

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

In the Matter of )  
 )  
 O N )  
\_\_\_\_\_ )

OAH No. 14-0969-SNA  
Agency No.

**DECISION**

**I. INTRODUCTION**

The Division of Public Assistance discovered that O N was receiving food stamp benefits in error and issued a claim requiring that she repay \$2,838.00 in benefits.<sup>1</sup> Ms. N contested the claim on the grounds that it was discriminatory, that she should be considered disabled, and that under her circumstances the Division should compromise the claim. The claim of discrimination, however, raises issues that cannot be decided in this forum. And although Ms. N is injured, she is not disabled for purposes of food stamp benefits. In addition, because her adult son is also liable for the debt, her circumstances do not justify a compromise of the debt. Therefore, the Division’s assessment of the \$2,838.00 repayment obligation against Ms. N is affirmed.

**II. FACTS**

O N is a 49-year-old woman who lives in No Name with her three sons B, age 31, F, age 17, and C, age 14. During the summer of 2013, Ms. N was incarcerated for a drug-related felony. While she was incarcerated, her two younger sons lived with their father.<sup>2</sup>

After Ms. N was released in August 2013, she and her sons moved back into her home in No Name. (While Ms. N was incarcerated, her mother had been paying the \$800 per month mortgage on her home.) On September 3, 2013, she applied for food stamp benefits for her household. At that time, the two younger children were not yet back in her home, and they were receiving food stamp benefits in a different household.<sup>3</sup> Ms. N herself was not eligible for food stamp benefits because of her drug-related felony conviction, but other members of the

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<sup>1</sup> The Food Stamp Act was amended in 2008, and the Food Stamp program was renamed the “Supplemental Nutrition Assistance Program.” *See Allen v. State, Dep’t of Health and Soc. Serv.*, 203 P.3d 1155, 1158 n.1 (Alaska 2009) (citing Pub.L. No. 110–234, 122 Stat 923, 1092 (May 22, 2008)). This decision will use the familiar term “food stamps” because that is the term used by the Division, the regulations, and the public.

<sup>2</sup> N testimony.

<sup>3</sup> Division Exhibit 3.4.

household were eligible. Based on a household size of one (B), and no income, Ms. N, as the head-of-household, was approved for a food stamp benefit of \$239 per month.<sup>4</sup> In November, the benefit was increased to \$594.00 per month.<sup>5</sup>

As the Division later discovered, however, the assumption that Ms. N had no income was not accurate. Since December 2011, Ms. N has been receiving worker's compensation payments of \$3,694.40 per month.<sup>6</sup> Ms. N explained that she was injured and that she can "never drive truck again."<sup>7</sup> She testified that she told her caseworker about the worker's compensation payments.<sup>8</sup>

On January 28, 2014, Ms. N filled out the "Eligibility Review Form" to recertify her household's eligibility for food stamp benefits.<sup>9</sup> On this form she reported that she receives income from worker's compensation. Based on this income, the Division determined that she was not eligible for food stamp benefits, and on February 12, 2014, terminated her benefit.

Because the worker's compensation payments made her ineligible for any of the \$2,838.00 benefit received from September 2013 through February 2014, on March 19, 2014, the Division sent Ms. N a letter informing her that she was required to repay the overpayment. The Division determined that the overpayment was due to inadvertent household error. The letter informed her that she could appeal the decision regarding the overpayment and that she could ask the Division to compromise the debt in whole or in part.<sup>10</sup>

On June 10, 2014, Ms. N requested a fair hearing. She also requested that the Division compromise the claim.

On June 13, 2014, the Division denied the request to compromise. The Division determined that Ms. N's circumstances "do not dictate that the claim of \$2,838.00 cannot be

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<sup>4</sup> Division Exhibit 2.8.

<sup>5</sup> Division Exhibit 4.15.

<sup>6</sup> Division Exhibit 3.1-3.2

<sup>7</sup> N testimony.

<sup>8</sup> *Id.* Ms. N's September 2013 application is not included in the record. The case notes for September 2013, however, do not indicate that she discussed worker's compensation income at that time. A "Report of Claim Determination" dated February 12, 2014 indicates that Ms. N was asked about income during a call in February 2014, and that she explained she had worker's compensation income. Ms. N's testimony that she told her caseworker about the worker's compensation might relate to the February telephone call rather than the September 2013 application. On this record, how the error occurred is not clear—Ms. N was forthright about the income in both the January recertification application and the February phone call. Yet, regardless of who was at fault, the Division is required to seek recoupment.

<sup>9</sup> Division Exhibit 2.1.

<sup>10</sup> Division Exhibit 4.1-4.2.

collected within three years.”<sup>11</sup> The Division noted that with monthly payments of \$79.00, the entire amount would be paid in three years, and that the account would not be considered delinquent as long as she paid at least \$20.00 per month.

A hearing was held on June 27, 2014. Ms. N represented herself, and Terri Gagne represented the Division.

At the hearing, Ms. N explained that the only household income is her worker’s compensation and \$25 per month net in child support. The children are not working. She has \$23,000 in debt. She pays \$800 per month for her mortgage, plus all utilities. She has two teenage boys who play football, so all additional money goes to food. She has only a mini-refrigerator, which is inadequate during the summer months. She has no discretionary income and the family does not spend money on entertainment: no movies, no video games.<sup>12</sup>

She further explained that during the time she was in jail, she had given the boy’s father power of attorney to pay the boy’s expenses, and that he had used that power to take all of her savings. In addition, she had child support arrearages accrue while she was in jail. Further hardship was due to her home having been burglarized and vandalized. Her hot water heater was stolen, as was the element from her range. To have running water, she had to replace her pump. Her home has six broken windows that she cannot afford to have fixed.

### **III. DISCUSSION**

The Food Stamp program is a federal program and the Division is required to follow federal law when determining whether an applicant is eligible for food stamp benefits.<sup>13</sup> Here, under federal law, Ms. N’s household was not eligible for food stamp benefits because her income exceeded the income limit for eligibility.<sup>14</sup> Accordingly, the Division must seek recoupment of the erroneously-paid benefits.<sup>15</sup> The department may, however, compromise some or part of the repayment if it determines that “a household’s economic circumstances dictate that the claim will not be paid in three years.”<sup>16</sup>

Ms. N does not dispute the amount of the benefit, and does not dispute that her income would make her household ineligible for food stamps if her household was not considered a

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<sup>11</sup> Division Exhibit 6.

<sup>12</sup> N testimony.

<sup>13</sup> 7 AAC 46.010; *see also, e.g., Allen*, 203 P.3d at 1162 (holding that state agency must comply with federal food stamp requirement to recoup overpayments).

<sup>14</sup> 7 C.F.R. § 273.9(a)(1) (ii).

<sup>15</sup> 7 C.F.R. § 273.18(b)(3).

<sup>16</sup> 7 C.F.R. § 273.18(e)(7).

disabled household. On appeal, she makes three arguments. First, she argues that the exclusion of persons with a drug-related felony conviction is discriminatory. Second, she argues that she should be considered disabled. Third, she asserts that under her circumstances, the department should compromise the debt. Those three arguments are addressed below.

**A. Is the allegation that the exclusion of drug-related felons from food stamp benefits is discriminatory a matter that can be addressed in this action?**

A person is not eligible for food stamp benefits if the person has a drug-related felony conviction. Therefore, in determining whether Ms. N's household was eligible, the Division did not include Ms. N in determining the household size. Based on a household size of three, the Division determined that her household was over the income threshold, and thus not eligible.<sup>17</sup>

In this hearing, Ms. N does not contest that she is ineligible under the law. She argues, however, that the law is discriminatory. She notes that rapists, murderers, and child molesters can qualify for food stamps, but not a person with a drug-related felony. In addition, she notes that statistically, most people who are arrested for drug-related crimes are drug addicts. Addiction is a disease. Therefore, she argues, the law discriminates against people who are ill.

Ms. N's arguments appear to state two possible theories. First, she might be arguing that the law that excludes drug-related felons from eligibility for food stamp is unconstitutional under the equal protection clauses of the Alaska and Federal Constitutions. Second, she might be arguing that the law is bad policy.

If Ms. N is arguing that the law is unconstitutional on its face, she must make that argument to a court. In this hearing, the decision will be made by an executive-branch agency. With some limited exceptions that are not applicable here, an administrative agency cannot declare a law unconstitutional. Similarly, if Ms. N is arguing that the law is bad policy, she must make that argument to legislative bodies that are responsible for the law. Here, this agency must abide by the law as written by Congress and incorporated by the Alaska legislature. Finally, even with a household size of four, Ms. N's household would still have been over the income limit and, therefore, ineligible.<sup>18</sup> For these reasons, Ms. N's arguments regarding discrimination will not be further considered in this fair hearing.

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<sup>17</sup> Division's Position Statement at 1.

<sup>18</sup> Division Exhibits 3.9, 3.21.

**B. Is Ms. N disabled for purposes of determining food stamp eligibility?**

Ms. N argues that she has a medical determination that her physical condition is unstable and she is not able to return to work. In her view, she is disabled. She asks that the income-eligibility charts for disabled persons be applied to her case. Because she would then receive a shelter deduction, she believes her household would have been eligible during the time in question if the Division had considered her to be disabled.

Under federal law, however, a person is not considered disabled unless the person has been determined to be disabled for supplemental security income or other disability benefits based on the criteria under the Social Security Act.<sup>19</sup> Ms. N, although injured and unable to work, has not been found disabled for purposes of social security. Therefore, she does not qualify for the special income rules that apply to disabled persons.

**C. Do the facts of this case support compromising the claim for recoupment of the overpayment?**

In order to compromise a claim, the department must first determine that the recoupment amount will not be paid in three years. Here, Ms. N has made a strong case that, based solely on *her* circumstances, she herself would likely not be able to pay back the debt in full. She is injured and not able to work. She has no discretionary income. Her home is not in a habitable condition, so if she was required to pay back this debt in full, she would likely either have to choose to have her family go without food, or live in an uninhabitable home, or, perhaps, both.

Yet, there is another adult in the household, her 31-year-old-son, B. B is equally liable for the debt.<sup>20</sup> In fact, the food stamp benefit that the household received was based on B's eligibility. The record indicates that Ms. N expected that B "should go to work in April."<sup>21</sup> Given this expectation, nothing in this record satisfactorily explains why it would be a hardship for B to have to contribute some or all of the \$79.00 per month required to repay this debt.

The department is not required to compromise all claims. The burden of proof is on the individual requesting the compromise to show both that the claim would likely not be paid in full in three years, and that the debt should be compromised. Here, Ms. N has not met that burden. Therefore, the department will not compromise this claim.

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<sup>19</sup> 7 C.F.R. § 271.2 (defining who would be considered a disabled member of a household). Although the definition of disabled has several components, Ms. N does not meet any of them.

<sup>20</sup> 7 AAC § 273.18(a)(4) ("The following are responsible for paying a claim: (i) Each person who was an adult member of the household when the overpayment or trafficking occurred").

<sup>21</sup> Division Exhibit 2.3.

**IV. CONCLUSION**

The Division’s decision assessing Ms. N’s household with liability for \$2,838.00 is affirmed. Ms. N’s household may negotiate a repayment schedule to repay this debt. The household must pay at least \$20.00 per month to avoid being found delinquent.

DATED this 3<sup>rd</sup> of July, 2014

By: Signed  
Bride A. Seifert  
Administrative Law Judge

**Adoption**

The undersigned, by delegation from 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 24<sup>th</sup> day of July, 2014.

By: Signed  
Name: Bride Seifert  
Title/Division: ALJ/OAH

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