

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

In the Matter of:)
)
 J D) OAH Case No. 13-0558-SNA
) DPA Case No.
 _____)

DECISION

I. Introduction

There are two issues in this case: (1) whether J D is required to pay back certain Supplemental Nutrition Assistance Program (SNAP or Food Stamp)¹ benefits which were issued to her by the 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 Ms. D was paid \$478.00 more in SNAP benefits than she should have been paid during the period January 1, 2013 through February 28, 2013. This decision concludes that, pursuant to the applicable federal regulations, the Division is required to seek reimbursement from Ms. D for the overpaid SNAP benefits. This decision further concludes, however, 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. D's request to compromise the SNAP overpayment claim. Accordingly, the Division's decision establishing a claim against Ms. D for the \$478.00 in overpaid SNAP benefits is affirmed. However, the Division's decision not to compromise its claim against Ms. D 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. D.

II. Facts

Ms. D applied for SNAP benefits in September 2012; her application was approved, and she began receiving benefits.² On February 6, 2013 Ms. D submitted a recertification application to renew her SNAP benefits.³ The information provided with the recertification application indicated

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 Ex. 1.

³ Ex. 2.

that Ms. D was receiving average gross monthly wages of \$1,920.06.⁴ On February 25, 2013 the Division reviewed Ms. D's recertification application and determined that, due to her income, she was no longer financially eligible to receive SNAP benefits.⁵ On February 26, 2013 the Division sent Ms. D a notice stating that it was terminating her SNAP benefits after February 28, 2013 because her income exceeded the applicable SNAP income limit.⁶ On April 2, 2013 the Division sent Ms. D a notice stating that, during the months of January 2013 through February 2013, she had been paid \$478.00 more in SNAP benefits than she should have received, and that the Division was requiring repayment of that amount.⁷ On April 24, 2013 Ms. D submitted a Fair Hearing Request Form to the Division on the repayment issue.⁸ She requested that the Division compromise its repayment claim based on hardship.⁹ She submitted income and expense information in support of her compromise request.¹⁰

On April 25, 2013, the Division notified Ms. D that it was denying her request to compromise the repayment amount.¹¹ The notice did not contain any analysis of Ms. D's ability to pay, but simply stated that the Division believed she could repay the debt over three years at a rate of \$10 - \$20 per month, and concluded "[w]e will not be compromising your claim."¹²

Ms. D's hearing was held on July 9, 2013. Ms. D participated in the hearing by telephone, represented herself, and testified on her own behalf. Terri Gagne (a Public Assistance Analyst employed by the Division) participated in the hearing by telephone, represented the Division, and testified on its behalf.

At her hearing, Ms. D did not dispute the Division's calculation of the amount of overpaid SNAP benefits.¹³ Rather, she asserted that it would be unfair to require her to repay the SNAP benefits at issue given her financial circumstances.¹⁴ Ms. D submitted 22 pages of documentation in support of her position.¹⁵ The record closed at the end of the hearing.

⁴ Ex. 2.

⁵ Exs. 2, 2.1.

⁶ Ex. 2.17.

⁷ Exs. 2.18 – 2.28.

⁸ Exs. 2.29 - 2.30.

⁹ Ex. 2.30.

¹⁰ Exs. 2.30 - 2.35.

¹¹ Exs. 2.38 - 2.39.

¹² Ex. 2.38.

¹³ J D hearing testimony.

¹⁴ J D hearing testimony.

¹⁵ See documents received by the Division and this Office on May 10, 2013 and marked as Exs. A1 through A22.

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 \$478.00 in Food Stamp (SNAP) benefits which were overpaid to Ms. D during the period January 2013 through February 2013, 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. *Is the Division Required to Pursue Recoupment of Overpaid SNAP Benefits?*

Ms. D does not dispute that she received \$478.00 more in SNAP benefits than she should have received during the period at issue.¹⁶ Rather, she questions whether she is legally required to pay back these benefits given her difficult financial circumstances.¹⁷

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 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 correct when it refused to compromise (write-off or forgive) all or part of the overpaid benefits. Federal SNAP regulation 7 C.F.R. §

¹⁶ J D hearing testimony.

¹⁷ J D hearing testimony.

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. D presented documentation and testimony at hearing which indicates she may not be able to repay the claim at issue within three years. The Division presented no evidence on this issue.¹⁸

It is clear that use of the word "may"¹⁹ 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.²⁰ 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 and considered all material facts and issues.²¹ 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.²²

¹⁸ The Division's hearing representative cannot be faulted for this, however. The analysis of why the Division believes Ms. D will likely be able to repay the claim within three years should have been contained in the letter of April 25, 2013 which denied Ms. D's compromise request (Exs. 2.38 - 2.39).

¹⁹ The use of the word 'may' rather than 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).

²⁰ 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. 4th Dist. 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).

²¹ *Phillips v. Houston Contracting, Inc.*, 732 P.2d 544, 547 (Alaska 1987).

²² *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. The Commissioner and this Office have jurisdiction to decide these issues pursuant to 7 C.F.R. § 273.15(a).

In this case, the Division's letter denying Ms. D's compromise request contained no explanation as to how the Division determined that Ms. D's economic circumstances make it likely that the claim can be paid within three years. Accordingly, the issue of whether the Division should compromise its overpayment claim against Ms. D should be remanded to the Division. On remand, the Division must consider the compromise issue and provide Ms. D with a new notice which explains its decision.²³

IV. Conclusion

The Division's decision to seek recovery of the \$478.00 in Food Stamp (SNAP) benefits which were overpaid to Ms. D during the period January 2013 through February 2013 is affirmed. The Division's decision not to compromise its claim against Ms. D 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. D.

Dated this 19th day of July, 2013.

Signed _____
Jay Durych
Administrative Law Judge

²³ In this case the Division sent its notice denying Ms. D'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 that 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").

Non-Adoption Options

D. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

There is only one issue in this case: whether the Division is required to compromise (write off or forgive) all or part of the overpaid benefits

The parties have agreed to the underlying finding of overpayment and the Division's requirement to seek to recover the overpayment.

The Division does have the discretion to compromise or to not compromise the overpayment claim as articulated in the ALJ Decision therefore the Division's decision to not compromise the amount is affirmed. In observation, the effect of the decision by the Division to pursue the uncompromised claim was mitigated by the fact that the Division referenced a monthly payment of \$13.28 deriving that amount by dividing the full amount of the claim by 36 months thereby maximizing the time factor related to repayment.

With the respect to the Division's request that for the Commissioner to decide to compromise the amount down to \$360.00, the following observation is made: if the Division argues that it has full discretion in this matter and given the additional review and information discovered in this case, then a further exercise of that discretion can accomplish the action they have requested of the Commissioner.

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 21st day of August, 2013.

By: Signed
Ree Sailors, Deputy Commissioner
Department of Health and Social Services

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