

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

In the Matter of )  
 ) OAH No. 15-0996-SNA  
 J N ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

J N had been receiving Food Stamp benefits through the Supplemental Nutrition Assistance Program. After applying, she obtained a new job. She notified the Division of Public Assistance (Division) when she obtained her job, but the Division did not process that report immediately. Because of the processing delay, Ms. N received more benefits than she was entitled to receive. The Division notified her that she would need to repay that amount, and Ms. N appealed.

A hearing was held on August 31 and October 7, 2015. The Division was represented by Sally Dial. Ms. N represented herself. Based on the evidence presented, the Division may seek to recover the overpayment, but must first recalculate that amount to give credit for Ms. N's utility payments.

**II. Facts**

Ms. N applied for benefits on February 5, 2015. At the time, she was receiving a rental subsidy from Alaska Housing. In addition, her stepfather was paying for her electric and trash utilities.<sup>1</sup> The eligibility technician who interviewed Ms. N called her stepfather to confirm that he was paying these utilities. Her stepfather told the technician that he would pay the utilities only until Ms. N obtained a job.<sup>2</sup>

Ms. N obtained a job beginning on February 18, 2015, and she reported this change promptly.<sup>3</sup> Unfortunately, the Division did not process her report until June 4, 2015.<sup>4</sup> It then

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<sup>1</sup> Exhibit 2.

<sup>2</sup> N testimony. Although this statement is not reflected in the Division's notes, the eligibility technician who interviewed her was not called as a witness. Accordingly, Ms. N's testimony on this issue is uncontradicted. Her testimony was credible, and is accepted as accurate.

<sup>3</sup> Exhibit 23. Ms. N testified that she reported within ten days of obtaining the job. The Division did not stamp the document as received until March 10, 2015. For purposes of this hearing, the exact date of her report is not material.

<sup>4</sup> Exhibit 3.

waited until June 26 to inform Ms. N that, based on its calculations, she had been overpaid benefits in the amount of \$477 for the months of May and June.<sup>5</sup> The Division acknowledged that the overpayment was due to an agency error.<sup>6</sup> In calculating that overpayment, the Division did not take into account any utility payments Ms. N had to make when her stepfather stopped paying.<sup>7</sup>

Ms. N appealed the overpayment notice. In a telephone conversation with the Division, she asked why she was not given a deduction for the utility payments.<sup>8</sup> It is unclear how that deduction would have changed her June benefits, but it would have reduced her May overpayment from \$217 down to \$189.<sup>9</sup>

### **III. Discussion**

The Supplemental Nutrition Assistance Program is governed by federal law. Federal regulations are clear that the Division “must establish and collect any claim” for overpaid Food Stamp benefits.<sup>10</sup> This is true even when the overpayment is caused by the Division’s error.<sup>11</sup> Thus, the Division correctly sought to recover the overpaid benefits.<sup>12</sup>

In addition to disputing the Division’s recoupment efforts, Ms. N also contested the amount of the overpayment. There is credible evidence in the record that the Division had been told in February that once Ms. N obtained a job, she would have to start paying for utilities. Even if the Division had not been told this, however, it is aware of this information now. Ms. N testified credibly that she began paying her own utilities prior to May of 2015. She informed the Division in July – arguably for the second time – that she was paying for utilities. The Division staff appears to have accepted her verbal report of that information during her July telephone conversation because the case note says “REMOVED THE ELECTRIC AND GARBAGE FROM DEMH – THIS WILL NEED TO BE ADDRESSED AT [FAIR HEARING] TIME.”<sup>13</sup>

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<sup>5</sup> Exhibit 4.1; Exhibit 4.12.

<sup>6</sup> Exhibit 4.1.

<sup>7</sup> Dial testimony.

<sup>8</sup> N Testimony; Exhibit 6.

<sup>9</sup> Exhibit 4.12; Exhibit 6.

<sup>10</sup> 7 C.F.R. §273.18(a)(1)(i); 7 C.F.R. §273.18(a)(2).

<sup>11</sup> 7 C.F.R. §273.18(b)(3); *In re D E*, OAH No. 14-0190-SNA (Comm’r of Health and Soc. Serv. 2014). This and other Food Stamp cases can be found at <http://doa.alaska.gov/oah/Decisions/SNA.html>.

<sup>12</sup> The Division has the discretion to compromise the overpayment amount if it cannot reasonably be repaid within three years. 7 C.F.R. §273.18(e)(7). Ms. N may request a compromise by contacting the Division or using the form at Exhibit 4.11. If a request is denied completely or partially, Ms. N would have the right to a hearing on that denial.

<sup>13</sup> Exhibit 6.

When seeking to recover an overpayment, the Division must first determine the correct amount of benefits, and subtract that amount from the benefits actually provided.<sup>14</sup> In deciding whether that calculation was correct, the Administrative Law Judge considers all of the relevant evidence, even if some of that evidence was not available at the time the Division made its decision.<sup>15</sup> Here, the record establishes that it is more likely true that the Division's calculation was incorrect because it failed to give Ms. N credit for paying her utility bills. Thus, while the Division may recover the benefit overpayment, the amount of that overpayment must be recalculated.

#### **IV. Conclusion**

The Division's decision to seek recovery of the overpaid benefits is **AFFIRMED**. However, the amount of the overpayment was incorrectly calculated. Accordingly, this matter is **REMANDED** to the Division to recalculate the overpayment after accounting for the correct deduction for utility payments. Ms. N would have the right to appeal the new overpayment amount if she disagrees with the Division's calculation.

Dated this 2nd day of November 2015.

*Signed*  
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Andrew M. Lebo  
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 24th day of November, 2015.

By: *Signed*  
\_\_\_\_\_  
Name: Jared C. Kosin, J.D., M.B.A.  
Title: Executive Director  
Agency: Office of Rate Review, DHSS

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

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<sup>14</sup> *In re T J*, OAH No. 13-0660-CMB (Comm'r of Health and Soc. Serv. 2013), page 5.

<sup>15</sup> *Id.* See also *In re D P*, OAH No. 13-0789-SNA (Comm'r of Health and Soc. Serv. 2013) (recalculating Food Stamp benefits based on new information provided at the hearing).