

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

In the Matter of)	
)	OAH No. 12-0726-SNA
M T K)	Agency No.
_____)	

DECISION

I. Introduction

M K’s household applied for and was found eligible to receive Food Stamps. The Division of Public Assistance (division) subsequently determined that it should not have approved Ms. T-K’s household for Food Stamp benefits. The division sought to recover the benefits that were paid in error. Ms. T-K requested a formal hearing on whether she should be required to repay the erroneously approved benefits.

A hearing was held on October 31, 2012. Ms. K represented herself, and the division was represented by Public Assistance Analyst Terri Gagne. Based on the evidence in this case, the division is entitled to recover this overpayment.

II. Facts

The relevant facts are not in dispute. Ms. K applied for Food Stamps on February 2, 2012.¹ She provided all of the required information, including a recent military Leave and Earnings Statement showing her husband’s income.² The case notes in the record show that the household was approved for Food Stamps beginning in February of 2012.³ In determining eligibility, the division did not include the \$1,578 housing allowance (BAH) received by Mr. K.⁴ The household received a total of \$2,565 in Food Stamp benefits during the months of February through July 2012.⁵

When Ms. K applied to renew her Food Stamp benefits in July 2012, an agency error was discovered in that, with the inclusion of the BAH as part of the household’s income, the household was not eligible for any amount of Food Stamps and should not have been

¹ Exhibit 2.10.
² Exhibit 2.19.
³ Exhibit 2.9.
⁴ Exhibit 2.8.
⁵ Exhibit 2.28.

approved to begin with. The agency issued a notice seeking to recoup the full \$2,565 paid to the household from February through July of 2012.⁶

Ms. K testified that re-paying this amount would be difficult. Her husband was recently discharged from the military and they are both currently unemployed. The household includes Mr. and Ms. K, and four children.⁷

III. Discussion

Ms. K argued that her household should not have to repay the benefits received since the overpayment was due to the agency's error. The amount of the overpayment is not in dispute. It is also not disputed that, with the inclusion of the BAH, the household did not financially qualify for Food Stamps.

Food Stamp benefits are governed by federal law. When there has been an overpayment, the division is required to collect most overpayments, including overpayments caused by agency error.⁸ The division is only allowed to compromise all or a portion of the claim if "it can be reasonably determined that a household's economic circumstances dictate that the claim will not be repaid in three years."⁹ Thus, unless repayment in three years is not likely, the division's determination to recoup this amount was correct.

Ms. Gagne indicated at the hearing that the division did not consider compromising all or some of this claim because Ms. K did not submit a hardship request. After the hearing, Ms. Gagne submitted an additional notice stating that a compromise request would be considered if Ms. K requests the division to compromise the amount due. Given the household's current economic circumstances, Ms. K should submit a compromise request, along with information about the household's income, expenses, and ability to repay the previously received benefits. After the agency considers that request, the household would have the right to request a hearing if it did not agree with the agency's decision.

IV. Conclusion

Although the overpayment was due to an agency error, Ms. K is still required to repay that amount unless the division compromises some or all of the claim as discussed

⁶ Exhibit 2.23.

⁷ Testimony of Ms. T-K.

⁸ 7 CFR §273.18(a)(2). *See Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)* (The division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is due to the division's error).

⁹ 7 CFR §273.18(e)(7).

above. Accordingly, the division's decision to require repayment is upheld subject to any later determination concerning a request to compromise that amount.

Dated this 1st day of November, 2012.

Signed _____
Jeffrey A. Friedman
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 13th day of November, 2012.

By: *Signed* _____
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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