

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

In the Matter of)
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OAH No. 14-1470-SNA
Agency No.

DECISION

I. Introduction

F J received Supplemental Nutrition Assistance Program, commonly called "Food Stamp" benefits. The Division of Public Assistance (Division) notified Ms. J that she was issued \$162 in Food Stamp benefits than she was not entitled to receive and she was required to repay that amount.¹ The Division asserts that Ms. J is ineligible for Food Stamps because she resides at an assisted living home that provides meals. Ms. J requested a hearing to challenge the recoupment.

Ms. J's hearing was held on September 11, 2014. Ms. J's care coordinator, M H, testified on her behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division.

Because Ms. J's living arrangement provides her with meals, the Division's overpayment calculation correct. The Division's overpayment finding and \$162 recoupment demand is affirmed.

II. Facts

Ms. J received \$18 per month in Food Stamp benefits.² In September and October 2013, Ms. J transitioned from her home to an assisted living home. The Division of Senior and Disabilities Services, a separate division of the Department of Human Services, was aware of the move. On July 16, 2014, Ms. J submitted her eligibility review form for Food Stamps, Adult Public Assistance, and Medicaid.³ Ms. J listed "No Name Assisted Living" under "information about your landlord."⁴ This prompted the Division to review her Food Stamp case file.

The Division confirmed that Ms. J moved into the assisted living home in October 2013 and is seeking to recoup \$162 in overpayments from December 2013 through May 2014.⁵ Ms. J

¹ Exhibit 6.
² Ex. 4.5.
³ Ex. 2.
⁴ Ex. 2.5
⁵ Ex. 4; Ex. 4.5.

requested a fair hearing, stating that she informed the State of Alaska of the move and repayment would be a hardship.⁶ In no way did Ms. J attempt to receive benefits she was not entitled to or hide her assisted living home residency.

III. Discussion

The Food Stamp program is a federal program administered by the State.⁷ The Code of Federal Regulations (C.F.R.) establishes the rules for determining Food Stamp eligibility.⁸ Residents of institutions, with some exceptions, are not eligible for Food Stamps.⁹ Individuals are considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services.¹⁰ Ms. J is living in an institution that makes her ineligible to receive Food Stamps.

Alaska regulations require assisted living homes to offer residents three meals a day.¹¹ Accordingly, assisted living homes, though not specifically mentioned in Food Stamp regulations, appear to meet the definition of an excluded institution. Ms. J receives all of her meals from her housing providers. Therefore, she is a resident of an institution for Food Stamp eligibility purposes and received benefits she was not entitled to.

The federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.¹² This is true regardless of whether the recipient or the Division caused the error.¹³ Once an overpayment is identified, the Division has discretion to compromise all or a portion of a claim if it appears the recipient is unable to repay it within three years.¹⁴ Ms. J, through Ms. H, testified credibly that she will be unable to repay this amount, even at \$10 per month. Ms. J may file a "Request for Compromise" form with the Division to request reduction or forgiveness.

⁶ Ex. 5.

⁷ 7 AAC 46.010; 7 C.F.R. § 271.4(a).

⁸ 7 AAC 46.010; 7 C.F.R. § 271 – 274.

⁹ 7 C.F.R. § 273.1(b)(7)(vi).

¹⁰ 7 C.F.R. § 273.1(b)(7)(vi).

¹¹ 7 AAC 75.265.

¹² 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

¹³ 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

¹⁴ 7 C.F.R. § 273.18(e)(7).

IV. Conclusion

Because Ms. J received benefits she was not entitled to, the Division's decision to recover \$162 in Food Stamp benefits is affirmed.

DATED: September 29, 2014.

Signed _____
Bride 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 14th day of October, 2014.

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

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