

six minor children, and later with seven minor children.² The oldest person in the household is currently 40 years old.³

On September 12, 2011 Mr. N purchased a 2012 Polaris Sportsman 500 ATV for \$7,318.70.⁴ Mr. N financed \$7,000.00 of the purchase price through his credit union.⁵ Mr. N and the credit union entered into a security agreement to secure repayment of the loan.⁶ However, instead of being secured by a lien against the ATV, the loan was secured by a lien against a 2002 Dodge pickup truck owned by Mr. N.⁷ As a result of this financing arrangement, Mr. N had approximately \$7,000.00 in equity in the ATV immediately upon purchasing the vehicle.

Because (as discussed in Section III, below) the ATV was not an exempt resource according to the federal Food Stamp regulations, and because Mr. N had more than \$2,000.00 in equity in the ATV beginning in September 2011, Ms. W's household exceeded the applicable Food Stamp program maximum resource limit beginning in September 2011. As a result, Ms. W's household became ineligible for Food Stamp benefits in September 2011.

On October 31, 2012 Ms. W's household submitted an Eligibility Review Form, which stated that the household owned three vehicles: a Toyota Sienna with no equity, a Dodge truck with \$11,699.00 in equity, and an ATV with no equity.⁸ On March 28, 2013 Ms. W's household submitted a second Eligibility Review Form, which stated that the household owned the same three vehicles, but that the Toyota Sienna had about \$1,000.00 in equity, the Dodge truck had \$11,900.00 in equity, and the ATV still had no equity.⁹ On April 19, 2013 Ms. W's household submitted a third Eligibility Review Form, which stated that the household owned the same three vehicles, but that the Toyota Sienna had about \$1,900.00 in equity, the Dodge truck had \$11,699.00 in equity, and the ATV had about \$2,300.00 in equity.¹⁰ On July 8, 2013 Ms. W's household submitted a fourth Eligibility Review Form which stated that the household owned the same three vehicles, but that the Toyota Sienna had about \$2,600.00 in equity, the Dodge truck had a new loan against it and had about \$7,000.00 in equity, and that the ATV had about \$7,400.00 in equity.¹¹

² Exs. 2.0 - 2.38.

³ Ex. 2.0.

⁴ Exs. 2.53 - 2.55.

⁵ Ex. 2.65.

⁶ Exs. 2.58 - 2.65.

⁷ Ex. 2.60.

⁸ Ex. 2.28.

⁹ Ex. 2.21.

¹⁰ Exs. 2.9, 2.34.

¹¹ Ex. 2.1.

By filing the foregoing forms, Ms. W had notified the Division on April 19, 2013 that the household's equity in the ATV had grown to exceed \$2,000.00. However, the Division did not realize or act on this information until July 22, 2013.¹² The next day (July 23, 2013) the Division determined that the current value of the ATV, according to the National Automotive Dealers Association (NADA) website, was between \$4,130.00 and \$5,435.00.¹³

B. Relevant Procedural History

On August 6, 2013 the Division mailed a notice to Ms. W stating that, during the months of March 2013 through August 2013, her household's resources had exceeded the Food Stamp program's maximum resource limit.¹⁴ The notice further stated that, as a result, Ms. W's household had been paid \$6,083.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of that amount.¹⁵ On August 8, 2013 Ms. W requested a hearing on the overpayment collection issue.

Ms. W's hearing was held on August 27, 2013. Ms. W participated in the hearing by phone, represented herself, and testified on her own behalf using an interpreter. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf.

C. Summary of Hearing Testimony

At the hearing, Ms. W did not dispute the Division's calculation of the value of her household's non-exempt (countable) resources, that her household had become ineligible for Food Stamp benefits due to the value of the ATV, or the amount of Food Stamp benefits which had been overpaid.¹⁶ Rather, she emphasized that she had not tried to hide anything from the Division; that she had not tried to cheat in any way; and that she had not known that her household had been receiving Food Stamp benefits to which it was not entitled.¹⁷ Further, she asserted that it would be unfair to require her household to repay the Food Stamp benefits at issue because the benefits had already been spent, and because requiring her household to repay the over-issued Food Stamp benefits would impose a significant hardship on her family.¹⁸ Finally, she questioned whether her

¹² Ex. 2.7.

¹³ Exs. 2.14, 2.16. Note that these NADA values were \$3,000 - \$4,000 less than the value of the ATV as reported by Ms. W's household.

¹⁴ Exs. 2.40 - 2.51.

¹⁵ Exs. 2.40 - 2.51.

¹⁶ Q W hearing testimony.

¹⁷ Q W hearing testimony. Ms. W's testimony in this regard was not disputed by the Division.

¹⁸ Q W hearing testimony. This testimony was not disputed by the Division.

household is legally required to pay back the benefits, given her difficult financial circumstances.¹⁹ In response, the Division asserted that state and federal regulations require that the Division seek to recover the overpaid benefits, regardless of which party is at fault.²⁰

The record closed at the end of the hearing. Ten days later, on September 6, 2013, Ms. W submitted a nine page fax to this Office. That fax, which has been marked for the record as Exs. A1 through A9, appears to indicate that Ms. W's boyfriend, O N, used his ATV to successfully hunt caribou this year in the Nelchina Tier I hunt in Game Management Unit 13.²¹ The Division objected to admitting the faxed documents into evidence because the record was already closed. Because the documents were submitted after the hearing record was closed, and because no showing was made by Ms. W that there was good cause to accept the documents even though they were late, the documents were not admitted into evidence.²²

III. Discussion

The Food Stamp or Supplemental Nutrition Assistance Program (SNAP) is a federal program administered by the states.²³ SNAP benefit amounts are based primarily on the number of people living in the household, and on the monthly income (after applicable deductions) received by those household members.²⁴

A. Food Stamp Program Rules Regarding Resource Limits

One of the Food Stamp 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 \$2,000.00.²⁵ Under 7 CFR 273.8(c)(2), countable or nonexempt resources are defined to include all "licensed and unlicensed vehicles" not specifically exempted.

Under 7 CFR 273.8(e)(3)(I), vehicles are not counted as resources (*i.e.* are exempt) *only* if (1) they are used for income-producing purposes; (2) they are necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member; (3) they are used as the household's home; (4) they are necessary to transport a physically disabled

¹⁹ Q W hearing testimony.

²⁰ Terri Gagne hearing testimony.

²¹ As explained in Section III, below, the fact that Mr. N used the ATV at issue for hunting does not change the ATV from a non-exempt, countable resource to an exempt, non-countable resource.

²² However, as explained in Section III, below, even had the late-filed documents been admitted into evidence, they would not have changed the outcome of this case.

²³ 7 CFR 271.4(a).

²⁴ 7 CFR 273.10(e)(2)(ii)(A).

²⁵ 7 CFR 273.8(b). In this case, no one in Ms. W's household is over 40 years old, and there has been no assertion that anyone in the household is disabled.

household member; (5) they are necessary to carry fuel for home heating or water for home use; or (6) the sale of the vehicle would produce an estimated return of \$1,500.00 or less.²⁶ In addition, 7 CFR 273.8(f)(2)(ii) exempts one licensed vehicle per adult household member, even if the vehicle is used for purposes other than those authorized in 7 CFR 273.8(e)(3)(i), above.²⁷ If a *licensed vehicle*²⁸ is *not exempt* under the foregoing rules, then that portion of the vehicle's fair market value, or its equity value (fair market value less encumbrances) (whichever is greater), that exceeds \$4,650.00, is counted as a resource.²⁹ However, if an *unlicensed vehicle* is not exempt under the foregoing rules, then its *entire equity value* of the vehicle counts as a resource.³⁰

In Alaska there are special provisions exempting vehicles used for subsistence hunting and fishing.³¹ However, a household is considered to be engaged in subsistence hunting and/or fishing *only* "when it customarily and traditionally depends on hunting and/or fishing for a substantial portion of its food needs."³²

B. Food Stamp Program Rules Requiring the Collection of Overpaid Benefits

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 USC 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.

The federal regulation pertaining to the recovery of overpaid Food Stamp benefits is 7 CFR 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 CFR 273.18 requires that the Division attempt to recover overpaid Food Stamp benefits, *even when the overpayment is the result of the Division's own error*. This was recently confirmed by the

²⁶ Alaska Food Stamp Manual Section 602-2(B) seemingly liberalizes 7 CFR 273.8(e)(3)(i) by excluding vehicles as resources if they are intended to be used for "family transportation to meet the household's basic needs, such as getting food, medical care or other essentials."

²⁷ This is the provision which exempts the W household's Toyota Sienna and Dodge truck.

²⁸ Such as a car or truck driven on-road - see AS 28.10.011.

²⁹ 7 CFR 273.8(f)(1).

³⁰ Under AS 28.10.011 and AS 28.10.201(b), ATVs ("off-highway vehicles") may not apply for or be issued a certificate of title.

³¹ See 7 CFR 272.7(f) and Alaska Food Stamp Manual Section 602-2(B); see also Alaska Food Stamp Manual Section 600-2.

³² Alaska Food Stamp Manual Section 600-2 (defining terms including "subsistence hunting/fishing").

Alaska Supreme Court 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 and on the Office of Administrative Hearings.

C. Federal Law Requires the Division to Seek Recovery of Overpayments in This Case

It is not disputed that the current value of the ATV at issue in this case is at least \$4,130.00; Mr. N indicated on the latest Renewal Application that he had about \$7,400.00 in equity in the ATV.³³ In addition, because the ATV is not a licensed / titled vehicle under Alaska law, its entire value is counted as a resource. Accordingly, the value of the ATV is at least \$2,130.00 greater than the Food Stamp program's applicable \$2,000 resource limit.

Ms. W submitted documents after the hearing indicating that Mr. N had used his ATV to successfully hunt caribou this year. However, a household is considered to be engaged in subsistence hunting and/or fishing only when it "customarily and traditionally depends on hunting and/or fishing for a substantial portion of its food needs."³⁴ There is no evidence in the record to indicate, and Ms. W did not assert, that her household "customarily and traditionally" depends on hunting or fishing for a "substantial portion" of its food needs. The documents submitted by Ms. W, had they been admitted, show only that Mr. N killed a caribou. There is no evidence to show that Mr. N was *subsistence* hunting as opposed to *sport* hunting.

In summary, the W household's ownership of the ATV at issue caused it to become ineligible for Food Stamp benefits. The period of ineligibility included the months of March 2013 through August 2013. The W household received \$6,083.00 in Food Stamp benefits during this period. Because the W household received benefits for which it was not eligible, federal law requires that the Division seek to recover those benefits.

IV. Conclusion

Ms. W's household received Food Stamp benefits to which it was not entitled. Ms. W's household did not intend to receive benefits for which it was not eligible. However, the applicable federal regulations make clear that the state agencies administering the Food Stamp program "must establish and collect any claim" for overpaid benefits, even where the overpayment is not the fault of the benefit recipient. Accordingly, the Division's decision to seek recovery of the \$6,083.00 in Food Stamp benefits, which were accidentally overpaid to Ms. W's household during the period from March 2013 through August 2013, is affirmed.

³³ Ex. 2.1.

³⁴ Alaska Food Stamp Manual Section 600-2 (defining terms including "subsistence hunting/fishing").

Now that an overpayment has been established, Ms. W has the right to request that the Division write-down or reduce the amount to be repaid based on inability to pay / financial hardship.³⁵ If Ms. W makes such a request, and if she is not satisfied with the Division's decision, she will have the right to request a hearing on the write-down issue.

Dated this 17th day of September, 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 26th day of September, 2013.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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

³⁵ See 7 CFR 273.18(e)(7).