

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

In the Matter of)	
)	OAH No. 13-0751-SNA
T H)	Division No.
_____)	

DECISION

I. Introduction

T H is a former Food Stamp¹ recipient. The Division of Public Assistance (Division) sent her notice that she had received \$430 more in Food Stamp benefits than she was entitled to receive, and that she was required to repay that amount.² Ms. H requested the amount be compromised, which was refused.³ She requested a hearing.

Ms. H’s hearing was held on July 15, 2013. She represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division.

Because Ms. H received \$430 more in Food Stamp benefits than she should have, the Division’s decision establishing a repayment claim in that amount is affirmed. However, the Division's decision not to compromise its claim against Ms. H 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. H.

II. Facts

The following facts were established by a preponderance of the evidence.

Ms. H has a five person household, which consists of her and her four children.⁴ One of those children is an adult. He works part-time.⁵ Ms. H applied for Food Stamp benefits in January 2013. The Division approved her application and issued her benefits for her household. Although Ms. H informed the Division that her adult son was employed, the Division failed to take the adult son’s part-time employment income into account when it determined the amount

¹ Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). However, the program is still commonly referred to as the Food Stamp program.

² The Division initially requested \$451 in repayment. Exs. 2.21 – 2.32. Prior to hearing, the Division reviewed its records and lowered the repayment claim to \$430. Exs. 20.0 – 20.10.

³ Exs. 2.33, 2.35.

⁴ H testimony; Ex. 2.33.

⁵ Exs. 2.4 – 2.5.

of Ms. H's Food Stamp benefits.⁶ As a result, Ms. H received a total of \$430 more in Food Stamp benefits than she was entitled to receive during January and February 2013.⁷

Ms. H did not dispute that she was overpaid Food Stamp benefits or the amount of the overpayment.⁸ She disagreed with the requirement that she repay the Food Stamp benefits, because the overpayment was caused by the Division's error. She requested the Division compromise its repayment claim due to hardship. She is a single parent with four children. Two of those children have special needs. Her child support payments have stopped. She has a difficult time paying her bills, including her rent.⁹ The Division denied her request for compromise, stating "[a]s you are no longer receiving food stamp benefits, the circumstances indicate that you may be able to pay . . . at least \$20 per month" and that the claim could be paid off in less than three years. The denial letter did not contain a further explanation or analysis of how the Division determined she was able to pay off the claim.¹⁰

III. Discussion

A. Overpayment Claim

The issue in this case is whether Ms. H is required to pay back \$430 in Food Stamp benefits that were issued to her in error. There are no factual disputes. The overpayment was due to Division error.

The Food Stamp program is a federal program administered by the State.¹¹ The Code of Federal Regulations (C.F.R.) contains the rules for determining a household's monthly Food Stamp payment. Food Stamp benefit amounts are calculated based upon the monthly income, after applicable deductions, received by all household members, and upon the number of people living in the household.¹²

Ms. H argued that she should not have to repay the Division because its own error had caused the overpayment. The federal regulations are clear that the Food Stamp Division "must

⁶ Ex. 2.2.

⁷ Exs. 20.0 – 20.7

⁸ There is no dispute regarding Ms. H's household's income and expenses or the Division's calculations of the amount due. Although Ms. H testified that her child support payments stopped in January 2013, the Child Support Enforcement Division printout showed payments were made through the end of February 2013. *See* Ex. 19.0. Ms. H was given the opportunity to supplement the record in support of her child support testimony. She contacted OAH and stated she would not be supplementing the record. Accordingly, she is deemed to no longer be disputing her receipt of child support income during February 2013.

⁹ H testimony; Ex. 2.33.

¹⁰ Ex. 2.35.

¹¹ 7 C.F.R. § 271.4(a).

¹² 7 C.F.R. § 273.10(e)(2)(ii)(A).

establish and collect any claim” for overpaid Food Stamp benefits issued.¹³ This is true even when the overpayment is caused by the Division’s error.¹⁴ Adult members of the Food Stamp recipient’s household are the persons responsible for repaying overpaid Food Stamp benefits.¹⁵ As a matter of law, Ms. H was overpaid \$430 in Food Stamp benefits and is required to repay those benefits to the Division, regardless of the fact she was not at fault and the overpayment was caused by the Division’s error.

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. § 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. H’s hearing request and testimony at hearing indicated that she was experiencing financial hardship. She has four children, two of whom are special needs. Her child support payments have stopped. She has difficulty paying her bills, including her rent. The Division presented no evidence on this issue.¹⁶

It is clear that use of the word “may”¹⁷ 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.¹⁸ 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

¹³ 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

¹⁴ 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)

¹⁵ 7 C.F.R. § 273.18(a)(4)(i).

¹⁶ The Division’s hearing representative cannot be faulted for this, however. The analysis of why the Division believes Ms. H will likely be able to repay the claim within three years should have been contained in its letter which denied her compromise request. *See Ex. 2.35.*

¹⁷ 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).

¹⁸ 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).

and considered all material facts and issues.¹⁹ 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.²⁰

The Division's letter denying Ms. H's compromise request contained no explanation as to how the Division determined that Ms. H's economic circumstances make it likely that the claim can be paid within three years. It instead concluded that because she was not a current Food Stamp recipient, she should be able to pay at least \$20 per month. Accordingly, the issue of whether the Division should compromise its overpayment claim against Ms. H should be remanded to the Division. On remand, the Division must consider the compromise issue and provide Ms. H with a new notice which explains its decision.²¹

IV. Conclusion

The Division's decision to seek recovery of the \$430 in Food Stamp (SNAP) benefits which were overpaid to Ms. H during the period January 2013 through February 2013 is affirmed. The Division's decision not to compromise its claim against Ms. H is remanded to the

¹⁹ *Phillips v. Houston Contracting, Inc.*, 732 P.2d 544, 547 (Alaska 1987).

²⁰ *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).

²¹ In this case the Division sent its notice denying Ms. H'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").

Division for its consideration of all relevant factors, and its documentation of same in a new decisional document to be sent to Ms. H.

DATED this 25th day of July, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

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:

The Division's decision to seek recovery of the \$430 in SNAP benefits which were overpaid is affirmed. The Division's decision not to compromise its claim is affirmed. The Division acted within its discretionary authority with sufficient reasoning and particularly because there is no automatic right to compromise.

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.]