

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

In the Matter of)	
)	OAH No. 15-1035-SNA
U T)	Division No.
_____)	

DECISION

I. Introduction

U T lives with her husband, F T, and four children. The family received Food Stamp¹ assistance calculated for a household of six from August 2014 to July 2015. The Division of Public Assistance (Division) later determined that F T was not eligible for Food Stamp benefits because he had a 2007 felony drug conviction, and it terminated his participation in his household's Food Stamp benefits. The Division coded Mr. T out of the household's Food Stamp benefits, and it notified Ms. T that she must reimburse the Division \$2,348 for the overpaid benefits.

Ms. T requested a hearing to contest both the termination of Mr. T's Food Stamp benefits and the Division's recoupment claim.

Ms. T's hearing was held on August 24, 2015. Ms. T represented herself and testified on her own behalf. Sally Dial represented the Division.

Mr. T was not eligible for Food Stamp benefits due to his 2007 felony drug conviction. Consequently, the Division's decision to terminate those benefits is upheld. Because he was not eligible to receive those benefits, the family was overpaid \$2,348 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. As a result, the Division's action seeking repayment from Ms. T is also upheld.

II. Facts

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

F T has a 2007 felony drug conviction resulting from a 2007 offense.² He received a suspended imposition of sentence, and his conviction was set aside in February 2010.³ F and U

¹ 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.

² Div. Exs. 4 – 4.5.

T married in July 2010.⁴ The household of six began receiving Food Stamp benefits in June 2014.⁵ On May 21, 2015, Ms. T submitted a Food Stamp recertification form.⁶ One of the questions on the form asks whether anyone in the household has been convicted of a drug-related felony.⁷ Believing that the successful completion of his suspended imposition of sentence expunged her husband’s prior drug felony from his record, Ms. T answered “no.” She credibly testified that she did not know her husband at the time of his drug offense, she could not find any court records of his case due to a court misspelling of his name, and she thought the letter notifying him that his probation had ended also erased the prior conviction.

In July 2015, the Division investigated and determined that Mr. T’s prior drug felony disqualifies him for Food Stamp benefits. It attributed Ms. T’s error on the recertification form to “inadvertent household error.”⁸ It then coded Mr. T out of the Food Stamp calculation for the household and re-budgeted to provide those benefits for a household of five.⁹

Over the 12 month period between August 2014 and July 2015, the T household received \$5,708 in Food Stamps, based upon a six-person household.¹⁰ When the Division recalculated the benefits for a household of five, it determined that Ms. T should have received \$3,360 in Food Stamps, a difference of \$2,348.¹¹ The Division then notified Ms. T that her household had been overpaid \$2,348 in Food Stamp benefits between August 2014 and July 2015. It also notified her 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 \$2,348 overpayment is paid off.¹²

III. Discussion

This case presents two issues. The first is whether the Division should have terminated Mr. T’s Food Stamp benefits due to his 2007 felony drug conviction. Food Stamps is a federal

³ Cl. Ex. 2 (February 15, 2010 Department of Corrections letter re expiration of probation period).

⁴ Cl. Ex. 1 (marriage certificate).

⁵ Div. Ex. 1.

⁶ Div. Exs. 2.0-2.8.

⁷ Div. Ex. 2.2.

⁸ Div. Ex. 6.

⁹ Div. Ex. 3.

¹⁰ Div. Ex. 6.

¹¹ Although Mr. T is coded out for purposes of the household’s Food Stamp benefits, his income remains part of the household income calculation. *See* 7 C.F.R. § 273.11(c)(1). Because the same household income level is applied to a household of five rather than six, the benefit amount decreases markedly.

¹² Div. Exs. 6-6.1.

program administered by the State.¹³ Federal regulations expressly provide that individuals convicted under state or federal law for a drug-related felony occurring after August 22, 1996 are ineligible for Food Stamp benefits.¹⁴

Even though Mr. T's conviction was set aside by his suspended imposition of sentence, he still technically has a criminal conviction. The Alaska Supreme Court has held that:

[S]etting aside a conviction does not expunge the conviction from an offender's criminal record. Both the conviction and the judgment setting it aside consequently remain in the public record. Members of the public, such as potential employers inquiring into a job applicant's criminal record, can learn of the existence of a conviction that has been set aside. They can do this by researching court records or by requiring a person applying for employment or housing to divulge the fact of a prior conviction even if it has been set aside.^[15]

Though Ms. T's confusion about this issue is understandable, Mr. T was not eligible to receive the Food Stamp benefits at issue in this case because of his 2007 felony drug conviction, regardless of the fact it was set aside. As a result, the Division was required to terminate his Food Stamp benefits.

The second issue is whether Ms. T is required to repay those benefits, which the household received by the inclusion of Mr. T. The federal Food Stamp regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.¹⁶ This requires the Division to recoup the overpaid benefits, regardless of the cause for the overpayment. Although the overpayment in this case resulted from an inadvertent household error, this is also true when overpayments are caused by the Division's own error.¹⁷

Adult members of the Food Stamp recipient's household are the persons responsible for repaying overpaid Food Stamp benefits.¹⁸ As a matter of law, the T household received \$2,348 in Food Stamp benefits for which it was not eligible. As one of the two adult members of the household, Ms. T is liable for repaying those benefits to the Division. Because Ms. T's household continues to receive Food Stamp benefits, the Division is allowed to recoup the

¹³ 7 C.F.R. § 271.4(a).

¹⁴ 7 C.F.R. § 273.11(m); 7 C.F.R. § 273.1(b)(7)(vii).

¹⁵ *Doe v. State, Dept. of Public Safety*, 92 P.3d 398, 407 (Alaska 2004) (footnotes omitted). See also *State, Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*, 169 P.3d 595, 599 – 600 (Alaska 2007) (regardless of the setting aside of the conviction, the applicant remained a "person who 'has been convicted' of a criminal offense.").

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

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

¹⁸ 7 C.F.R. § 273.18(a)(4)(i).

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."¹⁹

IV. Conclusion

For the reasons discussed above, the Division's decision to terminate Mr. T's Food Stamp benefits is upheld. Its action to recoup from Ms. T \$2,348 in benefits that were overpaid between August 2014 and July 2015 is also upheld.

DATED this 25th day of August, 2015.

Signed _____

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 9th day of September, 2015.

By: *Signed* _____

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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

¹⁹ 7 C.F.R. § 273.18(g)(1)(iii). Ms. T also has the option of agreeing to increase her monthly payment to the Division. *Id.*