

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

In the Matter of: )  
 )  
 G M. ) OAH Case No. 12-0603-SNA  
 ) Former OHA Case No.  
 ) DPA Case No.  
 \_\_\_\_\_ )

**DECISION**

**I. Introduction**

There is only one issue in this case: whether the State of Alaska Division of Public Assistance (DPA or Division) has the right to attempt to collect certain Supplemental Nutrition Assistance Program (SNAP or Food Stamp)<sup>1</sup> benefits which were overpaid to Mr. G M due to a mistake made by the Division.<sup>2</sup>

The parties agree that, through no fault of his own, Mr. M was paid \$2,207.00 more in SNAP benefits than he should have been paid during the period January 2011 through December 2011. This decision concludes that, pursuant to the applicable federal regulations, the Division is required to seek reimbursement from Mr. M for the overpaid SNAP benefits. Accordingly, the Division's decision establishing a claim against Mr. M for the \$2,207.00 in overpaid SNAP benefits is AFFIRMED.

**II. Facts**

*A. Procedural History*

On March 23, 2012 the Division mailed a notice to Mr. M stating that, during the period January 2011 through December 2011, he had been paid \$2,114.00 more in SNAP benefits than he should have received, and that the Division was requiring repayment of that amount.<sup>3</sup> On April 25, 2012 the Division mailed a second notice to Mr. M revising the amount owed to

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). This decision uses the new ("SNAP") terminology.

<sup>2</sup> This Office has jurisdiction to review these issues pursuant to 7 CFR § 273.15 (a) ("[e]xcept as provided in [not applicable], each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program."

<sup>3</sup> Exs. 3.0 – 3.1.

\$2,207.00.<sup>4</sup> On April 30, 2012 Mr. M requested a Fair Hearing on the overpayment collection issue.<sup>5</sup>

The Department of Health and Social Services' Office of Hearings and Appeals held Mr. M's hearing on June 6, 2012. Mr. M attended the hearing in person, represented himself, and testified on his own behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, attended the hearing in person, represented the Division, and testified on its behalf. Mr. W N, a Samoan language interpreter, participated in the hearing by telephone. The hearing was recorded.

*B. Repayment Issue*

The facts of this case are not in dispute. Mr. M has a five-person household consisting of himself, his wife, his daughter, and his two sons.<sup>6</sup> Mr. M and his children are citizens of the United States.<sup>7</sup> However, his wife is not a citizen of the United States.<sup>8</sup>

Mr. M's household has received SNAP benefits since January 2010.<sup>9</sup> He submitted SNAP renewal applications for his household on December 2, 2010 and June 14, 2011.<sup>10</sup> On each of these renewal applications Mr. M disclosed that his wife was not a U.S. citizen.<sup>11</sup> However, following each of these renewal applications, the Division issued benefits for a household of five persons (*i.e.*, it counted Mr. M's wife as a member of his household for SNAP eligibility purposes). As a result of this, the Division issued more SNAP benefits to Mr. M's household, from January 2011 through December 2011, than the household should have received.<sup>12</sup> The monthly overpayments ranged from a low of \$83.00 to a high of \$246.00, and totaled \$2,207.00 by the end of 2011.<sup>13</sup>

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<sup>4</sup> Exs. 19.0 - 19.1

<sup>5</sup> Ex. 4.

<sup>6</sup> Ex. 1.

<sup>7</sup> Exs. 2.1, 15.0.

<sup>8</sup> Exs. 2.1, 2.3, 15.0. This is legally significant because, as explained later in this decision, SNAP / Food Stamp Program eligibility is limited to United States citizens and certain groups of qualified aliens. *See* 7 CFR 273.4(a).

<sup>9</sup> Ex. 1.

<sup>10</sup> Exs. 2.1, 2.2, 13.0 - 13.3, 15.0 - 15.3.

<sup>11</sup> Exs. 2.1, 2.2, 13.0 - 13.3, 15.0 - 15.3.

<sup>12</sup> Exs. 19.0, 19.7 - 19.20.

<sup>13</sup> Exs. 19.0, 19.7 - 19.20.

Early in 2012, the Division realized that Mr. M's wife was not eligible for SNAP benefits due to her citizenship status and provided the notices described above.<sup>14</sup> The notices acknowledged that the overpayments were due to errors by the Division and were not the fault of Mr. M.<sup>15</sup> However, the notices asserted that federal SNAP regulations required that the Division seek to recover overpaid benefits, regardless of which party was at fault.<sup>16</sup>

At his hearing, Mr. M did not dispute that his wife was ineligible for SNAP benefits due to her citizenship status.<sup>17</sup> He also did not dispute the Division's treatment of his household's rent and utilities, or its calculation of the amount of overpaid SNAP benefits.<sup>18</sup> Rather, he emphasized that he had disclosed to the Division that his wife was not a U.S. citizen in all his 2010 and 2011 benefit applications; that he did not hide anything or try to cheat in any way; and that he had been unaware that his household had been receiving more than its share of SNAP benefits.<sup>19</sup> Finally, he asserted that it would be unfair to require him to repay the SNAP benefits at issue given that the overpayment of benefits was caused by the Division's error; this would be punishing him for the Division's mistakes.<sup>20</sup>

### **III. Discussion**

The Food Stamp or Supplemental Nutrition Assistance Program (SNAP) is a federal program administered by the states.<sup>21</sup> SNAP's regulations restrict eligibility for SNAP benefits to individuals who are United States citizens or qualified aliens.<sup>22</sup> A qualified alien, who entered the country on or after August 22, 1996, is not eligible to receive SNAP benefits for a period of five years after the date he or she physically entered the United States.<sup>23</sup>

The federal SNAP regulations contain a number of exceptions to the U.S. citizenship requirement and the five-year residency requirement for qualified aliens, such as an exception for

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<sup>14</sup> Ex. 2.0, 3.0 – 3.1, 19.0 - 19.1. While the primary reason for the overpayment appears to have been its inclusion of Mr. M's wife in its calculation of his household's benefit amount, the Division also discovered minor errors regarding its prior treatment of the M household's rent and utilities (Ex. 19.0).

<sup>15</sup> Exs. 3.0, 19.0.

<sup>16</sup> Exs. 3.0, 19.0.

<sup>17</sup> M hearing testimony.

<sup>18</sup> M hearing testimony.

<sup>19</sup> M hearing testimony. Mr. M's testimony was not disputed by the Division.

<sup>20</sup> M hearing testimony.

<sup>21</sup> 7 C.F.R. § 271.4(a).

<sup>22</sup> 7 C.F.R. 273.4(a).

<sup>23</sup> 7 C.F.R. 273.4(a)(2); 62 F.R. 61344.

refugees granted asylum.<sup>24</sup> However, there is no evidence in the record to indicate, and Mr. M did not assert, that his wife falls within any of these categories.

SNAP benefit amounts are calculated based on the number of people living in the household, and on the monthly income (after applicable deductions) received by those household members.<sup>25</sup> In general, the more eligible members there are in a household, the more SNAP benefits the household will receive each month.<sup>26</sup>

The federal statute pertaining to the recoupment of overpaid SNAP benefits is 7 U.S.C.A. § 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 SNAP benefits.

The federal implementing regulation pertaining to the recoupment of SNAP 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, it is clear that federal regulation 7 C.F.R. § 273.18 requires on its face that the Division attempt to recover overpaid SNAP benefits, *even when 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*, 203 P.3d 1155 (Alaska 2009). The federal regulations, and the *Allen* decision, are binding on the Department of Health and Social Services.<sup>27</sup>

#### **IV. Conclusion**

It is clear as a factual matter that the overpayment at issue was not Mr. M's fault; this was acknowledged by the Division. However, the federal regulations make clear that the state agencies administering SNAP “must establish and collect any claim” for overpaid SNAP benefits. This is the case even where (as here) the overpayment is caused by the Division’s

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<sup>24</sup> 7 C.F.R. 273.4(A)(5)(i) and (ii).

<sup>25</sup> 7 C.F.R. § 273.10(e)(2)(ii)(A).

<sup>26</sup> See Alaska Food Stamp Manual, Addendum 4.

<sup>27</sup> Mr. M does, however, have the right to request that the Division compromise (write-off or forgive) all or part of the overpaid benefits. See SNAP regulation 7 C.F.R. § 273.18(e)(7).

error. The Division's decision to seek recovery of the \$2,207.00 in Food Stamp (SNAP) benefits which the Division mistakenly overpaid to Mr. M's household during the period January 2011 through December 2011 is AFFIRMED.

Dated this 20<sup>th</sup> day of July, 2012.

Signed  
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Jay Durych  
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 31<sup>st</sup> day of July, 2012.

By: Jay D. Durych

Title/Agency: ALJ, OAH, DOA

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