

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

In the Matter of )  
 )  
 E D )  
\_\_\_\_\_ )

OAH No. 14-0168-SNA  
Agency No.

**DECISION**

**I. Introduction**

E D was the recipient of food stamps under the Supplemental Nutrition Assistance Program (SNAP).<sup>1</sup> The Division of Public Assistance (division) determined that Mr. D had received food stamps in error and seeks reimbursement of \$717 in benefits received by Mr. D.

A hearing was held on February 19, 2014. Mr. D and the division representative, Teri Gagne, appeared by telephone. Because the division has no discretion and is required to seek reimbursement of benefits paid in error, its decision to do so is affirmed.

**II. Facts**

The underlying facts are not in dispute and are taken from the evidence and testimony presented at hearing. Mr. D moved to Alaska from Florida. He was receiving food stamps from Florida but that ended when he began receiving food stamps from Alaska. He was convicted of a felony drug conviction in Florida. Mr. D revealed his prior conviction on his application but the division failed to notice the felony drug conviction and provided food stamps from November 2012 through January 2013. This division error caused an overpayment to Mr. D in the amount of \$717. The division seeks to recover the amount of over payment.

**III. Discussion**

Because there is no dispute that Mr. D received food stamp benefits for the months of November 2012, December 2012, and January 2013, and there is no dispute that he has a felony drug conviction, the only issue is a question of law: may the division seek reimbursement of those benefits?

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<sup>1</sup> 7 U.S.C. §2013.

Mr. D argued 1) he should not be responsible for paying back the overpaid food stamp benefit since the division's mistake caused the overpayment, and 2) that he was homeless and repayment would cause a hardship.

Food Stamps are provided through a Federal program administered by the State of Alaska pursuant to 7 CFR §§ 271 – 274 and 7 AAC 46.010 – 990. The Federal regulations define a claim to include amounts owed because benefits were overpaid.<sup>2</sup> Claims are divided into three categories: 1) intentional program violations by the recipient (IPV claim); 2) inadvertent errors by a recipient household (IHE claim); and 3) agency errors (AE claim).<sup>3</sup> This case involves the third type of claim, AE.

Mr. D was honest and forthright on his application and throughout his testimony at hearing. He informed the division that he had a felony drug conviction. Persons who have been convicted of felonies involving controlled substances, like Mr. D, are disqualified from participation in the Food Stamp program in Alaska.<sup>4</sup> Although states have the discretion to exempt recipients from the drug felony disqualification rule,<sup>5</sup> Alaska has not done so. The division's failure to notice Mr. D's drug conviction resulted in an overpayment.

The division, as the state agency administering this program, must comply with all applicable federal regulations. One such regulation requires the division to "establish and collect" all claims,<sup>6</sup> including claims due to agency error. There is no applicable exception to this requirement.<sup>7</sup>

Notwithstanding its obligation, the division recognizes (as did Congress) that recoupment of overpayments made to innocent households may cause hardship. The division seeks to minimize the hardship by providing that where appropriate the parties may enter into a

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<sup>2</sup> 7 CFR §273.18(a)(1)(i).

<sup>3</sup> 7 CFR §273.18(b).

<sup>4</sup> 21 U.S.C. § 862a (a)(1) provides in relevant part that "[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of title IV of the Social Security Act [42 U.S.C.A. § 601 *et seq.*]." This includes the Food Stamp program.

<sup>5</sup> See 21 U.S.C. § 862a(d)(1) and 7 CFR § 273.11(m).

<sup>6</sup> 7 CFR §273.18(a)(2) ("[Claims for overpaid benefits regardless of fault are] a federal debt . . . The State agency must establish and collect any claim . . ."); 7 CFR 273.18(a)(4)(i) ("Each person who was an adult member of the household when the overpayment . . . occurred" is responsible for the claim); 7 CFR 273.18(b)(3) (recognizing that an overpayment caused by agency error is a collectable claim); *Also see Allen v. State, DHSS*, 203 P.3d 1155 (Alaska, 2009).

<sup>7</sup> The state has exercised its discretion not to establish and collect claims that are not cost effective. 7 AAC 46.021(a)(43); 7 CFR §273.18(e)(2). There is no indication in the record that this claim would fit within the definition of claims that would not be cost effective.

repayment agreement that provides for periodic payments,<sup>8</sup> and may compromise all or a portion of the claim if it is determined that, because of the household's economic circumstances, the claim will not be paid in three years.<sup>9</sup>

#### **IV. Conclusion**

Because Mr. D received \$717 in food stamp benefits due to agency error, he received an overpayment. The division has no discretion and must seek to recover the overpayment. Accordingly, the division's decision to seek reimbursement of that amount is affirmed. This decision does not preclude the parties from entering into a repayment or compromise agreement.

DATED this 20<sup>th</sup> of February, 2014.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

#### **Adoption**

The undersigned adopts this decision as final 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 AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3<sup>rd</sup> day of March, 2014.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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

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<sup>8</sup> 7 CFR §273.18(e)(4).

<sup>9</sup> 7 CFR §273.18(e)(7).