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

In the Matter of:	)	
	)	
F J	)	OAH Case No. 12-0604-SNA
	)	Former OHA Case No.
	)	DPA Case No.

DECISION

I. Introduction

There are two issues in this case: (1) whether F J is required to pay back Supplemental Nutrition Assistance Program (SNAP or Food Stamp)[1] benefits which were issued to her in error by the State of Alaska Division of Public Assistance (DPA or Division), and if so (2) whether the Division is required to compromise (write-off or forgive) all or part of the overpaid benefits.

The parties agree that, through no fault of her own, Ms. J was paid $7,524.00 more in SNAP benefits than she should have been paid during the period May 2011 through April 2012. This decision concludes that, pursuant to the applicable federal regulations, the Division must seek reimbursement from Ms. J for the overpaid SNAP benefits. This decision further concludes that although the Division has broad discretion in determining whether to compromise a claim (and for what amount), the Division failed to demonstrate that it actually *exercised its discretion* in denying Ms. J's request to compromise the SNAP overpayment claim. Accordingly, the Division's decision establishing a claim against Ms. J for the $7,524.00 in overpaid SNAP benefits is AFFIRMED. However, the Division's decision not to compromise its claim against Ms. J is REMANDED to the Division for its consideration of all relevant factors, and its documentation of same in a new decisional document to be sent to Ms. J.

II. Facts

A. Procedural History

On May 10, 2012 the Division sent Ms. J a written notice stating that during the period May 2011 through April 2012 she had been paid $7,524.00 more in SNAP benefits than she should have

[1] 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.

received, and that the Division was requiring repayment of that amount.[2] On May 15, 2012 Ms. J submitted a Fair Hearing Request Form to the Division on this issue.[3]

The Department of Health and Social Services' Office of Hearings and Appeals held Ms. J's hearing on June 21, 2012. Ms. J participated in the hearing by telephone, represented herself, and testified on her own behalf. Jeff Miller (a Public Assistance Analyst employed by the Division) participated in the hearing by telephone, represented the Division, and testified on its behalf. The hearing was recorded.

B. The Overpayments

Ms. J has a three person household consisting of herself and her two sons.[4] Her sons are adopted, and she has received a monthly adoption subsidy in the amount of $3,324.00 at all times relevant to this decision.[5] Prior to April 2011 the Division treated adoption subsidies as exempt (non-countable) income for purposes of the Food Stamp Program / SNAP.[6] During this period, because the adoption subsidies were treated as non-countable income, and because Ms. J had no other significant income, Ms. J's household was eligible for SNAP benefits.[7]

In April 2011 the Division changed its policy and began treating adoption subsidy payments as non-exempt (countable) income, effective May 2011.[8] Thus, as of May 1, 2011, Ms. J's $3,324.00 in monthly adoption subsidy payments became countable income for purposes of the Food Stamp Program / SNAP.[9] The practical effect of this was to raise Ms. J's countable household income above the Food Stamp Program's maximum income limit for a household of three persons.[10]

The Division should have mailed a notice to Ms. J in April or May 2011 advising her that, due to the policy change, she was now over-income for SNAP benefits, and that her benefits would be terminated and her case would be closed.[11] However, the Division inadvertently failed to do so, and

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2 Exs. 4.0 – 4.1.
3 Ex. 5.0, 5.1.
4 Ex. 1.
5 Exs. 2, 3, 4, 4.18, 4.19, 7, 16.
6 Exs. 4.18, 4.19, Miller testimony.
7 Exs. 4.17, 4.18, 4.19, Miller testimony.
8 Exs. 4.18, 4.19, Miller testimony. The Division's current policy treating adoption subsidy payments as non-exempt (countable) income, now set forth in the Alaska Food Stamp Manual at Section 602-3 B(7)(r), is consistent with the federal SNAP regulation governing countable income. *See* 7 C.F.R. § 273.9(b)(2)(v); 7 C.F.R. § 273.9(c).
9 Exs. 2, Miller testimony.
10 Exs. 3, 4.4 - 4.13, 4.18, 4.19, Miller testimony.
11 7 C.F.R. § 273.13.

the SNAP payments to Ms. J continued.[12] Ms. J subsequently received $3,324.00 in adoption subsidy payments each month during the period May 2011 - April 2012.[13]

On March 23, 2012 Ms. J submitted an application to recertify (renew) her SNAP benefits.[14] The Division reviewed this application the following week, and in the process discovered that it should have terminated Ms. J's SNAP benefits when the adoption subsidy policy changed approximately one year earlier.[15] The Division proceeded to close Ms. J's SNAP case effective May 2012.[16]

In her hearing request related to the closure, Ms. J stated that she could no longer work due to serious medical problems involving her heart and back.[17] She also stated that she was required to spend a great deal of time and effort taking care of her sons, who suffer from hemophilia.[18] Based on these hardships, she requested that the Division compromise (reduce) the amount of its overpayment claim.[19] Later the same day the Division mailed a letter to Ms. J declining to compromise the overpayment claim.[20] The only rationale for not compromising the claim stated in the Division's letter was the following sentence:

> In accordance with 7 CFR 273.18(e)(7), [the Division] will not be compromising any portion of your Food Stamp benefit overpayment claim.[21]

At her hearing, Ms. J did not dispute the Division's calculation of the amount of overpaid SNAP benefits.[22] Rather, she asserted that it would be unfair to require her to repay the SNAP benefits at issue given her financial circumstances and the fact that the overpayment of benefits was caused by the Division's error.[23]

III. Discussion

This case does not involve any disputed issues of material fact. The only questions in this case are (1) whether the Division is correct to seek recovery of the $7,524.00 in Food Stamp (SNAP) benefits which were overpaid to Ms. J during the period May 2011 through April 2012 due to the

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12 Miller testimony.

13 Exs. 4.17, 4.18, 4.19. Actually, Ex. 4.17 indicates that Ms. J received more than $3,324.00 per month in adoption subsidies during the period May 2011 - October 2011. However, the Division has based its calculations on the lower payment of $3,324.00 received by Ms. J during the period November 2011 - April 2012.

14 Ex. 2.

15 Ex. 2.

16 Ex. 3. The record does not contain a copy of the Division's notice of case closure (notice of termination of SNAP benefits). However, Ms. J does not dispute that the Division properly closed her SNAP case based on excess income (Ex. 7, J testimony).

17 Ex. 5.1

18 Ex. 5.1.

19 Ex. 5.1.

20 Ex. 6.

21 Ex. 6.

22 J testimony.

23 J testimony.

Division's own error; and if so, (2) whether the Division is required to compromise (write-off or forgive) all or part of the overpaid benefits. These are purely legal issues.

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.

A. Was the Division Required to Pursue Recoupment of Overpaid SNAP Benefits?

Ms. J does not dispute that she received $7,524.00 more in SNAP benefits than she should have received during the period at issue.[24] Rather, she argues that she has done nothing wrong and that the Division's own error caused the overpayment.[25]

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.* The Alaska Supreme Court recently confirmed this 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.

B. Was the Division Correct to Decline to Compromise the Overpaid Benefits?

The remaining issue is whether the Division was required to compromise (write-off or forgive) all or part of the overpaid benefits. Federal SNAP regulation 7 C.F.R. § 273.18(e)(7) provides 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.

Ms. J presented testimony at hearing on the issue of whether she will likely be able to pay the claim at issue within three years. Because of its interpretation of the applicable regulation, the Division presented no evidence on this issue. [26]

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[24] J testimony.
[25] J testimony.

It is clear that use of the word "may"[27] in 7 C.F.R. § 273.18(e)(7)(i) means that the decision whether to compromise a SNAP overpayment claim is subject to the Division's discretion.[28] However, when (as here) a determination is within the realm of agency discretion, the reviewing tribunal's task is to ensure that the agency engaged in reasoned decision-making, taking into consideration all material facts and issues.[29] When the agency's written decision does not contain a reasoned explanation for its actions, the decision should be remanded to the agency for supplementation.[30]

In this case, the Division's letter denying Ms. J's compromise request contained no explanation as to how the Division determined that Ms. J's economic circumstances indicate that the claim can be paid in three years, or even whether the Division considered that question at all.[31] Accordingly, the issue of whether the Division must or should compromise its overpayment claim against Ms. J should

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[26] Review of the Division's own (state option) SNAP regulations demonstrates that the Division has not adopted an official interpretation of 7 C.F.R. § 273.18(e)(7) by regulation or policy manual. See 7 AAC 46.021 and Alaska Food Stamp Manual Sections 607-3 and 607-4. The Division's state option regulation is based on the 1985 version of the federal regulations (see 7 AAC 46.990(c)). Because the federal SNAP regulations have been revised several times since 1985, many of the Division's "state option" provisions no longer reference the correct federal SNAP regulation. For example, in 1985 the substance of what is now 7 C.F.R. § 273.18(e)(7)(i) was contained in 7 C.F.R. § 273.18(g)(2)(i).

[27] The use of the word 'may' rather that the directive 'shall,' indicates a discretionary power. *Frontier Saloon, Inc. v. Alcoholic Beverage Control Board*, 524 P.2d 657, 660 (Alaska 1974); *see also Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74, 76 (Alaska 2000) (in contrast to the term "shall," the term "may" generally denotes permissive or discretionary authority and not a mandatory duty).

[28] Research indicates that the only appellate courts to address this issue to date have indicated that whether a state agency compromises a Food Stamp *recoupment* claim is discretionary. *See Hill v. Indiana Board of Public Welfare*, 633 N.E.2d 352, 357 (Ind. App. 1994) (holding based on a prior version of 7 C.F.R. § 273.18); *Waters-Haskins v. New Mexico Human Services Department, Income Support Division*, 210 P.3d 817, 822 (N.M. 2009) (stated as dicta).

[29] *Phillips v. Houston Contracting, Inc*., 732 P.2d 544, 547 (Alaska 1987).

[30] *Id.; see also Smith v. State of Alaska Department of Corrections*, 872 P.2d 1218, 1224-1225 (Alaska 1994) ("[w]e have ruled in a broad variety of administrative adjudications that the decision maker should identify the reasons for his decision"); *Kenai Peninsula Borough v. Ryherd*, 628 P.2d 557, 562 (Alaska 1981) (even absent a statutory duty to make findings, an agency that makes an adjudicative decision must articulate its reasons); *Fields v. Kodiak City Council*, 628 P.2d 927, 933 (Alaska 1981) (requiring findings even in informal adjudications). Such findings facilitate judicial review, insure careful administrative deliberation, assist the parties in preparing for review, and restrain agencies within the bounds of their jurisdiction. *See Mobile Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97 n.11 (Alaska 1974).

There are exceptions to this doctrine for agency decisions that are traditionally regarded as committed to agency discretion and unreviewable. These include decisions on whether or not to pursue enforcement action (*see, e.g., Heckler v. Cheney*, 470 U.S. 821 (1985)), decisions on how to allocate funds (*see, e.g., Lincoln v. Vigil*, 508 U.S. 182, 191 (1993)), and decisions on settling cases (*see, e.g., NLRB v. United Food & Commercial Workers*, 484 U.S. 112 (1987) (no review of settlement reached); *cf. Harvey v. Marshall*, 884 A.2d 1171, 1192-93 (Md. 2005) (court review of agency refusal to write off arrearages of child support extremely limited)). However, while the Division's refusal to consider a compromise authorized by 7 C.F.R. § 273.18(e)(7)(i) might be unreviewable by a court, the same cannot be said of review by the Commissioner of Health and Social Services. As the chief executive of the department, the commissioner is free to review whether this blanket refusal comports with the policy he wishes the department to follow. Moreover, the commissioner and this office have jurisdiction to decide 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" [italics added]).

[31] Ex. 6. The exercise of discretion invariably entails the collection and evaluation of information. *Ortega v. Sacramento County Department of Health and Human Services*, 74 Cal. Rptr.3d 390, 404 (Cal. App. 2008). Thus, the collection and evaluation of information is an integral part of "the exercise of discretion." *Id.*

be remanded to the Division. On remand, the Division must consider the compromise issue and provide Ms. J with a new notice which explains its decision.[32]

IV. Conclusion

The Division's decision to seek recovery of the $7,524.00 in Food Stamp (SNAP) benefits which were overpaid to Ms. J during the period May 2011 through April 2012 due to the Division's own error is AFFIRMED. The Division's decision not to compromise its claim against Ms. J is REMANDED to the Division for its consideration of all relevant factors, and its documentation of same in a new decisional document to be sent to Ms. J.

Dated this 23rd day of July, 2012.

Signed
Jay Durych
Administrative Law Judge

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 1st day of August, 2012.

By: *Jay D. Durych*

Title/Agency: ALJ, OAH, DOA

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

[32] In this case the Division sent its notice denying Ms. J's compromise request before the hearing which established the overpayment. However, 7 C.F.R. § 273.18(e)(6-7) appears to contemplate that the amount of overpayment, if disputed by the recipient, will be determined at hearing, and only then will the issue of compromise be ripe for consideration by the agency. *See Waters-Haskins v. New Mexico Human Services Department, Income Support Division*, 210 P.3d 817, 822 (N.M. 2009) (7 C.F.R. § 273.18 "requires that a state agency first establish a valid claim in the full amount of the overpayment, either by the notification letter or by a fair hearing, before the agency can decide whether to compromise the claim").