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

In the Matter of)	
)	
ЕН)	OAH No. 13-0879-SNA
)	Agency No.

DECISION

I. Introduction

E H was approved for and received food stamps for her household in February 2013. Later, the Division of Public Assistance determined that the household was not eligible for the benefits the household had received. On February 13, 2013, the Division wrote to Ms. H and told her that she would have to pay back the benefits. Ms. H did not appeal the decision or request further assistance. On June 13, 2013, more than 90 days later, the Division sent another notice, which discussed collection procedures. On June 20, 2013, Ms. H requested a hearing. Because more than 90 days had passed since the Division's decision, the appeal is not timely, and this hearing is dismissed.

II. Facts

On January 2, 2013, E H applied for food stamp benefits for her family of four. ¹ She was approved for benefits beginning February 2013. ² In processing Ms. H's application, the Division noticed that a member of her household, K N, had received some overtime pay. ³ The Division checked with his employer, and determined that overtime was unusual, so overtime pay did not need to be included in determining eligibility. Later, the Division found that Mr. N received overtime pay for three consecutive pay periods in December and January. ⁴ It determined that the household exceeded the income limit for food stamp benefits. ⁵ The determination came too late to stop the February food stamp benefit of \$723.00, which was issued to Ms. H.

On January 24, 2013, the Division notified Ms. H that she was no longer eligible for food stamp benefits. On February 13, 2013, the Division wrote to Ms. H and informed her again that her household was not eligible for the \$723.00 the household had received, and that she would

Division Exhibit 2.0.

Division Exhibit 2.1.

² Id

Division Exhibit 2.2.

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Division Exhibit 2.10.

have to pay it back. The Division asked that she select a repayment option.⁷ This notice also told Ms. H that she could appeal this decision by requesting a fair hearing within 90 days.⁸

Ms. H did not respond to the February 13 letter. She did not request a fair hearing or select a repayment option.

On June 13, 2013, the Division wrote to Ms. H again, informing her that it would refer the matter to a federal collections process, and telling her how she could avoid having the matter referred to the federal collections agency. Ms. H requested a review, and the Division referred the matter to the Office of Administrative Hearings for a fair hearing. ¹⁰

A telephonic hearing was held on July 10, 2013. Ms. H represented and herself, and Terri Gagne represented the Division.

III. Discussion

The Food Stamp program is a federal program and the Division is required to follow federal law when determining whether an applicant is eligible for food stamp benefits. ¹¹ Under federal law, a household is "allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days." ¹² Here, Ms. H did not request a fair hearing within 90 days of the Division's February 13, 2013, action, which notified her that the February food stamp benefits were issued incorrectly and that Ms. H needed to repay \$723.00. Therefore, under 7 C.F.R. § 273.15(j)(1)(i), Ms. H has no right to a hearing on the action taken by the Division on February 13, 2013.

The June 13, 2013, letter to Ms. H was not a decision or an action by the Division. It merely informed Ms. H again of the earlier decision, and notified her of how she could avoid the federal debt collection process. ¹³ It told Ms. H that she could request a review—by the Division, not the Office of Administrative Hearings—if she believed that the debt was not owed. ¹⁴ The review contemplated by the letter, however, would not reopen the February 13 decision. The review would be limited to issues regarding the debt itself. For example, the review would give Ms. H an opportunity to show that she has already paid the debt or that she is the wrong person

Division Exhibit 2.11.

Id.

Division Exhibit 2.23.

Division Exhibit 2.24.

¹¹ 7 AAC 46.010.

¹² 7 C.F.R. § 273.15(g).

Division Exhibit 2.22.

Division Exhibit 2.23.

to target for repayment. At the hearing, Ms. H explained that she asked for a review because she did not believe that she should have to repay a benefit when she did not do anything wrong. That issue is not timely, and neither the Division nor this Office can consider it. Therefore, this request for a hearing is dismissed.

IV. Conclusion

Ms. H's request for a hearing was not timely because it was received more than 90 days after the date of the agency decision that she was contesting. Ms. H's request for a fair hearing is dismissed.

DATED this 12th of July, 2013.

By: Signed

Stephen C. Slotnick Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, 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 Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of August, 2013.

By: <u>Signed</u>

Name: Stephen C. Slotnick

Title: Administrative Law Judge/DOA

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