

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

In the Matter of:)
)
D U) OAH No. 14-0239-SNA
) Agency No.

CORRECTED DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (Division) was correct to seek recoupment of \$720 in Food Stamp¹ overpayments from D U. The Division sought recoupment because Ms. U' income exceeded the Food Stamp program's gross monthly income limit for the months of October through December 2013. Based on the evidence presented, the Division's February 26, 2014,² decision requiring Ms. U to repay the \$691 in excess Food Stamp benefits is affirmed.

II. Facts

The Division received Ms. U' Food Stamp application on July 8, 2013.³ Ms. U was not working at the time.⁴ Shortly thereafter, Ms. U began working.⁵

The Food Stamp program requires recipients to report to the Division if their income exceeds the program maximums.⁶ The maximum gross income for a one-person household is \$1,555.⁷ Ms. U' income exceeded \$1,555 beginning in September 2013.⁸ Ms. U did not report that her wages exceeded the income maximum.⁹ When Ms. U submitted a recertification application on December 4, 2013,¹⁰ the Division requested pay information and learned that Ms. U was over-income for the program.¹¹

¹ Officially known as the "Supplemental Nutrition Assistance Program."
² The Division's original January 6, 2014, notice sought recovery of \$930 in overpayments.
³ Ex. 2.
⁴ Ex. 2.3.
⁵ Ex. 6.13; Ex. 6.14.
⁶ Ex. 3.1.
⁷ Ex. 6.6; maximum was \$1,514 in September and October, \$1,515 in November and December (*see* Ex. 613).
⁸ Ex. 6.13.
⁹ Ex. 5; Miller hearing presentation; not contested by Ms. U.
¹⁰ Ex. 4-4.5.
¹¹ Ex. 5; position statement.

On January 6, 2014, the Division sent Ms. U notice that she received \$930 more in Food Stamp benefits than she was entitled to receive.¹² On January 22, 2014, Ms. U requested a compromise on the overpayment amount.¹³ She also submitted a \$20 per month repayment agreement.¹⁴ The Division agreed to compromise Ms. U' overpayment down to \$720.¹⁵ Ms. U requested a fair hearing on February 14, 2014.¹⁶ While preparing for the hearing Jeff Miller, hearing representative for the Division, realized that the Division erred by including the month of September as an overpayment month. The Division recalculated Ms. U' overpayment at \$691 and sent an updated notice on February 26, 2014.

Ms. U' hearing was held on March 5, 2014. Ms. U appeared telephonically, represented herself, and testified on her own behalf. Mr. Miller participated by telephone and represented the Division.

Ms. U credibly testified that she inadvertently failed to report her excess income, as she did not realize she was over income.¹⁷ Ms. U also testified that repayment would create financial hardship. Mr. Miller stated that the Division would not compromise the \$691 overpayment down to a lower amount.¹⁸

III. Discussion

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.

A household is required to satisfy both a gross income eligibility standard and a net income eligibility standard in order to qualify for Food Stamp benefits.¹⁹ These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. § 9902(2) and are adjusted

¹² Ex. 6.

¹³ Ex. 7.

¹⁴ Ex. 8.

¹⁵ Ex. 9.

¹⁶ Ex. 10.

¹⁷ U testimony; The Division does not assert that Ms. U intentionally failed to report her income. Both parties agree that the failure to report was inadvertent.

¹⁸ Mr. Miller stated the Division's policy only allows compromises down to \$720 for individuals no longer receiving Food Stamps. The Division may compromise repayments down to \$360 for households still receiving Food Stamps. Ms. U no longer qualifies for Food Stamps.

¹⁹ 7 C.F.R. § 273.9(a).

periodically for inflation.²⁰ The Division publishes current income limits in the Food Stamp Program Manual at Addendum 4.²¹ The gross income limit for a one-person household is \$1,555.²² Ms. U' gross monthly income ranged from \$1,611 to \$1,809 from October through December 2013.²³ It is clear that Ms. U' monthly gross income exceeded the Food Stamp program income limit.

Federal statutes and regulations pertaining to the recoupment of overpaid Food Stamp benefits require states to collect any overpayments issued, regardless of who is at fault for the overpayment.²⁴ Virtually all courts have held that the applicable federal statute and regulations require recoupment of Food Stamp benefits regardless of fault.²⁵ Accordingly, the Division is required to seek reimbursement from Ms. U for the overpaid Food Stamp benefits.

The Division does have discretion when determining whether to compromise an overpayment finding.²⁶ The same federal regulation, which requires states to initiate overpayment collection, also gives states 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

²⁰ 7 C.F.R. § 273.9(a).

²¹ Ex. 11.2; *see also* <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>.

²² Ex. 11.2; *see also* <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>.

²³ Ex. 11.3.

²⁴ 7 U.S.C. §2022(b)(1); 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."

²⁵ *See, Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009); *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997); *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3 Dist. 2002).

²⁶ 7 C.F.R. § 273.18(e)(7).

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).

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 Ms. U has proven by a preponderance of the evidence that her financial circumstances will not improve sufficiently to allow collection of the \$691 at issue within the next three years.³¹

It is clear that Ms. U is currently experiencing financial difficulties. However, although it is possible that Ms. U' financial circumstances will not improve over the next three years, it is also possible that they will improve. In addition, as long as Ms. U remains in Alaska, she 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 \$2,069.00.³² It is therefore likely that receipt of a single dividend check would allow the Division to collect the \$691 at issue. Accordingly, the Division was within its discretion to decline to compromise its \$619.00 overpayment claim at this time.³³

IV. Conclusion

The Division properly found that Ms. U' gross monthly income exceeded the Food Stamp program's gross monthly income limit. Accordingly, the Division's decision requiring Ms. U to repay \$691 in Food Stamp benefits issued in error affirmed.

Dated this 21st day of March, 2014.

Signed _____
Bride Seifert
Administrative Law Judge

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).

³¹ Ms. U originally agreed to a \$20 per month payment, which would allow repayment in just under three years. At hearing, Ms. U states that even \$20 per month would be a hardship. Mr. Miller suggested she contact the Division to set up a lower repayment amount.

³² See Alaska Permanent Fund Division website at <http://pfd.alaska.gov/DivisionInfo/SummaryApplications> Payments (date accessed December 20, 2013).

³³ See OAH No. 13-0751-SNA, p. 5 (August 21, 2013).

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 7th day of April, 2014.

By: Signed
Name: Bride Seifert
Title: Administrative Law Judge

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