use the permit in 2012. Second, he believes that he should not be liable for paying back the \$8,070 Food Stamp benefit overpayment. Mr. L¹⁴ has the burden of proof by a preponderance of the evidence.¹⁵

The Food Stamp program is a federal program administered by the State.¹⁶ The Code of Federal Regulations (CFR) contains the rules for determining a household's financial eligibility, which is determined, in part, based on the resources (assets) owned by the household members. The program has a resource limit of \$2,000 for a household whose members are under 60 years of age.¹⁷ Some resources are not counted as assets to a household. They are such things as:

(5) [p]roperty, such as farm land or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.^{18]}

While the federal regulation does not specifically address commercial fishing permits, the division interprets it as applying to them.¹⁹ The regulation therefore only allows an unused permit not to count as a resource for up to one year from its last use.

Mr. L is the registered owner of a commercial salmon gillnet fishing permit for the No Name River. According to the Commercial Fisheries Entry Commission, the permit is valued at between \$7,900-\$9,000. It is therefore a countable resource that exceeds the \$2,000 limit for Mr. L's household. If he had used the permit in 2011, it would still be in the one-year time for exclusion as a countable resource, but he has not fished with it since 2008, a period of four years. As a result, the fishing permit cannot be excluded from Mr. L's countable resources, and since it is valued over \$2,000, he was not eligible to receive food stamp benefits beginning in February 2012.

As to his second issue, Mr. L argues that the division is not entitled to repayment of his food stamp benefits because its own error had caused the overpayment. The federal regulations

¹⁴ 2 AAC 64.290(e).

¹⁵ Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5th Ed. 1979).

¹⁶ 7 C.F.R. § 271.4(a).

¹⁷ 7 C.F.R. § 273.8(b).

¹⁸ 7 C.F.R. § 273.8(e)(5).

¹⁹ FS Manual § 602-2B(7).

are clear that the Food Stamp agency “must establish and collect any claim” for overpaid food stamp benefits issued.²⁰ This is required even when the overpayment is caused by the division’s error.²¹ Adult members of the food stamp recipient’s household are the persons responsible for repaying overpaid benefits.²² As a matter of law, Mr. L was overpaid \$8,070 in food stamp benefits and is required to repay those benefits to the division.

IV. Conclusion

Because Mr. L’s fishing permit is a countable resource worth more than \$2,000, his resources exceed the food stamp program’s \$2,000 resource limit, and the division correctly determined he was not eligible for the program. However, before his ineligibility was discovered, Mr. L received \$8,070 in food stamp benefits that he should not have and he is required to repay that amount. The division’s decisions to close Mr. L’s case and require him to repay the \$8,070 in overpaid food stamp benefits should be AFFIRMED.

V. Decision

The division’s decisions to close Mr. L’s case and require him to repay the \$8,070 in overpaid food stamp benefits are AFFIRMED.

DATED this 4th day of September, 2012.

Signed

Kay L. Howard
Administrative Law Judge

²⁰ 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

²¹ 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS*, 203 P.3d 1155, 1164-1166 (Alaska 2009).

²² 7 C.F.R. § 273.18(a)(4)(i).

Adoption

The undersigned, by delegation from of 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 13th day of September, 2012.

By: Signed
Name: Kay L. Howard
Title: Administrative Law Judge

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