

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

In the Matter of:)
)
 M H) OAH No. 15-0894-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 recover \$49.00 in Food Stamp benefits which the Division asserts were overpaid to Ms. M H's household during the month of June 2015.¹ At hearing, Ms. H did not dispute the Division's assertion that her household received a greater amount of Food Stamp benefits than it should have received during the month at issue. Rather, Ms. H asserted that (1) she did not receive timely notice of a penalty, imposed in her tribal Temporary Assistance to Needy Families (TANF) case, which may have affected her household income (and thus her Food Stamp benefit amount); and (2) she should not have to repay the overpaid Food Stamp benefits because the overpayment was not her fault, and repayment would impose a financial hardship on her. This decision concludes that, under the applicable federal regulations, the Division is required to seek reimbursement from Ms. H for the overpaid Food Stamp benefits (and is not required to compromise the overpayment), regardless of whether the overpayments were Ms. H's fault or the Division's fault, and regardless of any notice deficiency which may have occurred in Ms. H's TANF case. The Division's decision establishing a claim against Ms. H for \$49.00 in overpaid Food Stamp benefits, and its decision not to compromise the claim, are therefore affirmed.

II. Facts

A. *Facts Relevant to the Overpayment and Compromise Issues*

The pertinent facts of this case are not in dispute. Ms. H's household has received Food Stamp benefits since October 2012.² Prior to May 16, 2015 Ms. H's household consisted of Ms. H, L C, and a two-year-old child.³ However, on May 19, 2015 Ms. H notified the Division that, as of May 16, 2015, Mr. C was no longer part of her household.⁴

¹ Ex. 8.0.
² Ex. 1.
³ Exs. 1, 2.0.
⁴ Exs. 2.0 - 2.3.

On June 1, 2015 the Division issued \$448.00 in Food Stamp benefits to Ms. H's household; this benefit amount was based on a three-person household because the Division had not yet deleted Mr. C from Ms. H's household.⁵ On June 2, 2015 the Division processed Ms. H's report regarding the decrease in the size of her household, and removed Mr. C from Ms. H's Food Stamp case effective July 2015.⁶ Six days later, on June 8, 2015, the Division processed another notice affecting Ms. H's benefit amount.⁷ This notice, which had been submitted to Ms. H's tribal TANF program on May 1, 2015, indicated that Mr. C had become employed on April 26, 2015, and was receiving gross monthly income of \$1,075.00.⁸

On June 26, 2015 the Division issued a notice to Ms. H stating that, for the month of June 2015, her household had received \$255.00 more in Food Stamp benefits than the amount to which it was entitled.⁹ On July 7, 2015 the Division issued a notice stating that Ms. H's request to write-down or write-off the overpayment had been denied.

On July 9, 2015 the Division issued a second overpayment notice.¹⁰ This notice contained a revised overpayment calculation which deleted (did not count) Mr. C's \$1,075.00 in employment income as part of Ms. H's household income.¹¹ This reduced Ms. H's countable household income for June 2015, thereby also reducing the amount of the overpayment. The only income counted by the Division in its revised overpayment notice was the \$821.00 in TANF paid to Ms. H by No Name (No Name) for June 2015.¹² As a result, the amount of the overpayment to Ms. H's household decreased from \$255.00 to \$49.00.¹³

B. Relevant Procedural History

On July 6, 2015 Ms. H requested a hearing on the overpayment collection issue and the compromise issue.¹⁴ Ms. H's hearing was held on August 4, 2015. Ms. H participated in the hearing by phone, represented her household, and testified on its behalf. Sally Dial, 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. H did not dispute the Division's calculation

⁵ Ex. 5.5.

⁶ Ex. 2.0.

⁷ Ex. 3.0.

⁸ Exs. 3.0, 3.1.

⁹ Exs. 5.0 - 5.1. The Division's notice of June 26, 2015 was incorrect in that it stated the overpayment was caused by the Division's failure to include Mr. C's employment income as part of Ms. H's household income for the month of June 2015. In actuality, Mr. C was no longer part of Ms. H's household in June 2015, so his income should not have been attributed to Ms. H.

¹⁰ Exs. 8.0 - 9.1.

¹¹ Ex. 8.6.

¹² Ex. 8.6.

¹³ Ex. 8.0.

¹⁴ Exs. 6.0, 6.1.

of the amount of overpaid Food Stamp benefits. Rather, she asserted that she did not receive timely notice of a penalty, imposed in her tribal Temporary Assistance to Needy Families (TANF) case, which may have affected her household income (and thus her Food Stamp benefit amount). She also asserted that her household should not have to repay the overpayment at issue because the overpayment was not her fault, and repayment would create a financial hardship on her family. The record closed following the hearing on August 4, 2015.

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.¹⁵ In general, the greater a household's net income, the smaller the amount of Food Stamp benefits the household will receive each month.¹⁶

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 . . .” [emphasis added]. Subsection (e)(1) of that regulation further states that “state agencies *must* begin collection action *on all claims* unless [inapplicable]” [emphasis added]. 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

¹⁵ 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).

¹⁶ See Alaska Food Stamp Manual, Addendum 4.

own error. This was confirmed by the Alaska Supreme Court in *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. Regulations Concerning the Compromise of Overpayment Claims

The same federal regulation which requires that state agencies *initiate* the collection of overpaid Food Stamp benefits also gives state agencies the ability to *compromise* overpayment claims. Federal Food Stamp regulation 7 C.F.R. § 273.18(e)(7) states as follows:¹⁷

(7) *Compromising claims.* (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household’s economic circumstances dictate that the claim will not be paid in three years.

The use of the word “may” in 7 C.F.R. § 273.18(e)(7)(i) indicates that the decision whether to compromise a Food Stamp overpayment claim is subject to the Division’s discretion.¹⁸ The few appellate courts to address this issue to date have concluded that whether a state agency chooses to compromise a Food Stamp overpayment claim is discretionary.¹⁹

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

In this case, the overpayment at issue was caused, at least in part, by the Division's delay in its processing of one or more of Ms. H's household change notices. However, based on the federal statutes and regulations cited in the preceding section, the Division is required to seek reimbursement from Ms. H's household for the overpaid Food Stamp benefits at issue, regardless of whether the overpayments were Ms. H's fault or the Division's fault.²⁰

With regard to Ms. H's second argument, it cannot be denied that notice of adverse action is extremely important under the Food Stamp program, particularly in cases involving the collection

¹⁷ Review of the Division's own (state option) SNAP regulations demonstrates that the Division has not adopted an official interpretation of 7 C.F.R. § 273.18(e)(7) by regulation. See 7 AAC 46.021 and Alaska Food Stamp Manual Sections 607-3 and 607-4. The Division's state option regulation is based on the 1985 version of the federal regulations (see 7 AAC 46.990(c)). Because the federal SNAP regulations have been revised several times since 1985, many of the Division's "state option" provisions no longer reference the correct federal SNAP regulation. For example, in 1985 the substance of what is now 7 C.F.R. § 273.18(e)(7)(i) was contained in 7 C.F.R. § 273.18(g)(2)(i).

¹⁸ The use of the word ‘may’ rather than the directive ‘shall,’ indicates a discretionary power. *Frontier Saloon, Inc. v. Alcoholic Beverage Control Board*, 524 P.2d 657, 660 (Alaska 1974); see also *Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74, 76 (Alaska 2000) (in contrast to the term “shall,” the term “may” generally denotes permissive or discretionary authority and not a mandatory duty).

¹⁹ See *Hill v. Indiana Board of Public Welfare*, 633 N.E.2d 352, 357 (Ind. App. 4th Dist. 1994) (holding based on a prior version of 7 C.F.R. § 273.18); *Waters-Haskins v. New Mexico Human Services Department, Income Support Division*, 210 P.3d 817, 822 (N.M. 2009) (stated as dicta).

²⁰ Under 7 CFR 273.18(e)(2)(ii), the Division may "opt not to establish any claim" if the claim is \$125.00 or less and the household is no longer participating in the Food Stamp program. In this case, the overpayment at issue is less than \$125.00. However, Ms. H's household is still participating in the Food Stamp program. Accordingly, this limited exception does not apply in this case.

of overpayments.²¹ However, the notice at issue in this case was a TANF program notice, *not a Food Stamp program notice*. Further, the notice was issued by No Name, *not by the Division*. Ms. H cited no authority for the proposition that a notice deficiency in one benefit program, administered by one agency, can be held against a different agency administering a different benefit program, and research has revealed no such authority. Accordingly, a notice deficiency in the TANF case administered by No Name does not prevent the Division from seeking collection of overpaid Food Stamp benefits in this case.

Finally, with regard to Ms. H's compromise request, 7 C.F.R. § 273.18(e)(7) allows an overpayment claim to be written-down, or completely written-off, *only if it can reasonably be determined that the household's economic circumstances dictate that the claim will not be paid within three years*.²² Applying the regulation to this case, the issue is whether Ms. H has proven by a preponderance of the evidence that her household's financial circumstances will not improve sufficiently to allow collection of the \$49.00 at issue within the next three years.

It is clear from the evidence that Ms. H's household's current financial condition is not good; otherwise, she would not qualify for the Food Stamp program. However, there is nothing in the record to indicate that Ms. H's earnings during the next three years will not equal or exceed \$49.00. As long as Ms. H and her child remain in Alaska, each will presumably be eligible for the annual Alaska Permanent Fund dividend distribution. Since 1982, these dividends have ranged from a low of \$331.29 to a high of \$2,069.00.²³ It is therefore likely that receipt of one dividend over the next three years would allow the Division to collect the \$49.00 at issue. The Division was therefore within its discretion not to reduce its \$49.00 overpayment claim.²⁴

D. 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. H's household's financial resources are limited. However, the Division is not at liberty to ignore the federal regulations governing the Food Stamp program.²⁵ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to

²¹ See 7 CFR § 273.13; *see also Rosenfeld v. Blum*, 442 N.Y.S.2d 89 (App. Div., 2nd Dept., 1981); *Ortiz v. Eichler*, 616 F. Supp. 1046 (D. Del. 1985); *affirmed* 794 F.2d 889 (3rd Cir. 1986); *Meyer v. New Jersey Department of Human Services, Division of Family Development*, 635 A.2d 544 (N.J. A.D.1993); and *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009).

²² 7 C.F.R. 273.18(e)(7).

²³ See Alaska Permanent Fund Division website at <http://pfd.alaska.gov/DivisionInfo/SummaryApplications> Payments (date accessed August 14, 2015).

²⁴ However, nothing in 7 C.F.R. § 273.18 limits a recipient or former recipient to a single compromise requests, so an individual in Ms. H's position may submit a new compromise request whenever warranted.

²⁵ "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).

those regulations.²⁶ Accordingly, the Division must seek to collect the \$49.00 overpayment at issue. Fortunately, where (as here) the household that received the 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.²⁷

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 \$49.00 in Food Stamp benefits which were overpaid to Ms. H's household during June 2015. The Division's decision establishing a claim against Ms. H for the \$49.00 in overpaid Food Stamp benefits, and the Division's decision not to compromise (write off or write down) that claim, are therefore affirmed.

DATED this 17th day of August, 2015.

Signed _____
Jay Durych
Administrative Law Judge

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 26th day of August, 2015.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge

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

²⁶ See 7 AAC 49.170 (limits of the hearing authority).

²⁷ 7 C.F.R. § 273.18(g)(1).