

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

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

OAH No. 14-0190-SNA  
Agency No.

**DECISION**

**I. Introduction**

D E applied for and received Supplemental Nutrition Assistance Program, commonly called “Food Stamps” on an expedited basis. The Division of Public Assistance (Division) notified Ms. E that she was issued \$2,938 in Food Stamp overpayments that she was not entitled to receive and she was required to repay that amount.<sup>1</sup> Ms. E requested a hearing.<sup>2</sup> Ms. E’s hearing was held on March 10, 2014.

Because Ms. E received \$2,938 more in Food Stamp benefits than she should have, the Division’s decision establishing a repayment obligation in that amount is affirmed.

**II. Facts**

On January 14, 2013, Ms. E applied for Food Stamps.<sup>3</sup> She listed herself as the only member of the household,<sup>4</sup> but later in the application listed assets for her father, Q E, Jr.<sup>5</sup> During an intake interview the next day, Ms. E stated that there are five members of household, herself, her father, Q E, Jr., her sister L, her sister’s daughter, and her sister’s boyfriend, M.<sup>6</sup> Ms. E stated that no one in the house had assets or income.<sup>7</sup>

The Division processed Ms. E’s application on an expedited basis, but let Ms. E know she needed to provide additional information to continue eligibility.<sup>8</sup> Ms. E did not supply the required information.<sup>9</sup>

Ms. E’s Food Stamp benefits should have been terminated at the end of January, when she had not supplied the additional information.<sup>10</sup> However, the Division did not re-examine

---

<sup>1</sup> Exhibit 7.11, (the Division’s original January 21, 2014, notice listed \$4,407 in overpayments).  
<sup>2</sup> Ex. 8.  
<sup>3</sup> Ex. 2.  
<sup>4</sup> Ex. 2.1.  
<sup>5</sup> Ex. 2.3; Ex. 2.4.  
<sup>6</sup> Ex. 3.  
<sup>7</sup> Ex. 3.  
<sup>8</sup> Ex. 3; Ex. 4.  
<sup>9</sup> Ex. 4; Ex. 5.

Ms. E's case until March 29, 2013.<sup>11</sup> The Division closed Ms. E's Food Stamp case because she did not supply the required information.<sup>12</sup> As a result, Ms. E and her household received benefits that they were not entitled to in March and April 2013.<sup>13</sup> The Division characterizes the overpayment as "agency error," due to the delay in re-evaluating her case.<sup>14</sup>

On January 21, 2014, the Division notified Ms. E that she received \$4,407 more in Food Stamp overpayments and she was required to repay this amount.<sup>15</sup> On February 3, 2014, Ms. E requested a fair hearing. Ms. E hearing request states that she cannot repay the amount and her family desperately needed Food Stamps at the time.<sup>16</sup> It also states that she does not believe she should have to pay back the funds issued due to agency error.<sup>17</sup> After reevaluating Ms. E's case, the Division changed the amount of recoupment sought to \$2,938.<sup>18</sup>

At hearing, Ms. E stated that the family still does not have a birth certificate for her sister's daughter. Ms. E testified that she sent some of the requested information to the Division and that other information was not available.<sup>19</sup>

### **III. Discussion**

The issue in this case is whether Ms. E is required to pay back \$2,938 in Food Stamp benefits that were issued to her in error. No facts are in dispute. Ms. E did not supply all the required information and the overpayment was due to Division error.

The Food Stamp program is a federal program administered by the State.<sup>20</sup> The Code of Federal Regulations (C.F.R.) establishes the rules for determining a household's monthly Food Stamp benefit. Benefit amounts are calculated based on the number of people living in the

---

<sup>10</sup> Ex. 6; Ex. 7.9.

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 5; Ex. 6.

<sup>13</sup> Ex. 7.11.

<sup>14</sup> Ex. 15.11; Gagne hearing presentation; position statement.

<sup>15</sup> Ex. 7.

<sup>16</sup> Ex. 8.

<sup>17</sup> Ex. 8.

<sup>18</sup> Ex. 7.11; Gagne hearing presentation; position statement. Because the additional information was due January 31, 2013, the Division could not have time to issue the required 10 day notice before terminating the February benefit. The Division could not consider the February Food Stamp benefit issuance an overpayment. This is why a new notice was issued on February 11, 2014, with the lowered repayment amount of \$2,938.

<sup>19</sup> Ms. E sent in a Gen 50-B form for her niece, but it was not signed by her sister, the child's mother. Ms. E testified that they still do not have a birth certificate for her niece and will not have it until paternity tests are complete. The Division did not receive any information regarding M. *See* Ex. 5. Ms. E stated that she faxed information that M did not have income or assets from a clinic, but did not keep a copy. It is not clear from the record when Ms. E attempted to fax the information. Ms. E believes that M does not have an Alaska driver's license and she did not submit his social security card or birth certificate.

<sup>20</sup> 7 C.F.R. § 271.4(a).

household and monthly income.<sup>21</sup> The Division is required to give 10 day notice before reducing benefits.<sup>22</sup>

The federal regulations are clear that the Division “must establish and collect any claim” for overpaid Food Stamp benefits issued.<sup>23</sup> This is true even when the overpayment is caused by the Division’s error.<sup>24</sup> Ms. E was overpaid \$2,938 in Food Stamp benefits and is required to repay those benefits to the Division, regardless of the fact that the overpayment is characterized as the Division’s error.

Ms. E’s hearing request indicates that she cannot repay the overpayment.<sup>25</sup> Federal law permits compromising or writing off a claim, but only if the claim cannot be paid off in three years.<sup>26</sup> The record does not indicate that Ms. E requested the Division reduce her repayment amount. If she chooses, Ms. E may still request a compromise of the overpayment finding.<sup>27</sup> The Division has discretion whether to grant a compromise request.<sup>28</sup>

#### **IV. Conclusion**

The Division's decision to recover \$2,938 in Food Stamp benefits overpaid to Ms. E is affirmed.

DATED this 21<sup>st</sup> day of March, 2014.

*Signed*  
\_\_\_\_\_  
Bride Seifert  
Administrative Law Judge

---

<sup>21</sup> 7 C.F.R. § 273.10(e)(2)(ii)(A).

<sup>22</sup> 7 CFR §273.13(a)(1).

<sup>23</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

<sup>24</sup> 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

<sup>25</sup> Ex. 8.

<sup>26</sup> 7 C.F.R. § 273.18(e)(7).

<sup>27</sup> Ex. 7.12; Ms. E may call or write the Division to request compromise or she may use the Request for Compromise form at Ex. 7.19.

<sup>28</sup> 7 C.F.R. § 273.18(e)(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.

## 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 15<sup>th</sup> day of April, 2014.

By: Signed  
Name: Ree Sailors  
Title: Deputy Commissioner, DHSS

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