

At the same time this error was occurring, a parallel error was occurring regarding Ms. B's rent for her subsidized housing. Ms. B was paying \$68 per month in rent,² but apparently she was supposed to be paying \$85 more, if the full amount of her income had been taken into account.³ Thus, although she did not know it and was not paying all of it at the time, Ms. B was incurring a monthly rent *obligation* of \$153 during this period. Ms. B is repaying the housing agency for that rent obligation through a \$65 monthly surcharge on her current rent.

III. Discussion

The first issue in this case is to determine just what Ms. B's benefits should have been in the period at issue. One of the input numbers in a Food Stamp benefit calculation is housing cost. DPA used a monthly rent figure of \$23 in its original recoupment calculation. The agency acknowledges that this was wrong, and agrees that the benefit for each month should be calculated using the total obligation Ms. B was incurring for rent during that month.⁴ At the hearing and in a post-hearing filing, the administrative law judge asked DPS to address how the revised housing obligation would affect the benefit amount for those months.

It turns out that correcting the rent amounts for November 2012 through January 2013 does not alter the benefit calculation at all. This is because there is a deduction for shelter costs only if they exceed half of a recipient's adjusted income. In each of the months at issue Ms. B's shelter costs, even after adjustment, never reached that threshold.

In November 2012 and January 2013, Ms. B had a gross income of \$856, from which she receives a standard deduction of \$256, leaving an adjusted income of \$600. The agency originally calculated her shelter costs as \$23 in rent and \$109 in other expenses, or \$132 in total.⁵ The correct figure for rent is \$153, giving a total shelter cost of \$153 + \$109, or \$262. But since even \$262 is less than half of the \$600 adjusted income, the ultimate calculation is not affected, and Ms. B's correct Food Stamp benefit for each of those months

² Ex. 7.

³ B testimony. Ms. B's testimony was vague on this point, but she did say the "original" amount (apparently the monthly underpayment) was \$85, which she is now repaying at \$65 per month surcharged on her current rent.

⁴ See Letter of Jeff Miller, July 8, 2013; 7 C.F.R. § 273.10(d)(2). As a corollary, this means that the surcharge Ms. B is now paying to make up for underpaying last winter can *not* be included in her current rent deduction. The deduction occurs in the month when the rent obligation originally came due.

⁵ Ex. 7.3.

is \$59, as the agency has maintained. This calculation is shown in Attachment A to this decision (Attachment A is similar to DPA Exhibit 22, but since that exhibit was mislabeled as a calculation for “December” and because it used a slightly incorrect rental figure,⁶ a new calculation has been run).

Similarly, in December of 2012, a month when Ms. B received higher income, the additional rental obligation makes no difference. The calculation for that month is shown in Attachment B to this decision.

The excess benefits Ms. B received are as follows:⁷

	Paid	Should Have Been	Overpayment
November 2012	239	59	180
December 2012	239	19	220
January 2012	239	59	180
Total	717	137	580

Ms. B argued that the overpayment was not her fault, and that she should not be held responsible for it. The division acknowledges that the overpayment was due to agency error. However, that the overpayment was a government mistake does not, by itself, mean that Ms. B is not required to repay the excess benefits she received.

Food Stamp benefits are governed by federal law. The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C. § 2022. Subsection (b)(1) of that statute provides 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.

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 that “the State agency *must* establish and collect any claim” Under 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

⁶ In its most recent calculation, DPA added \$65 to the monthly rental, but that is actually a repayment rate which, as the agency has correctly argued, is irrelevant. The correct addition to the rental is the amount it was underpaid *at the time*.

⁷ This is a simplified version of Ex. 19.5. Ex. 19.5 is completely correct.

State agency.” Thus, federal law requires the division attempt to recover overpaid Food Stamp benefits, even if the overpayment is the result of the division’s own error.

This was recently confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*.⁸ After holding that federal law requires the state to pursue repayment of all overpaid Food Stamp benefits, the court observed:

We are sympathetic to the argument that it is unfair to require indigent food stamp recipients to repay benefits that were overissued to them through no fault of their own, but Congress has already made the policy decision that a ten dollar or ten percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness.^[9]

The federal regulations and the *Allen* decision are binding on the Department of Health and Social Services.¹⁰

IV. Conclusion

Ms. B received an overpayment of Food Stamp benefits. Although the overpayment was not her fault, she is still required to repay the excess benefits if she is able. Accordingly, the division’s decision to require repayment of \$580.00 is upheld.

Dated this 15th day of July, 2013.

Signed

Christopher Kennedy
Administrative Law Judge

⁸ 203 P.3d 1155 (Alaska 2009).

⁹ *Id.* at 1164 (footnotes omitted).

¹⁰ As alluded to in the quoted language from *Allen*, Ms. B does have the right to request that the division compromise (write-off or forgive) all or part of the overpaid benefits. *See* 7 C.F.R. § 273.18(e)(7).

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 24th day of July, 2013.

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

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