

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

In the Matter of:)	
)	
D S)	OAH No. 12-0614-SNA
)	Former OHA Case No.
_____)	DPA Case No.

DECISION

I. Introduction

There are two issues in this case. The first issue is whether certain No Name I real property owned by Mr. S' household is an exempt resource for purposes of eligibility for the Supplemental Nutrition Assistance Program (SNAP).¹ The second question, legally dependent on the first, is whether Mr. S is required to pay back SNAP benefits which were issued to him in error by the State of Alaska Division of Public Assistance (DPA or Division).

The parties agree that, through no fault of his own, Mr. S' household may—depending on whether the No Name I property is an exempt resource for purposes of SNAP eligibility—have been paid \$3,762.00 more in SNAP benefits than it should have been paid during the period May 2011 through October 2011. This decision concludes that the S' No Name I property is not an exempt resource for SNAP eligibility purposes, and that for this reason the S family was resource-ineligible for participation in SNAP during the period in question.² This decision further concludes that, pursuant to the applicable federal regulations, the Division must seek reimbursement from Mr. S for the overpaid SNAP benefits. Accordingly, the Division's decision establishing a claim against Mr. S for the \$3,762.00 in overpaid SNAP benefits is AFFIRMED.

II. Facts

D S and his wife N have three minor children.³ Their household has received SNAP benefits since December 2009 or before.⁴

On September 24, 2009 N's grandparents deeded to her certain property located on No Name I in lower Cook Inlet.⁵ The S family has two Cook Inlet set-net fishing permits which they fish from the

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.

² In other words, as a result of their ownership of the No Name Island property, the countable assets owned by the S family exceeded the maximum resource limit for participation in SNAP.

³ Exs. 1, 2.2.

⁴ Ex. 2.0.

⁵ Exs. 6.8, 6.9, 6.10.

No Name I property.⁶ The only reason they own the No Name I property is to fish their set-net permits.⁷ The S family does not live on the No Name I property year round.⁸ However, they do camp on the property for the three months or so each summer that the Cook Inlet commercial fishing season is open,⁹ usually from late May through mid-August.¹⁰ During this time the S family fishes the set-net permits from the beaches of the No Name I property.¹¹

On October 20, 2010 Mr. S submitted a recertification / renewal application for SNAP benefits.¹² The application listed both the S' home in No Name, and the No Name I property, as family assets.¹³ The application valued the No Name I property at \$57,300.00.¹⁴

On April 5, 2011 Mr. S submitted another recertification / renewal application for SNAP benefits.¹⁵ The application again listed both the S' home in No Name, and the No Name I property, as family assets.¹⁶

On April 26, 2011 N S confirmed to the Division, during a telephone conversation, that her grandparents had deeded the No Name I property to her.¹⁷ On April 27, 2011 the Division requested additional information from Mr. S regarding the family's income and resources, including the No Name I property.¹⁸ However, on May 19, 2011 the Division again approved Mr. S' recertification application for SNAP benefits.¹⁹

On September 30, 2011 N S contacted the Division and advised that she and her husband had separated and that Mr. S had moved out of the household.²⁰ On October 14, 2011 the Division closed Mr. S' SNAP case.²¹ On the same date the Division concluded, based on a review of its records, that it should have been counting the No Name I property as an available resource for some time; for this reason it also closed N S' SNAP case.²²

⁶ V G hearing testimony.

⁷ V G hearing testimony.

⁸ D S hearing testimony.

⁹ D S hearing testimony.

¹⁰ D S hearing testimony.

¹¹ D S hearing testimony.

¹² Exs. 2.2 - 2.5.

¹³ Ex. 2.3.

¹⁴ Ex. 2.3.

¹⁵ Exs. 3.2 - 3.4.

¹⁶ Ex. 3.3.

¹⁷ Ex. 3.0.

¹⁸ Ex. 3.5.

¹⁹ Ex. 6.3.

²⁰ Ex. 6.4.

²¹ Ex. 6.4.

²² Ex. 6.4.

As of October 14, 2011 the No Name Peninsula Borough was listing the tax value of the No Name I property as \$52,500.00.²³ It listed N B (formerly S) as the owner of the property.²⁴

On December 7, 2011 the Division notified Mr. S that it had paid his household a total of \$3,762.00 more in SNAP benefits than his household should have received during the period May 2011 through October 2011.²⁵ The notice acknowledged that the overpayment was the result of agency error.²⁶ However, the notice further stated that the Division was seeking repayment of the \$3,762.00 from Mr. S.²⁷ Mr. S requested a hearing with regard to the Division's SNAP repayment claim on March 1, 2012.²⁸

Mr. S' hearing began as scheduled on March 28, 2012. The hearing was recorded. Mr. S participated in the hearing by telephone, represented himself, and testified on his own behalf. Mr. S' wife N S and his mother V G also participated by telephone and testified on Mr. S' behalf. Public Assistance Analyst Terri Gagne attended the hearing in person, represented the Division, and testified on its behalf.

At the hearing the testimony centered on whether the No Name I property could be considered an exempt resource due to the fact that the S family fishes their set-net permits from the property. Mr. S testified that there are only a limited number of sites in Cook Inlet from which a set-netter can fish, and these beach sites have been fished by the same families for generations. He further testified that, although he was not certain, he believes that if his family didn't have the No Name I property, they would have nowhere to fish their permits. However, Ms. G testified that the No Name I property could be sold without selling the Cook Inlet set-net permits, and vice-versa. Mr. S was given the opportunity to submit any documentation he might have showing that the set-net permits were legally tied to the No Name I property, but he chose not to do so. Accordingly, at the end of the hearing the record was closed.

III. Discussion

At the hearing, Mr. S did not dispute the Division's assertions regarding the total amount of SNAP benefits actually received by his household during the period in question. Likewise, Mr. S did not dispute the Division's assertions regarding the amount of SNAP benefits which should have been paid to the S' household during the period in question if the No Name I property must be counted. Finally, Mr. S did not dispute the value of the No Name I property. Rather, Mr. S' position was

²³ Ex. 6.5.

²⁴ Ex. 6.5.

²⁵ Exs. 8.0 - 8.7.

²⁶ Ex. 8.0; *see also* Ex. 8.10, 8.12, and Terri Gagne hearing testimony.

²⁷ Ex. 8.0.

²⁸ Ex. 9

essentially that he and his wife had at all times complied with applicable SNAP program requirements; that they had done nothing wrong; and that he should not be penalized for the Division's mistake.

The only issues in this case are (1) whether the No Name I property is an exempt resource; and, if not, (2) whether the Division is correct to seek recovery of the SNAP benefits which were overpaid to Mr. S during the period May 2011 through October 2011 due to the Division's own error. These are purely legal issues which will be discussed below in the order stated.

A. *Is the No Name I Property an Exempt Resource?*

Pursuant to 7 CFR § 273.8(b), the maximum household resource limit is \$2,000; if the household includes a disabled member or a member age 60 or over, the maximum resource limit is increased to \$3,000.00.

A family's home is not counted as a resource for purposes of SNAP eligibility; it is an "exempt resource."²⁹ Other real property is generally countable or non-exempt.³⁰ However, the regulations grant an exemption for property that is "essential" to the employment or self-employment of a household member.³¹ This raises the issue of whether the No Name I property is essential to the S family's set-net fishing. If the property *is essential* to the commercial fishery, then it qualifies as an exempt resource under 7 CFR § 273.8(e)(5), and the benefits at issue would have been properly paid to the S family. If the property *is not essential* to the commercial fishery, then the property is not exempt but rather is a countable resource. In that event, the S family would not have been eligible for the SNAP benefits at issue.

Were it not possible to fish the S' set-net permits elsewhere than their No Name I property, the No Name I property would be deemed essential to the commercial fishing enterprise. However, it is not legally necessary to own (or even lease) property in order to fish a set-net from that property.³² It is possible to lease tidal and submerged lands from the State of Alaska Department of Natural Resources (DNR) in order to participate in a shore fishery.³³ Such lease sites are available in Cook Inlet.³⁴ Accordingly, although the S' No Name I property no doubt *facilitates* the use of their set-net permits, the No Name I property is not "essential" to the use of their set-net permits. For this reason, the No Name I property is a non-exempt, countable resource for purposes of SNAP. Further, because the S' No Name I property was a countable resource, the S household was not financially eligible to participate in SNAP during the period at issue.

²⁹ 7 CFR § 273.8(e)(1).

³⁰ 7 CFR § 273.8(c).

³¹ 7 CFR § 273.8(e)(5).

³² See 11 AAC § 64.020.

³³ See generally 11 AAC 64.

³⁴ http://dnr.alaska.gov/mlw/factsht/shorefish_fs.pdf (date accessed September 7, 2012).

B. *Is the Division Required to Seek Recovery of the Overpaid SNAP Benefits?*

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 over issuance 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].”³⁵ 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.

Some courts held, *prior to* the 1996 amendments to the Food Stamp / SNAP statutes, that state agencies such as the DPA might be prevented from seeking recoupment of overpaid Food Stamp benefits in certain cases involving agency error.³⁶ However, after the 1996 amendments to the Food Stamp / SNAP statutes, virtually all courts have held, based on the clear language of the federal statute and regulation, that agencies such as the DPA must attempt to recoup overpaid Food Stamp / SNAP benefits even in cases (like this one) involving agency error.³⁷ 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.

IV. Conclusion

Because the No Name I property is not essential to the S family’s commercial fishery, it is not an exempt resource and it rendered the family ineligible for SNAP benefits during the period in question.

The applicable federal statute (7 U.S.C.A. § 2022) and federal regulation (7 C.F.R. § 273.18) require that the Division attempt to recoup all overpaid SNAP benefits. On their face, the federal

³⁵ Italics added.

³⁶ See, for example, *Cudal v. Sunn*, 742 P.2d 352 (Hawaii 1987); *Mendez v. Department of Social Services*, 813 P.2d 1234 (Utah App. 1991); and *Lewis v. State, Dept. of Health and Rehabilitative Services*, 659 So.2d 1255 (Fla.App. 4th Dist. 1995).

³⁷ See, for example, *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997) and *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3rd Dist. 2002).

statute and regulation give the Division no discretion to waive recoupment, even where (as here) the SNAP overpayments resulted from agency error. Further, the judicial decisions interpreting the current federal statute and regulations confirm that state agencies have no discretion to waive recoupment even where (as here) the Food Stamp overpayments resulted from agency error. Accordingly, in this case the Division is required by federal law to seek recovery of the \$3,762.00 in SNAP benefits paid to the S household during the period May 2011 through October 2011. The Division's decision to seek recovery of these SNAP benefits is therefore AFFIRMED.

Dated this 10th day of September, 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 19th day of September, 2012.

By: *Signed*

Name: Jay D. Durych
Title: Administrative Law Judge

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