

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

In the Matter of	)	
	)	OAH No. 15-0892-SNA
E C	)	Division No.
_____	)	

**DECISION**

**I. Introduction**

E C lives with his fiancée, L J, and two children. The household received Food Stamp<sup>1</sup> assistance calculated for a household of four from February 2015 to June 2015. The Division of Public Assistance (Division) later determined that Ms. J was not eligible for Food Stamp benefits because she had a 2011 felony drug conviction. It terminated her participation in the household’s Food Stamp benefits and calculated that the household had received \$805 in overpaid benefits over the 5 months from February to June 2015. It notified Mr. C that he must reimburse the Division \$805 for the overpaid benefits.

There is no dispute that Ms. J was not eligible for Food Stamp benefits due to her 2011 felony drug conviction. Because she was not eligible to receive those benefits, the household was overpaid \$805 in Food Stamps. Under federal law, all adults in the household at the time of the overpayment may be held liable and required to reimburse the Division for overpaid benefits, even when the overpayment is due to an agency error. Accordingly, the Division’s action seeking repayment from Mr. C is upheld.

**II. Facts**

The following facts were established by a preponderance of the evidence.

Mr. C filled out a recertification application for Food Stamps in December 2014. At that time, he lived with his fiancée, L J, and one child.<sup>2</sup> Another child was born on January 8, 2015.<sup>3</sup> On the December 2014 recertification form, Mr. C properly disclosed that Ms. J has a 2011 felony drug conviction.<sup>4</sup>

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<sup>1</sup> Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). However, the program is still commonly referred to as the Food Stamp program.

<sup>2</sup> Ex. 2 – 2.4 (December 30, 2014 Food Stamp Eligibility Review Form).

<sup>3</sup> Ex. 1.

<sup>4</sup> Ex. 2.1.

The Division missed the felony drug conviction and approved Food Stamp benefits beginning in February 2015 that were calculated for a household of four.<sup>5</sup> On June 16, 2015, Mr. C submitted another Food Stamp recertification application.<sup>6</sup> Mr. C again disclosed that Ms. J has been convicted of a drug-related felony.<sup>7</sup>

When the Division processed this application, it realized that Ms. J had been included in the household as a result of agency error, and it coded her as ineligible for Food Stamps due to her felony drug conviction.<sup>8</sup> For purposes of Food Stamps, this changed the household from four to three. When it re-budgeted Food Stamps for a household of three, the Division initially calculated that the household had received \$753 in overpaid Food Stamps benefits.<sup>9</sup> It mailed Mr. C a notice of the overpayment and informed him that he is responsible to reimburse the \$753 overpayment.<sup>10</sup> The Division later revised its overpayment and recoupment claim to \$805.<sup>11</sup>

Over the 5 months between February and June 2015, the C household received \$3,652 in Food Stamps, based on a four-person household.<sup>12</sup> When the Division recalculated benefits for a household of three, it determined that Mr. C should have received \$2,847 in Food Stamps, a difference of \$805.<sup>13</sup> The Division notified Mr. C that his household had been overpaid \$805 in Food Stamp benefits and informed him that it seeks to recoup the overpayment, either through direct repayment or through an automatic reduction of ongoing Food Stamp benefits by the greater of \$10 or 10%, until the \$805 overpayment is paid off.<sup>14</sup>

Mr. C requested a hearing to contest his responsibility to reimburse the Division for an agency error.<sup>15</sup> Mr. C's hearing was held on August 27, 2015. Mr. C represented himself. Jeff Miller represented the Division.

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<sup>5</sup> Ex. 4.

<sup>6</sup> Ex. 7-7.5 (Food Stamp program Eligibility Review Form).

<sup>7</sup> Ex. 7.1.

<sup>8</sup> Ex. 8.

<sup>9</sup> Ex. 8.

<sup>10</sup> Ex. 9-9.12.

<sup>11</sup> Ex. 20-20.11. The revision was due to a recalculation of the overpayment amount for June 2015. After adjusting for the household's June Alaska Temporary Assistance Program benefits, and changing the household from four to three people, the overpayment for June changed from \$109 to \$161. This meant that the Division calculated a \$161 overpayment for each of the five months at issue. *Id.*

<sup>12</sup> Ex. 20-20.11.

<sup>13</sup> Although Ms. J is coded out for purposes of the household's Food Stamp benefits, her income remains part of the household income calculation. *See* 7 C.F.R. § 273.11(c)(1). This can result in a significant change in the household benefit amount.

<sup>14</sup> Ex. 20-20.11.

<sup>15</sup> Ex. 10-10.1.

### III. Discussion

Food Stamps is a federal program administered by the State.<sup>16</sup> Federal regulations expressly provide that individuals convicted under state or federal law of a drug-related felony occurring after August 22, 1996 are ineligible for Food Stamp benefits.<sup>17</sup> As a result, there is no question that Ms. J was not eligible to receive Food Stamp benefits in 2015, and Mr. C does not challenge that conclusion.

Mr. C argues that he properly disclosed his fiancée's felony history, and he should not be held financially responsible to reimburse the Division for its error in overpaying benefits. He does not challenge the Division's calculation of the \$805; he opposes repaying any amount of overpaid benefits based on the principle that his household is an innocent recipient that can ill-afford to return that sum of money.

The federal Food Stamp regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.<sup>18</sup> This requires the Division to recoup overpaid benefits, regardless of the cause for the overpayment. This is true even when the overpayment is the result of the Division's error, and the recipient household did nothing wrong.<sup>19</sup> The Alaska Supreme Court also came to this conclusion in *Allen v. State, Department of Health & Social Services*.<sup>20</sup> Like Mr. C, the appellants in *Allen* argued that it was unfair to ask an indigent household to reimburse for overpaid Food Stamps benefits resulting from an agency error. Like Mr. C, they argued that the agency should be required to reimburse the federal government out of its own funds. The Alaska Supreme Court rejected this argument and responded:

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,<sup>□</sup> coupled with allowing state agencies some flexibility to compromise claims,<sup>□</sup> is sufficient to mitigate this unfairness. [<sup>21</sup>]

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<sup>16</sup> 7 C.F.R. § 271.4(a).

<sup>17</sup> 7 C.F.R. § 273.11(m); 7 C.F.R. § 273.1(b)(7)(vii).

<sup>18</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

<sup>19</sup> 7 C.F.R. § 273.18(b)(3).

<sup>20</sup> 203 P.3d 1155, 1162 (Alaska 2009).

<sup>21</sup> *Id.* at 1164 (footnotes omitted).

Federal law also makes clear that all adult members of a Food Stamp recipient's household at the time of an overpayment are responsible for repaying the overpaid benefits.<sup>22</sup> As a matter of law, the C household received \$805 in Food Stamp benefits for which it was not eligible. As one of the two adult members of the household, Mr. C is liable for repaying those benefits to the Division. Because Mr. C's household continues to receive Food Stamps, the Division is allowed to recoup the overpaid amount by reducing the household's monthly Food Stamp payment by "the greater of \$10 per month or 10 percent of the household's monthly allotment."<sup>23</sup> Mr. C also has the option of agreeing to increase his monthly payment to the Division.<sup>24</sup>

#### **IV. Conclusion**

For the reasons discussed above, the Division's action to recoup from Mr. C \$805 in benefits that were overpaid between February and June 2015 is upheld.

DATED this 4th day of September, 2015.

*Signed*

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Kathryn A. Swiderski

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 18th day of September, 2015.

By: *Signed*

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Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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

<sup>22</sup> 7 C.F.R. § 273.18(a)(4)(i).

<sup>23</sup> 7 C.F.R. § 273.18(g)(1)(iii).

<sup>24</sup> *Id.*