

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

In the Matter of:)
)
 N S) OAH No. 12-0939-SNA
) DPA Case No.
 _____)

DECISION

I. Introduction

This case concerns the value of a household’s non-exempt resources in July of 2012. Because those resources exceeded the Food Stamp program’s applicable limit,¹ the household was not eligible for benefits that month. Accordingly, the determination of the Division of Public Assistance (Division) is affirmed.

II. Facts

The relevant facts of this case are not in dispute. Ms. S has a four person household consisting of herself, her domestic partner D L, and their two minor sons.² Ms. S and Mr. L submitted an application for Food Stamp benefits to the Division on July 5, 2012³ and participated in an eligibility interview on July 6, 2012.⁴ At the time the application was submitted Ms. S was working part-time and earning approximately \$200.00 per month in wages, while Mr. L was unemployed but receiving approximately \$1,800.00 per month in unemployment insurance benefits.⁵ Ms. S indicated on the application that her household had approximately \$360.00 available to it between its bank accounts and cash on hand.⁶ Ms. S' application was approved on July 6, 2012 and her household began receiving Food Stamp benefits.⁷ The amount of Food Stamp benefits received by Ms. S' household during July 2012 totaled \$680.00.⁸

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”). However, the use of the program’s former name still predominates. Accordingly, this decision will refer to the program as “the Food Stamp program.”

² Exs. 1, 2.1.

³ Exs. 2.0 - 2.9.

⁴ Ex. 2.10.

⁵ Exs. 2.2, 2.3, 2.10.

⁶ Ex. 2.4.

⁷ Ex. 2.10.

⁸ Ex. 2.36.

On October 1, 2012 Ms. S provided copies of her household's bank statements to the Division.⁹ On October 7, 2012 the Division reviewed these bank statements and determined that, during July 2012, the balances of Ms. S' household's bank accounts totaled more than \$2,000.00.¹⁰ The Division further determined that, as a result of the above, Ms. S' household was not eligible for Food Stamp benefits during July 2012, and therefore should not have received the \$680.00 in benefits issued to it that month.¹¹

On November 15, 2012 the Division notified Ms. S of its determination regarding the July 2012 overpayment.¹² The Division acknowledged that the overpayment was due to an error by the Division and was not the fault of Ms. S' household.¹³ However, the notice asserted that the Division was required to seek to recover the overpaid benefits regardless of which party was at fault.¹⁴ On November 27, 2012 the Division provided Ms. S with a supplemental notice to correct a mistake in the initial notice.¹⁵ On December 3, 2012 Ms. S requested a hearing on the overpayment collection issue.

Ms. S' hearing was held on January 9, 2013. Ms. S and Mr. L attended the hearing in person, represented themselves, and testified on their own behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf. Following the hearing the record was held open through January 14, 2013 for post-hearing filings.

III. Discussion

The Food Stamp program is a federal program administered by the states.¹⁶ One of the program's eligibility criteria is that, unless one or more household members are disabled or age 60 or older, the value of the household's countable or nonexempt resources may not exceed \$2,000.00.¹⁷ Importantly, the amount or value of a household's countable resources *is determined as of the date of the household's eligibility interview.*¹⁸ Cash on hand, and money in

⁹ Exs. 2.12 - 2.26.

¹⁰ Ex. 2.27.

¹¹ Ex. 2.36.

¹² Ex. 2.38.

¹³ Ex. 2.38.

¹⁴ Ex. 2.38.

¹⁵ Ex. 2.36.

¹⁶ 7 C.F.R. § 271.4(a).

¹⁷ 7 C.F.R. § 273.8(b).

¹⁸ See 7 C.F.R. § 273.10(b) and Alaska Food Stamp Manual Section 602-2(A)(3)(a). There are exceptions to this rule, but the exceptions do not apply on the facts of this case.

checking or savings accounts, are classified as countable resources and must therefore be included when calculating the household's total resources.¹⁹

At the hearing, Ms. S and Mr. L did not dispute the Division's calculation of the amount of allegedly overpaid Food Stamp benefits. Rather, they asserted that they had not exceeded the Food Stamp program's maximum resource limit during July 2012 in the first instance because (1) \$2,000.00 of the money in their bank accounts came from a loan made to Mr. L by a private individual during June 2012; and (2) \$1,800.00 of the money in their bank accounts came from a transfer from a line of credit (i.e. a loan) from his credit union.²⁰

The Food Stamp program specifically excludes money received through loans from inclusion in a household's countable *income*.²¹ However, the Food Stamp program does not exclude money received through loans from a household's countable *resources*.²²

Further, even if the loans at issue were not countable as part of a household's resources, it would not affect the outcome of this case. First, assuming that Mr. L in fact received a \$2,000.00 loan from a private individual in June 2012, the bank statements contained in the record show that this loan money was never deposited to any of the household's three bank accounts at or before the time of the eligibility interview on July 6, 2012.²³ In other words, there is no evidence that this \$2,000.00 loan comprised any portion of the monies in the S household's bank accounts. Thus, this \$2,000.00 loan payment was not counted by the Division in making its determination, and if included would constitute a resource *in addition to* the money in the household's bank accounts counted by the Division.

The \$1,800.00 transfer from Mr. L's bank line of credit likewise does not affect the Division's determination. The bank records show that this transfer occurred on August 8, 2012, about one month after the eligibility interview.²⁴ Because this money had not been deposited as of the date of the July 6, 2012 eligibility interview, it necessarily was not counted by the Division when it made its resource determination.

¹⁹ 7 C.F.R. § 273.8(c)(1).

²⁰ L hearing testimony; S hearing testimony.

²¹ 7 C.F.R. § 273.9(c)(4).

²² 7 C.F.R. § 273.8(b).

²³ See Exs. A, B, and 2.12 - 2.26.

²⁴ Ex. 2.12.

The S household's bank records indicate that, as of July 6, 2012, they had \$0.13 in one account,²⁵ \$372.97 in a second account,²⁶ and \$2,421.11 in a third account,²⁷ for a total of \$2,794.21. Because the total value of the S household's countable resources exceeded the applicable maximum resource limit by \$794.21 on the date of the eligibility interview, the S household was not eligible to receive Food Stamp benefits. There is no dispute that the S household received \$680.00 in Food Stamp benefits for July 2012. Because the S household received \$680.00 in benefits at a time when it was not eligible, these benefits constitute an overpayment.

The federal statute pertaining to the recovery of overpaid Food Stamp 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 Food Stamp benefits, and the statute contains no hardship exception.

The federal implementing regulation pertaining to the recoupment of Food Stamp 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, the federal statutes and regulations require that the Division attempt to recover overpaid Food Stamp benefits even when the overpayment is the result of the Division’s own error.²⁸ These federal statutes and regulations are binding on the Department of Health and Social Services.²⁹

IV. Conclusion

Ms. S' household did have more than \$2,000 in countable resources at the time of the eligibility interview on July 6, 2012. Accordingly, the Division correctly determined that the

²⁵ Ex. B1; Ex. 2.22.

²⁶ Ex. 2.14.

²⁷ Ex. 2.12.

²⁸ This was recently confirmed by the Alaska Supreme Court in *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009).

²⁹ Ms. S does, however, have the right to request that the Division compromise (write-off or forgive) all or part of the overpaid benefits. See Food Stamp regulation 7 C.F.R. § 273.18(e)(7).

household was not eligible for Food Stamp benefits that month. As acknowledged by the Division, the overpayment at issue was not Ms. S' fault. However, the federal regulations require the state agencies administering the Food Stamp program to "establish and collect any claim" for overpaid benefits. This is the case even where (as here) the overpayment is caused by the Division's own error. Accordingly, the Division's decision to seek recovery of the \$680.00 is affirmed.

Dated this 17th day of January, 2013.

Signed _____
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 29th day of January, 2013.

By: *Signed* _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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