

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

In the Matter of:)
)
 A K) OAH No. 14-0267-SNA
) DPA Case No.
 _____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) is entitled to attempt to collect \$856.00 in Food Stamp benefits which the Division asserts was overpaid to Mr. K's household during the months of November 2013 through February 2014.¹

The parties agree that, through no fault of his own, Mr. K's household was paid \$856.00 more in Food Stamp benefits than it should have been paid for the months of November 2013 through February 2014. This decision concludes that, pursuant to the applicable federal regulations, the Division is required to seek reimbursement from Mr. K for the overpaid Food Stamp benefits. Accordingly, the Division's decision establishing a claim against Mr. K for the \$856.00 in overpaid Food Stamp benefits is affirmed. The Division's claim may be satisfied through monthly deductions from Mr. K's household's ongoing monthly Food Stamp benefits.

II. Facts

A. *Circumstances Surrounding the Overpayments at Issue*

The facts of this case are not in dispute. At all times relevant hereto Mr. K has had a three-person household consisting of two adults and one minor child.² Mr. K's household has received Food Stamp benefits since September 2009.³ On August 26, 2013 Mr. K submitted a change reporting form to the Division which stated that his family had recently moved to a new address.⁴ On January 22, 2014 Mr. K's wife telephoned the Division and reported that the rent at their new residence was \$950.00 per month and included all household utilities.⁵ Following this contact, a DPA eligibility technician (ET) reviewed Mr. K's household's Food Stamp case and found that the K household had been paying for their own fuel oil at their old residence, and had therefore

¹ Ex. 5.0.
² Ex. 1.
³ Ex. 1.
⁴ Exs. 2.7, 2.8.
⁵ Ex. 3.0.

received a standard utility deduction (SUD) in calculating the household's monthly Food Stamp benefit amount.⁶ The ET also discovered that, for whatever reason, the SUD was not removed from the Ks' Food Stamp case at the time the family moved in August 2013.⁷ Because of this, the Ks continued to receive the SUD at their new home, even though they were no longer responsible for paying for their utilities.⁸ This in turn caused the Ks' monthly Food Stamp benefit amount to be higher than it should have been after they moved.⁹

As a result, the Ks received \$307.00 per month in Food Stamp benefits during November and December 2013 when they should have received \$93.00 per month.¹⁰ The Ks received \$300.00 per month in Food Stamp benefits during January and February 2014 when they should have received \$86.00 per month.¹¹

B. Relevant Procedural History

On February 14, 2014 the Division mailed a notice to Mr. K stating that, during the months of November 2013 through February 2014, his household had been paid \$856.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of that amount.¹² On February 21, 2014 Mr. K's wife requested a hearing on the overpayment collection issue.

Mr. K's hearing was held on March 12, 2014. Mr. K and his wife, S K, participated in the hearing by phone and testified on their household's 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. At the hearing Mr. K did not dispute the Division's calculation of the amount of overpaid Food Stamp benefits. Rather, he emphasized that requiring his household to repay the over-issued Food Stamp benefits would impose a significant hardship on his family, and he requested that he be allowed to repay the overpayments by way of a relatively small monthly deduction from his household's Food Stamp benefits. The hearing record closed on March 12, 2014.

⁶ Exs. 3.0, 4.0.

⁷ Exs. 3.0, 4.0.

⁸ Exs. 3.0, 4.0.

⁹ Exs. 3.0, 4.0.

¹⁰ Ex. 5.4.

¹¹ Ex. 5.4.

¹² Exs. 5.0 – 5.10.

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.¹³ In general, the greater a household's net income, the smaller the amount of Food Stamp benefits the household will receive each month.¹⁴

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C. § 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 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 (as here) the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, it is clear that 7 C.F.R. § 273.18 requires 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 and on the Office of Administrative Hearings. Accordingly, in this case the Division is required to seek reimbursement from Mr. K's household for the overpaid Food Stamp benefits, even though the overpayments were not Mr. K's fault.

¹³ 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).

¹⁴ See Alaska Food Stamp Manual, Addendum 4.

If the household that received the overpayment is still receiving benefits, and the household is unable or 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 month or 10% of the household's monthly benefit amount, whichever is greater.¹⁵ If the household is no longer receiving benefits, the overpayment may be repaid through a lump-sum payment, installment payments, public service, or through involuntary collection efforts.¹⁶

B. Though the Result in This Case May Seem Unfair, the Division Does not Have the Authority to Disregard the Applicable Federal Regulations

It is not disputed that Mr. K's household has a significant need for Food Stamp benefits. It is also not disputed that Mr. K's household's financial resources are limited. However, the Division is not at liberty to ignore the federal regulations governing the Food Stamp program.¹⁷ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to those regulations.¹⁸

IV. Conclusion

The overpayment at issue was not Mr. K's fault. However, the applicable federal regulations make clear that the state agencies administering the Food Stamp program “must establish and collect any claim” for overpaid Food Stamp benefits. This is the case even where (as here) the overpayment is not the fault of the benefit recipient. Accordingly, the Division's decision to seek recovery of the \$856.00 in Food Stamp benefits, which the Division mistakenly overpaid to Mr. K's household during the period November 2013 through February 2014, is affirmed.

DATED this 20th day of March, 2014.

Signed

Jay Durych

Administrative Law Judge

¹⁵ 7 C.F.R. § 273.18(g)(1). This is what the K stated they wish to do in this case.

¹⁶ 7 C.F.R. § 273.18(g).

¹⁷ “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).

¹⁸ 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 1st day of April, 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.]