

options are discussed in the notice⁶ which the Division sent to Ms. N on May 22, 2014, and Ms. N is still free to pursue them. These options are not further addressed in the decision.

II. Facts

Ms. N, a single mother of two children, applied for Food Stamps in 2013. She disclosed at that time that she had received an SIS in connection with a drug-related felony⁷. The agency representative counted Ms. N as part of the household for purposes of receiving Food Stamps, despite knowing about the SIS.

In May of 2014, the Fraud Department contacted the Division and provided a certified copy of a judgment in 3AN-08-00000CR. This judgment and order for an SIS established that Ms. N had been convicted upon her guilty plea of a fourth degree misconduct involving a controlled substance in violation of AS 11.7.040(a)(3)(A). On May 22, 2014, the Division sent her a letter notifying her that she was not eligible for Food Stamps because of the prior drug felony charge. Since Ms. N was not eligible for Food Stamps, it meant that her household size for computing Food Stamp benefits consisted of two people, not three⁸. Consequently, the Division found that Ms. N had received an overpayment in Food Stamps in the amount of \$2,389 because her Food Stamp allotment from May of 2013 through May of 2014 had been based on a household size of three⁹.

III. Discussion

The Code of Federal Regulations states that an individual convicted of a drug-related felony after August 22, 1996 “shall not be considered an eligible household member” under the Food Stamp program unless a state has adopted legislation which would allow its residents to receive Food Stamp benefits despite having a felony drug conviction.¹⁰ Alaska has not enacted any such legislation,¹¹ which obviously operates to the detriment of individuals like Ms. N who have learned from their mistakes. Ms. N pled guilty in 2008 to a violation of 11.71.040 – which

⁶ Exhibit 8.

⁷ Exhibit 8. Ms. N, in her appeal and through her testimony, indicated that it was her belief that an SIS meant that she had been charged with a felony but not convicted. *See* Exhibits 9-9.1.

⁸ Exhibits 8.6-8.7.

⁹ Exhibits 8-8.15.

¹⁰ *See* 7 C.F.R §273.11(m).

¹¹ The Alaska regulations applicable to the Food Stamp program do not contain any exemptions from the federal requirement, under 7 C.F.R. §273.1(m), that a person with a drug felony conviction is barred from receiving Food Stamp benefits. *See* 7 AAC 46.010 *et seq.* Exhibits 8.3 & 8.19; *see also* AS §12.55.080 (stating that an SIS may be available in appropriate cases after the **judgment of conviction of crime**)[emphasis added].

is misconduct involving a controlled substance in the fourth degree and a class C felony – and was convicted upon her guilty plea.¹² She received a SIS, and upon completion of her probation, the judgment of conviction was “set aside.”¹³

The Alaska Supreme Court has, however, made it clear that an SIS does not eliminate or expunge a conviction:

Although setting aside a conviction limits the consequences of the conviction itself, it does not change the fact that an individual was previously found guilty of committing a crime Setting aside a conviction does not expunge the conviction from the individual’s criminal record Thus, although the set aside indicates that the defendant has made a “substantial showing of rehabilitation, it does not erase the fact of conviction [T]he fact of conviction may lead to certain “lingering consequences”

Platt, 169 P. 3d at 599-600.

The Alaska Supreme Court in *Platt* admitted that “criminal records, even those containing convictions that have been set aside, often have ‘pernicious effects’ and that such ‘consequences may be harsh where . . . the individual has demonstrated an ability to turn her life around after being convicted.’” *Platt*, 169 P. 3d. at 600. This is very true in the present case, since Ms. N appears to have turned her life around after her encounter with the criminal justice system.

Because Ms. N’s felony drug conviction is not expunged through an SIS, the Division is correct in its position that Ms. N was overpaid Food Stamp benefits in the amount of \$2,389. Although this overpayment of Food Stamp benefits resulted from a government mistake, Ms. N is still required to repay the excess benefits she has received. Food Stamp benefits are governed by federal law. 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 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 overpaid Food Stamp benefits.

The federal implementing regulation pertaining to the recoupment of Food Stamp benefits is 7 C.F.R. §273.18. Under subsection (b)(3), collection action is required even where

¹² Exhibit 4.

¹³ Exhibit 6.

(as here) the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, federal law requires the division attempt to recover overpaid Food Stamp benefits, *even if the overpayment is the result of the Division’s own error.*

This was confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*.¹⁴ After holding that federal law requires the state to pursue repayment of all overpaid Food Stamp benefits, the court observed:

We are sympathetic to the argument that it is unfair to require indigent food stamp recipients to repay benefits that were overissued to them through no fault of their own, but Congress has already made the policy decision that a ten dollar or ten percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness.^[15]

The federal regulations and the *Allen* decision regarding the recoupment of Food Stamp benefits that were paid in error are binding on the Department of Health and Social Services.¹⁶

IV. Conclusion

Ms. N received an overpayment of Food Stamp benefits because her SIS did not operate as an expungement of a drug-related felony. Although the overpayment was not her fault and was the result of an agency error, she is still required to repay the excess benefits if she is able to do so. Accordingly, the Division’s decision to require repayment of \$2,389 is upheld.

Dated this 8th day of July, 2014.

Signed _____
Kathleen A. Frederick
Administrative Law Judge

¹⁴ 203 P.3d 1155 (Alaska 2009).

¹⁵ *Id.* at 1164 (footnotes omitted).

¹⁶ As alluded to in the quoted language from *Allen*, Ms. N does have the right to request that the Division compromise (write-off or forgive) all or part of the overpaid benefits. *See* 7 C.F.R. § 273.18(e)(7).

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 17th day of July, 2014.

By: Signed
Signature
Kathleen A. Frederick
Name
Administrative Law Judge
Title

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