

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

In the Matter of:)
)
 K P) OAH No. 14-1193-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 \$324.00 in Food Stamp benefits which the Division asserts were overpaid to Ms. K P's household during the months of April 2014 and May 2014.¹ At hearing, Ms. P did not dispute that she received Food Stamp benefits during the two months at issue to which her household was not entitled. Ms. P asserted, however, that (1) she is entitled to a credit or offset, in the amount of \$120.57, for unspent Food Stamp benefits which have now been returned to the Division, and (2) she should not have to repay any of the overpayment because it would not have occurred had the Division acted promptly when she informed it of her housemate's new employment and income.

This decision concludes that, pursuant to the applicable federal regulations, the Division is required to seek reimbursement from Ms. P for the overpaid Food Stamp benefits, regardless of whether the overpayments were Ms. P's fault or the Division's fault. However, Ms. P is entitled to a credit or offset, in the amount of \$120.57, for unspent Food Stamp benefits which have now been returned to the Division. Accordingly, the Division's decision establishing a claim against Ms. P for overpaid Food Stamp benefits is affirmed, but the amount owed is reduced from \$324.00 to \$203.43.

II. Facts

A. *Facts Relevant to the Overpayments at Issue*

The pertinent facts of this case are not in dispute. At all times relevant hereto Ms. P has had a two-person household consisting of two adults (Ms. P and L G).² Ms. P's household has received

¹ Ex. 9.0.

² Ex. 1.

Food Stamp benefits since some time prior to December 2013.³ Ms. P is disabled and receives Social Security disability benefits and Adult Public Assistance benefits.⁴

On December 4, 2013 Ms. P submitted a Food Stamp renewal (recertification) application to the Division.⁵ On December 27, 2013 the Division notified Ms. P that her renewal application had been approved and that, if she remained eligible, she would receive Food Stamp benefits through May 2014.⁶ The Division's notice listed Ms. P's monthly benefit amount, as well as the income sources and amounts which the Division had considered in determining Ms. P's eligibility and benefit amount.⁷ A second notice, also dated December 27, 2013, explained the importance of notifying the Division of changes in employment and income.⁸

On May 27, 2014, at the end of the Food Stamp recertification period, Ms. P participated in an interview with a DPA eligibility technician (ET) to determine her household's continuing eligibility for Food Stamps.⁹ The ET reviewed Ms. P's household's Food Stamp case and found that, because Mr. G had become re-employed, Ms. P's total household income exceeded the Food Stamp program's monthly gross income limit.¹⁰ Upon being notified of this, Ms. P was confused; she advised the Division that she had previously notified it of Mr. G's new employment, and the Division had not reduced or terminated her benefits.¹¹ A Division ET then checked the Division's records but was not able to find any indication that Ms. P had previously advised the Division of Mr. G's new employment and earnings.¹²

Regardless of which party was at fault, the Division was not aware that Mr. G had a new job and was earning income until late May 2014. For this reason, Ms. P's household received \$162.00 per month in Food Stamp benefits for April 2014 and May 2014, during which time the household was actually ineligible for Food Stamps due to excess income.¹³ The Food Stamp benefits overpaid to Ms. P's household during the two months in question, prior to credits or offsets, total \$324.00.¹⁴

³ Ex. 1.

⁴ Ex. 2.0.

⁵ Ex. 2.0.

⁶ Ex. 2.0.

⁷ Ex. 2.0.

⁸ Ex. 2.1.

⁹ Ex. 3.

¹⁰ Ex. 3.0. Mr. G's new employment began on February 16, 2014, and he received his first paycheck on February 28, 2014 (Ex. 7.0).

¹¹ Exs. 4, 5, 6, 7.0, 7.1.

¹² Exs. 5.0, 5.1, 5.2, 5.4.

¹³ Exs. 8.0, 9.0, 9.5, 9.11.

¹⁴ Exs. 8.0, 9.0, 9.5, 9.11.

B. Relevant Procedural History

On June 24, 2014 the Division mailed a notice to Ms. P stating that, during the months of April 2014 and May 2014, her household had been paid \$324.00 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of that amount.¹⁵ On July 14, 2014 Ms. P requested a hearing on the overpayment collection issue.¹⁶

Ms. P's hearing was held on August 6, 2014. Ms. P participated in the hearing by phone, represented her household, and testified on its 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 Ms. P did not dispute the Division's calculation of the amount of overpaid Food Stamp benefits. Rather, she asserted that she was entitled to a credit or offset, in the amount of \$120.57, for unspent Food Stamp benefits still on her Electronic Benefits Transfer (EBT) card. She also asserted that her household should not have to repay the overpayments because the overpayments would not have occurred had the Division acted promptly when she informed it of Mr. G's new employment and income. Following the hearing, the record was left open for seven days for post-hearing filings. The hearing record closed on August 13, 2014.

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.¹⁷ In general, the greater a household's net income, the smaller the amount of Food Stamp benefits the household will receive each month.¹⁸

¹⁵ Exs. 9.0 – 9.10.

¹⁶ Exs. 7.0, 7.1, 7.2.

¹⁷ 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).

¹⁸ See Alaska Food Stamp Manual, Addendum 4.

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.

B. Application of the Regulations to the Facts of This Case

Based on the federal statutes and regulations cited in the preceding section, the Division is required to seek reimbursement from Ms. P's household for the overpaid Food Stamp benefits, regardless of whether the overpayments were Ms. P's fault or the Division's fault. The only remaining issue is the amount of overpayments which the Division is entitled to collect.

Ms. P does not dispute the Division’s calculation that, prior to credits or offsets, her household received \$324.00 in overpaid Food Stamp benefits. She asserts only that she is entitled to a credit or offset, in the amount of \$120.57, for the unspent Food Stamp benefits remaining on her Electronic Benefits Transfer (EBT) card.

At hearing, the undersigned asked the Division to check its records and confirm whether Ms. P in fact had unspent benefits remaining on her EBT card. The Division did so, and confirmed that there was \$120.57 in unspent benefits on Ms. P's EBT card.¹⁹ The Division then froze the funds on the EBT card so they could not be spent and would revert back to the Division.²⁰ Accordingly, Ms. P's household is entitled to a \$120.57 offset from the \$324.00 otherwise due.

¹⁹ Exs. 15, 16.

²⁰ Exs. 15, 16.

C. 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 Ms. P's household's financial resources are limited. However, the Division is not at liberty to ignore the federal regulations governing the Food Stamp program.²¹ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to those regulations.²² Fortunately, if a household that received an 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.²³ If a 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.²⁴

IV. Conclusion

The applicable federal statutes and 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 the overpayment is not the fault of the benefit recipient. Accordingly, the Division is entitled to seek recovery of the Food Stamp benefits which were overpaid to Ms. P's household during April 2014 and May 2014. However, Ms. P is entitled to a credit or offset, in the amount of \$120.57, for unspent Food Stamp benefits which have now been returned to the Division. The Division's decision establishing a claim against Ms. P for overpaid Food Stamp benefits is therefore affirmed, but the amount owed is reduced from \$324.00 to \$203.43.

DATED this 29th day of August, 2014.

Signed _____
Jay Durych
Administrative Law Judge

²¹ “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).

²² See 7 AAC 49.170 (limits of the hearing authority).

²³ 7 C.F.R. § 273.18(g)(1).

²⁴ 7 C.F.R. § 273.18(g).

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 9th day of September, 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.]