

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

In the Matter of:)
)
K Q) OAH No. 12-0909-SNA
) Agency No.
_____)

DECISION

I. Introduction

K Q was the recipient of food stamps under the Supplemental Nutrition Assistance Program (SNAP).¹ The Division of Public Assistance (division) determined that Ms. Q had received food stamps in error and seeks reimbursement of \$2,117 for benefits received by Ms. Q.

A hearing was held on December 11, 2012. Ms. Q appeared by telephone, and the division was represented by Public Assistance Analyst Terri Gagne. Because the division is required to seek reimbursement of benefits paid in error, its decision to do so is affirmed. However, the matter is remanded to the division for the limited purpose of recalculating the amount of the overpayment which the division may recover.

II. Facts

The underlying facts are not in dispute and are taken from the evidence and testimony presented at hearing. Ms. Q timely provided the division with all the information it requested in support of her application for recertification. The division made an administrative error when it failed to carry forward income. As a result of its error, the division calculated that Ms. Q received an overpayment of \$2,117 SNAP benefits from September 2012 through November 2012. When the administrative error was discovered, the division sought reimbursement of the benefit paid in error.

Ms. Q challenges the divisions attempt to seek reimbursement when the overpayment was caused by a division error. She also challenges the division's calculation of what benefits she should have received. Specifically, the division included a dependent care deduction ranging from \$25 or \$23 depending on the month.² Ms. Q contends she should receive a larger

¹ 7 U.S.C. §2013.

² Exhibit 2.55.

deduction for dependent care and she supplemented the record with an invoice for child care showing amounts paid in excess of \$25.³

III. Discussion

There is no dispute that Ms. Q received an overpayment of benefits. Therefore, the issue is whether the division may seek reimbursement of those benefits when the overpayment was due to an administrative error by the division. Ms. Q argued 1) she should not be responsible for paying back the overpaid food stamp benefit since the Division's mistake caused the overpayment, and 2) that repayment would cause a hardship. She also challenged the calculation contending that the amount of overpayment was incorrect because she did not receive the full deduction for dependent care expense.

A. *Recovery of an overpayment due to administrative error.*

SNAP is a federal program administered by the State of Alaska pursuant to 7 CFR §§ 271 – 274 and 7 AAC 46.010 – 990. The federal regulations define a claim to include amounts owed because benefits were overpaid.⁴ Claims are divided into three categories: 1) intentional program violations by the recipient (IPV claim); 2) inadvertent errors by a recipient household (IHE claim); and 3) agency errors (AE claim).⁵ This case involves the third type of claim, AE.

The division, as the state agency administering SNAP, is required to “establish and collect” all claims pursuant to the federal regulations.⁶ This includes claims due to agency error. There is no applicable exception to this requirement.⁷

Notwithstanding its obligation to collect all overpayments, the division recognizes (as did Congress) that recoupment of overpayments made to innocent households may cause hardship. The division seeks to minimize the hardship by providing that where appropriate the parties may enter into a repayment agreement that provides for periodic payments,⁸ and may compromise all

³ Post Hearing Submission (December 11, 2012).

⁴ 7 CFR §273.18(a)(1)(i).

⁵ 7 CFR §273.18(b).

⁶ 7 CFR §273.18(a)(2) (“[Claims for overpaid benefits regardless of fault are] a federal debt . . . The State agency must establish and collect any claim . . .”); 7 CFR 273.18(a)(4)(i) (“Each person who was an adult member of the household when the overpayment . . . occurred” is responsible for the claim); 7 CFR 273.18(b)(3) (recognizing that an overpayment caused by agency error is a collectable claim); *Also see Allen v. State, DHSS*, 203 P.3d 1155 (Alaska, 2009).

⁷ The state has exercised its discretion not to establish and collect claims that are not cost effective. 7 AAC 46.021(a)(43); 7 CFR §273.18(e)(2). There is no indication in the record that this claim would fit within the definition of claims that would not be cost effective.

⁸ 7 CFR §273.18(e)(4).

or a portion of the claim if it is determined that, because of the household's economic circumstances, the claim will not be paid in three years.⁹ Thus, unless repayment in three years is not likely, the division's determination to recoup an overpayment was correct.

It is unclear from the record whether Ms. Q submitted a hardship request. After the agency considers that request, Ms. Q would have the right to request a hearing if it did not agree with the agency's decision.

B. *The amount of overpayment is remanded for the division to recalculate the amount taking into consideration the correct dependent care deduction.*

As to the overpayment calculation 7 CFR §273.9(d)(4) provides that Ms. Q may receive a deduction up to \$175 per month for dependent care of a child over 2 years of age. The maximum allowable dependent care deduction, \$175, is significantly less than the amount of claimed overpayment. Information regarding Ms. Q's childcare expenses was not previously available to the division and, as a result, the amount of overpayment may be overstated. Until the division recalculates the amount of overpayment using the correct deduction, the exact amount of overpaid benefits cannot be ascertained. Therefore, the amount of overpayment should be remanded to the division so it may perform a new calculation incorporating the appropriate dependent care deduction.

This proceeding resolves any dispute regarding the division's ability to seek reimbursement of an overpayment from Ms. Q, but because the amount of overpayment is not yet known, should Ms. Q dispute the final overpayment amount, she may request a hearing. The scope of the hearing will be restricted to whether the amount of overpayment is correct.

IV. Conclusion

Ms. Q received an overpayment of SNAP benefits. The overpayment was due to an administrative error. Although the overpayment was due to an agency error, Ms. Q is still required to repay that amount unless the division compromises some or the entire claim as discussed above. Accordingly, the division's decision to require repayment is upheld subject to any later determination concerning a request to compromise that amount.

Post hearing the Ms. Q provided information not previously available to the division, revealing that she is entitled to a larger deduction for dependent care than was originally included in the overpayment calculation. Therefore, it is more likely than not that the amount of

⁹ 7 CFR §273.18(e)(7).

overpayment sought to recover is overstated. This matter is remanded for a recalculation of the overpayment. The recalculation is to include, as permitted by law, a deduction for dependent care expenses. Ms. Q may receive a hearing on the limited issue of the actual calculation should she disagree with the division's figure. The division's decision to seek reimbursement is affirmed, however amount of the overpayment, as stated above, has yet to be resolved.

DATED this 21st day of December, 2012.

By: Signed
Rebecca Pauli
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of January, 2013.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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