

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

In the Matter of:)
)
B N, JR.) OAH No. 13-1654-SNA
) DPA Case No.

DECISION

I. Introduction

This case involves a claim by the Division of Public Assistance (DPA or Division) to collect \$199.00 in Food Stamp benefits which the Division asserts were overpaid to B N, Jr.'s household during the month of October 2013.¹ The parties agree that, through no fault of his own, Mr. N's household was paid \$199.00 more in Food Stamp benefits than it should have received during October 2013. The parties also agree that there are no disputed factual issues, and that the only issues are legal issues. These are (1) whether federal Food Stamp regulations require that the Division seek to recover overpaid benefits, even where (as here) the overpayment was not the fault of the recipient; and (2) whether the Division was within its discretion, under federal Food Stamp regulations, to decline to compromise (write-down or write-off) its overpayment claim against Mr. N.

This decision concludes that, pursuant to applicable federal regulations, the Division must seek reimbursement from Mr. N for the overpaid Food Stamp benefits, even though the overpayment was not Mr. N's fault. This decision further concludes that the Division has broad discretion under applicable federal regulations in determining whether to compromise on a claim for overpaid Food Stamp benefits, and that the Division was within its discretion, under 7 CFR § 273.18(e)(7), to decline to compromise its overpayment claim in this case. Accordingly, the Division's decisions (1) establishing a claim against Mr. N for \$199.00 in overpaid Food Stamp benefits, and (2) declining to write-off or write-down that claim, are affirmed.

II. Facts

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

Mr. N is disabled and receives Adult Public Assistance (APA) from the state of Alaska as well as Supplemental Security Income (SSI) from the Social Security Administration (SSA).² His

¹ Exs. 6.1, 6.11.

² Exs 5.2, 5.3.

household has received Food Stamp benefits since some time prior to August 22, 2013.³ Prior to that date Mr. N's household consisted of himself and one other person.⁴ However, on August 22, 2013 Mr. N's minor daughter, who had been living with her mother in Louisiana, came to Alaska to live with Mr. N.⁵ On October 2, 2013 Mr. N contacted the Division and asked to have his daughter added to his Food Stamp case.⁶ The Division added Mr. N's daughter to his Food Stamp case effective October 1, 2013, and on October 3, 2013 issued Mr. N \$199.00 in supplemental Food Stamp benefits.⁷

Prior to coming to Alaska, Mr. N's daughter (J) had been receiving Food Stamp benefits while living with her mother (E) in Louisiana.⁸ Mr. N spoke with E shortly before J came to Alaska, and it was his understanding based on that conversation that E would close her Food Stamp case (or take J off her case) as soon as J got to Alaska.⁹ However, on October 18, 2013 a Division employee contacted the Louisiana public assistance agency and was advised that Louisiana had issued Food Stamp benefits on J's behalf through October 31, 2013.¹⁰ This meant that for October 2013 Food Stamp benefits had been issued on J's behalf in both Louisiana and Alaska.¹¹

B. Relevant Procedural History

On October 31, 2013 the Division mailed a notice to Mr. N stating that, during the month of October 2013, his household had been paid \$199.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of that amount.¹² On November 12, 2013 Mr. N requested a hearing on this issue.¹³ On the same date he requested that the Division write-off or write-down the amount of its claim based on hardship.¹⁴ On November 18, 2013 the Division mailed a notice to Mr. N stating that it had considered his request to compromise the

³ Ex. 2.

⁴ Ex. 4.

⁵ Exs. 2, 4, B N's hearing testimony.

⁶ Exs. 2, 6.1.

⁷ Exs. 2, 3, 5.11.

⁸ Ex. 4.

⁹ Ex. 4, B N's hearing testimony.

¹⁰ Exs. 5.0, 5.1, 6.11, Terri Gagne's hearing testimony.

¹¹ Pursuant to federal Food Stamp regulation 7 C.F.R. 273.3(a), no individual may participate as a member of more than one household, or in more than one project area, in any given month. Accordingly, since Mr. N's daughter had already received benefits for October 2013 in Louisiana, she should not have been paid benefits in Alaska for the same month. Of course, neither Mr. N nor the Division knew that Louisiana had already issued October 2013 benefits for J until after Alaska had also issued benefits for her for October 2013.

¹² Exs. 6.1 – 6.10.

¹³ Ex. 7.0.

¹⁴ Ex. 7.1.

claim, but that it was denying the request based on its determination that it was likely Mr. N would be able to repay the \$199.00 overpayment within three years.¹⁵

Mr. N's hearing was held on December 4, 2013. Mr. N participated in the hearing by phone, represented himself, and testified on his own behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf. The record closed at the end of the hearing on December 4, 2013.

C. Summary of Hearing Testimony

At the hearing Mr. N did not dispute the Division's calculations regarding the amount of overpaid benefits. Rather, he emphasized that he had not tried to hide anything from the Division; that he had not tried to cheat in any way; and that he had not known that his household had been receiving Food Stamp benefits to which it was not entitled.¹⁶ Further, he asserted that it would be unfair to require his household to repay the Food Stamp benefits at issue because the benefits had already been spent, and because requiring his household to repay the over-issued Food Stamp benefits would impose a hardship on his family.¹⁷ In response, the Division asserted that federal regulations require that the Division seek to recover the overpaid benefits, regardless of which party is at fault.¹⁸

III. Discussion

The only questions in this case are (1) whether the Division is correct to seek recovery of the \$199.00 in Food Stamp benefits which were overpaid to Mr. N's household during October 2013; and if so, (2) whether the Division is required to compromise (write-off or forgive) all or part of the overpaid benefits. These are purely legal issues.

A. Do Food Stamp Regulations Require That the Division Seek to Recover Overpaid Benefits Even Where (as Here) the Overpayment was not the Recipient's Fault?

The Food Stamp program is a federal program administered by the states. Its statutes are codified primarily at 7 U.S.C. §§ 2011 – 2029, and its regulations are codified primarily at 7 C.F.R. §§ 271-274. The Alaska Department of Health and Social Services administers the Food Stamp program in Alaska and has promulgated its own regulations at 7 AAC 46.010 - 7 AAC 46.990.

¹⁵ Ex. 8.

¹⁶ Mr. N's testimony in this regard was not disputed by the Division.

¹⁷ Mr. N's testimony in this regard was likewise not disputed by the Division.

¹⁸ Terri Gagne's hearing testimony.

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.¹⁹

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits states the “state agency *shall* collect any over issuance of benefits issued to a household . . .” (emphasis added).²⁰ The federal regulation implementing this statute says “the State agency *must* establish and collect any claim . . .” (emphasis added).²¹ 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 C.F.R. § 273.18 requires that the Division initially²² attempt to recover overpaid Food Stamp benefits, even when the overpayment is not the recipient’s fault or is the result of the Division’s error. The dollar threshold at which the federal Food Stamp regulations require that states attempt to collect overpayments is \$125 (collection efforts are required when the amount of the overpayment exceeds \$125).²³

Following the 1996 amendment of the Food Stamp statutes, virtually all courts have held that the applicable federal statute and regulations require recoupment of Food Stamp benefits regardless of fault.²⁴ The Alaska Supreme Court adopted this view in *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009). The federal statutes and regulations, and the *Allen* decision, are binding on the Department of Health and Social Services and on the Office of Administrative Hearings. Accordingly, in this case the Division is required to seek reimbursement from Mr. N for the overpaid Food Stamp benefits, even though the overpayment was not Mr. N's fault.

If the household that received the overpayment is still receiving benefits, and the household does not want to repay the overpayment immediately in full, the household may opt to repay the overpayment through a reduction of its current Food Stamp benefits in the amount of \$10.00 per

¹⁹ See 7 U.S.C. § 2012(o); 7 U.S.C. § 2017(a); 7 C.F.R. § 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).

²⁰ 7 U.S.C. §2022(b)(1) (emphasis added).

²¹ The federal implementing regulation pertaining to the recoupment of SNAP benefits is 7 C.F.R. § 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.”

²² 7 C.F.R. § 273.18(e)(6-7) contemplates that the amount of overpayment, if disputed by the recipient, will be determined at hearing, and 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").

²³ 7 C.F.R. § 273.18(e).

²⁴ See, for example, *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997) and *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3 Dist. 2002).

month or 10% of the household's monthly benefit amount, whichever is greater.²⁵ If the household is no longer receiving benefits, the overpayment may be repaid through a lump-sum payment, installment payments, the performance of public service, or through involuntary collection efforts.²⁶

B. Was the Division Within its Discretion to Decline to Compromise its Overpayment Claim in This Case?

The same federal regulation which requires that state agencies *initiate* the collection of overpaid Food Stamp benefits also gives state agencies the ability to *compromise* overpayment claims. Federal Food Stamp regulation 7 C.F.R. § 273.18(e)(7) states as follows:²⁷

(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.

The use of the word “may” in 7 C.F.R. § 273.18(e)(7)(i) indicates that the decision whether to compromise a Food Stamp overpayment claim is subject to the Division's discretion.²⁸ The few appellate courts to address this issue to date have concluded that whether a state agency chooses to compromise a Food Stamp overpayment claim is discretionary.²⁹

The federal Food Stamp regulation (7 C.F.R. § 273.18(e)(7)) allows an overpayment claim to be written-down, or completely written-off, *if it can reasonably be determined that the household's economic circumstances dictate that the claim will not be paid within three years.*³⁰ Applying the regulation to this case, the issue is whether Mr. N has proven by a preponderance of the evidence that his financial circumstances will not improve sufficiently to allow collection of the \$199 at issue within the next three years.

It is clear from the evidence received at hearing that Mr. N's current financial condition is not good; otherwise he would not be receiving Food Stamps, APA, and SSI. Were it reasonably certain that Mr. N's financial condition at the end of the 36-month period will be the same as his

²⁵ 7 C.F.R. § 273.18(g)(1).

²⁶ 7 C.F.R. § 273.18(g).

²⁷ Review of the Division's own (state option) SNAP regulations demonstrates that the Division has not adopted an official interpretation of 7 C.F.R. § 273.18(e)(7) by regulation. See 7 AAC 46.021 and Alaska Food Stamp Manual Sections 607-3 and 607-4. The Division's state option regulation is based on the 1985 version of the federal regulations (see 7 AAC 46.990(c)). Because the federal SNAP regulations have been revised several times since 1985, many of the Division's "state option" provisions no longer reference the correct federal SNAP regulation. For example, in 1985 the substance of what is now 7 C.F.R. § 273.18(e)(7)(i) was contained in 7 C.F.R. § 273.18(g)(2)(i).

²⁸ 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).

²⁹ 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).

³⁰ 7 CFR 273.18(e)(7).

financial condition at hearing, it would be appropriate to completely write-off the Division's overpayment claim. However, although it is clearly *possible* that Mr. N's financial circumstances will not improve over the next three years, it is also possible that they *will* improve. In addition, as long as Mr. N remains in Alaska, he would presumably be eligible for the annual Alaska Permanent Fund Dividend distribution. Since 1982 these dividends have ranged from a low of \$331.29 to a high of \$2,069.00.³¹ It is therefore likely that receipt of a single dividend check would allow the Division to collect the \$199 at issue. Accordingly, the Division was within its discretion to decline to compromise its \$199.00 overpayment claim at this time.³²

C. Though the Result in This Case Seems Unfair, the Division Does not Have the Authority to Disregard the Applicable Federal Regulations

It is not disputed that Mr. N's household has a significant need for Food Stamps. It is also not disputed that Mr. N's financial resources are limited. However, the Division is not at liberty to ignore the federal regulations governing the Food Stamp program.³³ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to those regulations.³⁴

IV. Conclusion

The federal regulations make clear that the state agencies administering the Food Stamp program “must establish and collect any claim” for overpaid benefits. This is the case even where (as here) the overpayment was not caused by the benefit recipient. Accordingly, the Division must seek reimbursement from Mr. N for the overpaid Food Stamp benefits, even though the overpayment was not Mr. N's fault. Further, the Division has broad discretion under applicable federal regulations in determining whether to compromise a claim for overpaid benefits, and the Division was within its discretion to decline to compromise its overpayment claim in this case. Accordingly, the Division's decisions (1) establishing a claim against Mr. N for \$199.00 in overpaid Food Stamp benefits, and (2) declining to write-off or write-down that claim, are affirmed.

Dated this 23rd day of December, 2013.

Signed

Jay Durych
Administrative Law Judge

³¹ See Alaska Permanent Fund Division website at <http://pfd.alaska.gov/DivisionInfo/SummaryApplications> Payments (date accessed December 20, 2013).

³² However, nothing in 7 CFR § 273.18 limits a recipient or former recipient to a single compromise request. Accordingly, an individual in Mr. N's position may submit a new compromise request whenever his circumstances change or relevant new information becomes available.

³³ “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

³⁴ See 7 AAC 49.170 (limits of the hearing authority).

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 2nd day of January, 2014.

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.]