

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

In the Matter of)

T N)
_____)

OAH No. 15-1443-SNA
Agency No.

DECISION

I. Introduction

T N applied for and received Supplemental Nutrition Assistance Program, commonly called “Food Stamps” for her household. The Division of Public Assistance (Division) determined that Ms. N was issued \$1267 in Food Stamp overpayments that her household was not entitled to receive and she was required to repay that amount. Ms. N requested a hearing.¹ Ms. N’s hearing was held on December 2, 2015.

Ms. N chose not to participate in the hearing after her request for a continuance was denied. The Division presented evidence showing that Ms. N received \$1267 more in Food Stamp benefits than she should have, and Ms. N refused to participate in the hearing. Ms. N’s case is therefore dismissed and the Division’s decision establishing a repayment obligation in that amount is affirmed.

II. Facts

On September 2, 2015, the Division realized that it had made overpayments in Food Stamps to Ms. N for the months of November 2014 through May of 2015 because the Division had paid monthly benefits based on including S W as a Food Stamp eligible member of her household. The Division later determine that S W should not have been included as a Food Stamp eligible member of her household because he had been convicted of a drug felony in 2008 in case number 3XX-07-00000CR.²

The Division notified Ms. N that he had been issued \$1267 in Food Stamp overpayments that she was not entitled to receive and she was required to repay that amount. Ms. N requested a fair hearing on November 2, 2015.³

At hearing, Ms. N stated that she had just received some of the information the related to the hearing two days ago. Ms. N then represented that she had an attorney and wanted to take

¹ Ex. 5.

² Exhibits 6 & 7.

³ Exhibit 9.

the information to him to look over. Ms. N then asked to continue the hearing. When asked how long she wanted to continue the hearing she responded that she would probably need about twenty five days to take the paper work to her attorney so that he could review it. When asked who her attorney was, Ms. N represented that she could not remember his name.

Based on Ms. N's hostile and implausible responses when queried about the attorney that she indicated that was working with but did not know the name of, her admission that she had timely received the information prior to the hearing, but had failed to file a request for a continuance before the hearing, her request was denied. Ms. N then indicated that she was planning to hang-up. Based on Ms. N's indication that she would not proceed with the hearing, she was informed that if she would not proceed, a proposed decision would be issued dismissing her case. Ms. N replied that her case would have to be dismissed.⁴

III. Discussion

The Food Stamp program is a federal program administered by the State.⁵ The Code of Federal Regulations (C.F.R.) establishes the rules for determining a household's monthly Food Stamp benefit. Benefit amounts are calculated based on the number of people living in the household and monthly income.⁶

The federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.⁷ This is true even when the overpayment is caused by the Division's error.⁸

The issue in this case was whether the Division correctly determined that Ms. N was required to pay back \$1267 in Food Stamp benefits that were issued to her in error. The evidence in the record shows that S W was not a Food Stamp eligible member of her household because of a felony drug conviction.⁹ As a result, Ms. N received total Food Stamp overpayments of \$1267 for the months of November 2014 through May of 2015.

Furthermore, Ms. N refused to participate in the hearing. Her case is dismissed. The Division's decision will be affirmed.¹⁰

⁴ Recording of Hearing.

⁵ 7 C.F.R. § 271.4(a).

⁶ 7 C.F.R. § 273.10(e)(2)(ii)(A).

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

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

⁹ Exhibit 6 & 7AAC 46.010 & 7 CFR 273.1(b)(7).

¹⁰ 2 AAC 64.230(a) & 2 AAC 64.320(a).

IV. Conclusion

The Division's decision to recover \$1267 in Food Stamp benefits overpaid to Ms. N is affirmed.

DATED this 2nd day of December, 2015.

Signed _____
Mark T. Handley
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 28th day of December, 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.]