

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

In the Matter of)	
)	OAH No. 14-0295-SNA
S D II)	Agency No.
_____)	

DECISION

I. Introduction

S D II applied for and received Food Stamp benefits. The Division of Public Assistance (division) sought to recover overpayments due to an agency error. Mr. D requested a hearing on whether he should be required to repay the overpayment amount.

A hearing was held on March 28, 2014. Mr. D participated by telephone and represented himself. C E also testified in support of Mr. D. The division was represented by Public Assistance Analyst Terri Gagne, who also participated by telephone. Based on the undisputed evidence in the record, the division’s decision is affirmed.

II. Facts

The relevant facts are not in dispute. In January of 2013, Mr. D applied for Food Stamp benefits.¹ That application stated that he had not previously been convicted of a drug related felony.² Based on his application, Mr. D was provided with benefits from January 2013 through December 2013, totaling \$2,501.³

Mr. D had been previously convicted of a drug related felony.⁴ In the past, he had disclosed that conviction to the division.⁵ On January 26, 2014, the division learned again of Mr. D’s prior conviction.⁶ The division sent Mr. D a notice indicating that there had

¹ Exhibit 3.11.

² Exhibit 3.12. Subsequent Eligibility Review Forms also indicated there had been no drug related felony conviction. Exhibit 3.5 (June 2013) and 2.0 (December 2013).

³ Exhibit 5.11 – 5.12.

⁴ Testimony of Mr. D; Exhibit 3.1 – 3.4. Exhibits 3.1 – 3.4, standing alone, might not be sufficient to prove a prior conviction. These pages appear to be a print out from the court system web site. There was no testimony as to the validity of this document, and the document contains warnings that the information contained in the document may be inaccurate. In this case, however, Mr. D acknowledged his prior conviction.

⁵ Exhibit 3.28 (November 2011 application); Exhibit 3.37 (March 2011 application).

⁶ Exhibit 3.0.

been an overpayment due to agency error, and asking him to repay \$2,501 in benefits he should not have received.⁷

III. Discussion

Food Stamp benefits are governed by federal law. A person who committed a drug related crime after August 22, 1996, and who has been convicted of that offense, is not eligible to receive Food Stamp benefits.⁸ When there has been an overpayment, the division is required to collect the overpayment.⁹ This is true even where the overpayment is the result of the division's error.¹⁰ The division is only allowed to compromise on all or a portion of the claim if "it can be reasonably determined that a household's economic circumstances dictate that the claim will not be repaid in three years."¹¹

Mr. D argued that he should not be responsible for the division's error. He asserted that he had been honest in his prior applications, and it is not his responsibility to ensure that the division is doing its job properly. Ms. E testified that she completed the eligibility review form after Mr. D had been receiving benefits, and was not aware of his prior conviction at that time.

Mr. D is responsible for making sure the documents he signs are correct. His 2013 application and two subsequent eligibility review forms were incorrect. But in the end, the question of who is at fault is not relevant. Under federal law, Mr. D should not have received Food Stamp benefits. That same law requires the division to seek repayment of the benefits he did receive. If Mr. D wants the division to compromise its claim because repayment will cause a hardship, or because his economic circumstances show that repayment within three years is unlikely, he may submit that request to the division.¹² However, the division was correct to find the overpayment and to seek recoupment of that amount from Mr. D.

⁷ Exhibit 5.0.

⁸ 7 C.F.R. §273.11(m).

⁹ 7 C.F.R. §273.18(a)(2).

¹⁰ At the hearing, the division argued that this mistake was not agency error. However, the notice sent to Mr. D alleged an agency error.

¹¹ 7 C.F.R. §273.18(e)(7).

¹² See Exhibit 5.10 (Request for Compromise form).

IV. Conclusion

Mr. D received \$2,501 in Food Stamp benefits that he was not entitled to receive because of his prior conviction. Accordingly, the division correctly found that he should repay that amount, and the division's decision is affirmed.

Dated this 2nd day of April, 2014.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

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 16th day of April, 2014.

By: *Signed* _____
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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