

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

In the Matter of: )  
 )  
 H C ) OAH No. 13-1360-SNA  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Public Assistance (DPA or Division) is entitled to attempt to collect \$972.00 in Food Stamp benefits which the Division asserts was overpaid to Mr. C' household during the months of June, July, and August 2013.<sup>1</sup> The Division's overpayment claim is based on the assumption that Mr. C' cousin is part of Mr. C' household for Food Stamp purposes, and that the cousin's income is therefore likewise attributable to Mr. C household.<sup>2</sup>

At hearing, however, Mr. C' mother credibly testified that, as a result of his work schedule, Mr. C' cousin (her nephew) does not customarily purchase and prepare food together with her and her son. This testimony was not disputed by the Division. Accordingly, the preponderance of the evidence, as developed through the hearing process, indicates that Mr. C' cousin is not part of Mr. C' household for Food Stamp purposes, and the cousin's income should therefore not have been attributed to Mr. C' household for purposes of determining Food Stamp benefit levels.

As previously stated, the Division's overpayment claim is based on the cousin's inclusion in, and the attribution of the cousin's income to, Mr. C household. However, Mr. C has demonstrated that his cousin should not have been included in Mr. C' household for Food Stamp purposes. Accordingly, the Division failed to prove, by a preponderance of the evidence, that Mr. C' household was overpaid Food Stamp benefits during the period in question. The Division's decision establishing a claim against Mr. C for \$972.00 in Food Stamp benefits is therefore reversed.<sup>3</sup>

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<sup>1</sup> Ex. 21.

<sup>2</sup> See the Division's Fair Hearing Position Statement dated October 21, 2013; see also DPA Hearing Representative Jeff Miller's hearing testimony.

<sup>3</sup> The overpayment claim at issue in this case is based on the Division's inclusion of Mr. C' cousin, and the cousin's income, in his household. Should the Division subsequently determine that Mr. C' household, when treated as a *two person household*, was overpaid benefits during the period in question, the Division is free to seek recovery of any overpaid Food Stamp benefits on that basis.

## II. Facts

### A. *Facts Relevant to the Overpayment / Repayment Issue*

Mr. C currently has three persons living at his residence: himself, his mother F C, and his cousin E N.<sup>4</sup> On March 6, 2013 Mr. C submitted an application for Food Stamp benefits to the Division.<sup>5</sup> In his application he stated that, at that time, the persons "living in his home" were himself, his mother, and his uncle K N.<sup>6</sup>

On March 15, 2013 Mr. C participated in an eligibility interview with a DPA eligibility technician.<sup>7</sup> Mr. C advised the eligibility technician that, as of that date, he and his mother and uncle were preparing and sharing their meals together.<sup>8</sup> Mr. C also informed the eligibility technician that his mother would begin attending Alaska Vocational Technical Center (AVTEC) beginning in April 2013.<sup>9</sup>

Mr. C' uncle, K N, moved to No Name in June 2013, so he was not part of Mr. C' household during July or August 2013.<sup>10</sup> Mr. C' cousin, E N, moved into Mr. C' residence in June 2013.<sup>11</sup> Mr. N pays the household's monthly electric bill, but does not contribute financially in any other way.<sup>12</sup> Significantly, Mr. N does not assist in purchasing food for Mr. C' household, and his work schedule is such that he does not prepare and/or eat meals with Mr. C' household.<sup>13</sup>

Mr. C' mother (F C) likewise does not purchase or prepare food with her son.<sup>14</sup> Her son (H C) uses the Food Stamp benefits to buy his food, while she purchases her food using a small monthly retirement payment of \$294.81 (net) that she receives from the State of Alaska.<sup>15</sup> She makes her own breakfast in the morning before she goes to school. She purchases her lunch from No Name's deli using funds provided to her as supportive services by No Name Council. Based on

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<sup>4</sup> Ex. 1; F C' hearing testimony.

<sup>5</sup> Exs. 8.3 - 8.8.

<sup>6</sup> Ex. 8.4. Notably, Mr. C did not represent that he was purchasing and/or preparing food with his mother or uncle.

<sup>7</sup> Ex. 8.0.

<sup>8</sup> Ex. 8.0.

<sup>9</sup> Ex. 8.0.

<sup>10</sup> F C' hearing testimony.

<sup>11</sup> F C' hearing testimony.

<sup>12</sup> F C' hearing testimony.

<sup>13</sup> Mr. N has a job which begins in the afternoon, and he does not get home after work until 10:00 p.m. (F C hearing testimony). By that time, Ms. C is usually in bed; she attends school from 8:30 a.m. to 3:30 p.m., and on Tuesdays and Thursdays she stays until 7:00 p.m. to catch up on her homework. *Id.*

<sup>14</sup> All factual findings in this paragraph are based on F C' hearing testimony unless otherwise noted.

<sup>15</sup> Exs. 8.0, 8.2.

Ms. C' hearing testimony, and at her request, the Division agreed to begin treating both her and E N as separate households, for Food Stamp program purposes, beginning in November 2013.<sup>16</sup>

***B. Relevant Procedural History***

A note on the Division's Electronic Information System (EIS) dated May 3, 2013 indicates that Mr. C called DPA on that date and left a phone message "reporting that [E N] was to be added to his household's [Food Stamp] case."<sup>17</sup> On May 6, 2013 the Division mailed a notice to Mr. C requesting additional information regarding E N's employment, income, and resources.<sup>18</sup> The notice did not, however, ask for information as to whether E N was purchasing and preparing food with Mr. C.

A note on the Division's Electronic Information System (EIS) dated July 26, 2013 indicates that a DPA eligibility technician had contact with Mr. C on that date.<sup>19</sup> The note states in relevant part, "add E [N] to case." The note does not indicate whether Mr. C specifically requested that E N be added to his Food Stamp case, or whether Mr. C was merely informing the Division that E N was now residing at his residence. Nevertheless, the DPA eligibility technician included E N's income as part of Mr. C' household income, and determined that Mr. C' household had been overpaid \$324.00 per month in Food Stamp benefits during the months of June through August 2013.<sup>20</sup>

On September 17, 2013 the Division mailed a notice to Mr. C stating that, during the month of July 2013, his household had been paid \$324.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of that amount.<sup>21</sup> On September 17, 2013 the Division mailed a second notice to Mr. C stating that, during the month of August 2013, his household had been paid \$324.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of this additional amount.<sup>22</sup> On September 30, 2013 Mr. C requested a Fair Hearing on the overpayment collection issue.<sup>23</sup> On October 21, 2013 the Division mailed a third notice to Mr. C stating that, during the months of June through August

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<sup>16</sup> Jeff Miller hearing testimony.

<sup>17</sup> Ex. 2. At hearing, Mr. C and his mother testified that this contact was initiated based on their understanding that they were required to notify the Division whenever someone moved into or out of the household, and that they did not represent that they were purchasing and/or preparing their meals with Mr. N.

<sup>18</sup> Ex. 3.

<sup>19</sup> All factual findings in this paragraph are based on Ex. 5 unless otherwise stated.

<sup>20</sup> Ex. 9. This determination was based on the eligibility technician's understanding that E N was a member of Mr. C' household for Food Stamp program purposes.

<sup>21</sup> Exs. 6.12 – 6.21.

<sup>22</sup> Exs. 6.1 – 6.10.

<sup>23</sup> Ex. 7.

2013, his household had been paid a total of \$972.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of this additional amount.<sup>24</sup>

Mr. C' hearing was held on October 24, 2013. Mr. C and his mother, F C, participated in the hearing by phone and testified on their household's behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf. Following the hearing the record was left open through November 15, 2013 for post-hearing filings. The record closed on November 15, 2013.

### III. Discussion

#### A. *The Food Stamp Program - Overview and Provisions Regarding Overpayments*

The Food Stamp program is a federal program administered by the states; its statutes are codified at 7 U.S.C. §§ 2011 – 2029. The United States Department of Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp program, which are codified primarily at 7 C.F.R. §§ 271-274. The Department of Health and Social Services (DHHS) administers the Food Stamp program in Alaska and has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

Eligibility for the Food Stamp program, and the amount of Food Stamp benefits awarded, depends primarily on household size, household income, and applicable income exclusions and deductions.<sup>25</sup> In general, the greater a household's income, the smaller the amount of Food Stamp benefits the household will receive each month.<sup>26</sup>

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 any overpaid Food Stamp benefits.

The federal implementing regulation pertaining to the recoupment of 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 (as here) the “overpayment [is] caused by an action or failure to take action by the State agency.”

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<sup>24</sup> Exs. 21.0 – 21.9.

<sup>25</sup> See 7 USC § 2012(o); 7 U.S.C. § 2017(a); 7 CFR § 273.10(e)(2)(ii)(A), Alaska Food Stamp Manual, Addendum 4, *Ruhe v. Block*, 507 F.Supp. 1290 (D.C.Va. 1981); and *Murray v. Lyng*, 854 F.2d 303, 304 (8th Cir. 1988).

<sup>26</sup> See Alaska Food Stamp Manual, Addendum 4.

Thus, it is clear that 7 CFR § 273.18 requires on its face 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 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.

**B. Given the Composition of Mr. C' Household, were there any Overpayments?**

As discussed above, if Mr. C' household received an overpayment, the Division is required by federal law to attempt to recover it. The initial question in this case, however is whether Mr. C' household was overpaid any Food Stamp benefits to begin with.

The Division's overpayment claim, as it currently exists, is based entirely on the premise that Mr. C' household was overpaid benefits because E N's income was not counted.<sup>27</sup> Had Mr. N's income been counted, as the Division asserts it should have, this would have increased Mr. C' household's income, thereby decreasing the amount of Food Stamp benefits to which the household was entitled. This is a perfectly logical argument. However, it proceeds from the premise that E N is part of Mr. C' household for Food Stamp purposes.

The Food Stamp program awards benefits by the household rather than by the individual.<sup>28</sup> For purposes of the Food Stamp program, a household consists of one or more individuals who live together *and* who customarily purchase food and prepare meals *together* for home consumption.<sup>29</sup> Thus, where two or more persons share common living quarters, *but purchase and prepare their food separately*, it is possible for there to be more than one Food Stamp "household" living under the same roof.<sup>30</sup> The persons claiming separate household status bear the burden of proving that they purchase and prepare their food separately.<sup>31</sup>

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<sup>27</sup> Ex. 21.0; Jeff Miller hearing testimony.

<sup>28</sup> 7 CFR § 273.1.

<sup>29</sup> 7 CFR § 273.1(a)(1); 7 CFR § 273.1(a)(3).

<sup>30</sup> See Federal Food Stamp statute 7 U.S.C. § 2012(n)(1)(A) (defining "household" in relevant part as "an individual who . . . while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others . . . "); Federal Food Stamp regulation 7 C.F.R. § 273.1(a) (defining "household" in relevant part as "[a]n individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others . . . "); Alaska Food Stamp Manual § 602-1A(b) (defining a household as including "[a]n individual or group of individuals living with others, but that customarily purchase food and prepare meals for home consumption separate and apart from the others"); and Alaska Food Stamp Manual § 600-2.

<sup>31</sup> 7 CFR § 273.2(f)(x) requires that state agencies "verify factors affecting the composition of a household," and states in relevant part that "[i]ndividuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency." Similarly, Alaska Food Stamp Manual § 602-3 states in relevant part that "[i]ndividuals claiming separate household status from others living in the same residence are responsible for verifying their separate status . . .".

In this case, H C' and F C' hearing testimony that E N does not customarily purchase food and prepare meals together with them for home consumption, was credible, and was completely un rebutted by the Division. Accordingly, Mr. C proved, by a preponderance of the evidence, that E N is not (and was not) a member of his household for Food Stamp purposes.

The Division's overpayment claim is based on the inclusion of E N's income as part of Mr. C' household's total income. However, because E N is not (and was not) a member of Mr. C' household for Food Stamp purposes, his income cannot be attributed to Mr. C' household for purposes of determining Mr. C program eligibility and proper benefit amount. And, because E N's income should not have been included as part of Mr. C' household's total income, the Division's overpayment calculations are incorrect.<sup>32</sup> The Division has therefore failed to prove, by a preponderance of the evidence, that there has been any overpayment to be recovered in this case.

#### **IV. Conclusion**

The Division's overpayment claim is based on E N's inclusion in, and the attribution of his income to, Mr. C' household. However, Mr. C has demonstrated that his cousin should not have been included in his household for Food Stamp purposes. Accordingly, the Division failed to prove, by a preponderance of the evidence, that Mr. C' household was overpaid Food Stamp benefits during the period in question. The Division's decision establishing a claim against Mr. C for \$972.00 in Food Stamp benefits is therefore reversed.<sup>33</sup>

Dated this 3rd day of December, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>32</sup> The Division bears the burden of showing that its overpayment calculations are correct. *See* 7 AAC 49.135; *see also State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>33</sup> As previously noted, the overpayment claim at issue in this case is based on the Division's inclusion of Mr. C' cousin, and the cousin's income, in his household. Should the Division subsequently determine that Mr. C' household, when treated as a *two person household*, was overpaid benefits during the period in question, the Division is free to seek recovery of any overpaid Food Stamp benefits on that basis.

## 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 12<sup>th</sup> day of December, 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.]