

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

IN THE MATTER OF)
B S U)
_____)

OAH No. 14-1881-SNA
Agency No.

DECISION

I. Introduction

This case involves a claim by the Division of Public Assistance (DPA or Division) to collect \$1,322 in Food Stamp benefits which the Division asserts were overpaid to B S U's household during the months of April through August of 2014.¹ The parties agree that, through no fault of her own, Ms. U's household was paid \$1,322 more in Food Stamp benefits during April through August of 2014 because her two children were correctly listed as being part of her household. The Division argues that this \$1,322 was an overpayment under federal Food Stamp regulations because Ms. U's children were listed as part of a household that was receiving benefits during this same period in Oregon.

This decision concludes that, pursuant to applicable federal regulations, the Division must not seek reimbursement from Ms. U for the Food Stamp benefits, because these children were members of Ms. U's household and entitled to receive benefits as members of that household.

Because these children were not part of any household located in Oregon during that period, the children did not qualify to participate as members of an Oregon household during that period. Any payments made to an Oregon household based on the children's membership would have been an overpayment, subject collection actions against that household.

Since neither the children or Ms. U were members of an Oregon household during that period, or received or applied for any benefits, based on their claiming to be members of an Oregon household during that period, they are not liable for reimbursement for any overpayments made as the result of such a claim being made by another party who did not have physical or legal custody of the children. The issue in this case is not whether the overpayment was Ms. U's fault, but whether there was any overpayment to Ms. U.

II. Facts

Alleged Overpayment

Ms. U was living in Oregon in 2013 with her two children and the children's father. The family was receiving public assistance including Food Stamp benefits through the State of Oregon.

¹ Exhibits 1-5.

Before the end of 2013, Ms. U moved back to Alaska by herself. When she left the Oregon household, Ms. U timely reported to the Oregon public assistance caseworker and was removed from the case. In the middle of March of 2014 the two children moved to Alaska to live with Ms. U. The children received \$1,322 more in Food Stamp benefits as members of Ms. U's Alaska household between April and August of 2014.

In order to receive these benefits the Division required Ms. U to bring the children into the public assistance office so that the caseworker could confirm that the children were living with her. Ms. U contacted the public assistance program in Oregon to ensure that they were aware of the children no longer being part of their former Oregon household with their father, but she was told that she could not remove the children from the Oregon public assistance case because she, Ms. U was no longer listed as a member of the Oregon public assistance case. When she learned that the children's father was still collecting public assistance for the children because of problems with her Alaska claim, Ms. U reported him to the Oregon public assistance fraud unit.²

The Division initiated collection action against Ms. U seeking \$1,322 in Food Stamp benefits when it determined that Food Stamp benefits continued to be paid on the Oregon claim listing the children as part of the Oregon household through August of 2014.³

Procedural History

On October 20, 2014, the Division mailed a notice to Ms. U stating that, during the month of April through August of 2014, her household had been paid \$1,322 more in Food Stamp benefits than it should have received, and that the Division was requiring repayment of that amount.⁴ On October 24, 2014 Ms. U requested a hearing.⁵ Ms. U's hearing was held on November 19, 2014. Ms. U participated in the hearing by phone, represented herself, and testified on her own behalf. Michelle Cranford, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf.

A Post Hearing Order was issued giving the Division time to file additional briefing and Ms. U time to file documentation of her daycare receipts for the children during for April through

² Recording of Hearing.

³ Exhibit 5.

⁴ Exhibit 17.

⁵ Exhibit 18.

August of 2014. The record closed on November 26, 2014. Ms. U filed copies of her daycare receipts.⁶ The Division filed additional legal briefing.

Hearing Testimony

At the hearing, Ms. U did not dispute the Division's calculations regarding the amount of alleged overpaid benefits. She simply explained the efforts she had gone to ensure that both the Division and the State of Oregon knew that the children were living with her and that they should not be included in an Oregon Household receiving public assistance.⁷ In response, the Division did not dispute Ms. U's testimony, but argued that federal regulations require that the Division seek to recover the overpaid benefits, regardless of which party is at fault. The Division argued that Ms. U's household should not have received the benefits for the children while they were living with her because they were included as members of an Oregon household on an application for Food Stamps that was being paid benefits during the same time frame.⁸

III. Discussion

The only question in this case is whether the Division is correct to seek recovery of the \$1,322 in Food Stamp benefits which were paid to Ms. U's household during April through August of 2014 or whether any overpaid benefits should be recouped from the individual incorrectly claiming that the children were part of a household in Oregon during those months. This is a purely legal issue.

The Food Stamp program is a federal program administered by the states. The Alaska Department of Health and Social Services administers the Food Stamp program in Alaska and has promulgated its own 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.⁹

⁶ Ex. A.

⁷ Ms. U's testimony was not disputed by the Division.

⁸ Pursuant to federal Food Stamp regulation 7 C.F.R. 273.3(a), no individual may participate as a member of more than one household, or in more than one project area, in any given month. However, because the children were not members of an Oregon household during the months of April through August of 2014, they should not have been paid benefits in Oregon for those months.

⁹ 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).

The federal statute pertaining to the recoupment of overpaid Food Stamps, 7 C.F.R. § 273.18, requires that the Division attempt to recover overpaid Food Stamp benefits, even when the overpayment is not the recipient's fault or is the result of the Division's error.

In this case the Division is not required to seek reimbursement from Ms. U for the overpaid Food Stamp benefits, because her household qualified for the benefits received during the period of the alleged overpayment. A household that received benefits for a household member that was not living in the household is liable for repayment.¹⁰ In this case the Division is incorrectly seeking repayment to the household that was eligible for issued benefits received.

In its post hearing briefing, the Division cites to two cases OAH numbers 13-1256-SNA and 13-1654. While both of these case could be read as supporting the Division's position, to the extent that those cases hold that the Division is authorized to collect Food Stamps that were correctly paid to a household that included children because Food Stamps were paid to another household that did not include, but was incorrectly paid as though it did include the same children, those holdings would be incorrect.

Some of the facts in this case are distinguishable from the some of the facts in the cases cited by the Division. In this case, the benefits were correctly paid and the Division is seeking reimbursement from the wrong party, not being asked to seek reimbursement from an applicant. In this case, the benefits were for months when the children were with Ms. U for the whole month and did not start out the month in another household. It is clear however, that based on the undisputed facts of this case, no other household could have been eligible to receive benefits for the two children, and that Ms. U's household was eligible for those benefits. Under these circumstances, there was no overpayment to Ms. U's household.

IV. Conclusion

The Division must not seek reimbursement from Ms. U for the Food Stamp benefits, because the overpayment was not made to Ms. U's household. Accordingly, the Division's decision establishing a claim against Ms. U for \$1,322 in overpaid Food Stamp benefits is overturned.

Dated this 15th day of December, 2014.

Signed _____
Mark T. Handley
Administrative Law Judge

¹⁰ *In the Matter of Q.L.* OAH No. 13-0199-SNA March 13, 2013

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 30th day of January, 2015.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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