

was approved to receive Food stamps and received \$435 in food stamps for March of 2014 and \$482 in Food Stamps in April of 2014, or \$917 in the aggregate. (Hearing Exhibit 5 & 5.5)

Ms. H testified that she had submitted this application requesting, *inter alia*, Food Stamps because a new grandchild, L-N, had begun living with her. Her testimony on this point is corroborated by Hearing Exhibits 3 and 18, which included case notes from a Division interview with Ms. H. In addition to working on a full-time basis, Ms. H is also raising three other biological grandchildren that she has adopted, and she disclosed these facts on her initial application for Food Stamps. (Hearing Exhibits 18 & 2). After Ms. H began receiving Food Stamps, the Division informed Ms. H that she could not apply for Food Stamps solely for L-N. Ms. H then advised the Division that she wished to withdraw her Food Stamps application. (Hearing Exhibit 18). Her request for closure of her Food Stamps application was effective on April 30, 2014. (Hearing Exhibit 3). However, by that time, Ms. H had already received a total of \$917 in Food Stamp benefits for her household that she was not entitled to receive. (Hearing Exhibit 5).

II. Discussion

Ms. H had five members in her household in March and April of 2014: herself, her adopted children (B, F, and Z Q, who are Ms. H's biological grandchildren) and grandchild L-N. Under the Alaska Food Stamp program, the maximum net income that a household of that size could receive and still qualify for Food Stamps is \$2783. (Hearing Exhibit 5). At the time Ms. H submitted her Food Stamps application, the form Food Stamps application did not specifically identify foster care or adoption subsidies as "other income" which needed to be listed on the Food Stamps application. *See* Hearing Exhibit at 2.6. In her interview with the Division, Ms. H further disclosed that she had adopted B, F, and Z Q. Ms. H thus provided the Division with complete information as requested on the Food Stamp application and in her interview with the Division. Accordingly, her conduct was not "inadvertent household error."

It is only through a careful reading of 7 C.F.R. § 273.9(c) (1)(iii) that it becomes apparent that "foster care and adoption payments from a government source" are to be included as income for purposes of determining Food Stamp eligibility. Because these sources of income are not identified on the Food Stamps application, it is unlikely that any lay person³ would have realized

³ Ms. H testified that her daughter assisted her in completing the Food Stamps application because reading and filling out forms was difficult for her, which underscores the importance of having foster care and adoption subsidy

that this source of income should have been disclosed in Question 97 on the Food Stamps application. (Hearing Exhibit B 2.6). Indeed, even the employee at the Division who interviewed Ms. H in connection with her March 4, 2014 Food Stamps application appeared to have been unaware that adoption subsidies⁴ were considered “other income” for purposes of food stamps. (Hearing Exhibit 2). Consequently, the agency assigned an incorrect allotment to Ms. H⁵ because nothing on the Food Stamps application disclosed to Ms. H or to the agency interviewer that if there were adoption or foster care subsidies, they had to be included as “other income” in calculating eligibility for Food Stamps benefits.

The uncontested evidence in this case showed that if the adoption subsidies were included as part of Ms. H’s monthly income, her income exceeded the maximum amount of net income which a household of 5 could receive and still be eligible for Food Stamps – *i.e.*, \$2873. (Hearing Exhibit 5, 5.4-5.7). By including these adoption subsidies as part of Ms. H’s income, she had household net income in March of 2014 in the amount of \$3911 and household net income in the amount of \$3904 in April of 2014. Thus, Ms. H was not entitled to receive any Food Stamps benefits in March or April of 2014. However, she did, in fact, receive \$917 in Food Stamp benefits during this time due to an agency error.

The fact that this overpayment of Food Stamp benefits was a government mistake does not mean that Ms. H is not required to repay the excess benefits she 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. Subsection (a)(2) of that regulation provides that “the State agency *must* establish and collect any claim” Under 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

payments specifically listed on the application as sources of other income so that it is apparent to lay persons filling out these forms.

⁴ Ms. H in that interview disclosed that she had adopted three of her biological grandchildren – Z, B, and F, Jr. – yet there is no evidence showing that the interviewer inquired as to whether Ms. H was receiving adoption subsidies. (Hearing Exhibits 2 and 18).

⁵ Hearing Exhibit 10 is the agency’s Food Stamp manual, which characterizes the agency’s assignment of an incorrect allotment as “agency error.”

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*.⁶ 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.^[7]

The federal regulations and the *Allen* decision are binding on the Department of Health and Social Services.⁸

IV. Conclusion

Ms. H received an overpayment of Food Stamp benefits. 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 \$917 is upheld.

Dated this 3rd day of July, 2014.

Signed

Kathleen A. Frederick
Administrative Law Judge

⁶ 203 P.3d 1155 (Alaska 2009).

⁷ *Id.* at 1164 (footnotes omitted).

⁸ As alluded to in the quoted language from *Allen*, Ms. H 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.]