

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

In the Matter of:)
)
 B S) OAH No. 16-0098-SNA
) DPA Case No.
_____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) has the right to attempt to collect (recoup) certain Food Stamp program¹ benefits which were overpaid to B S's household due to a mistake made by the Division. The parties agree that, through no fault of her own, Ms. S's household was paid \$410.00 more in Food Stamp benefits than it should have been paid for the months of January 2015 through October 2015.

This decision concludes that, pursuant to the applicable federal regulations, the Division is required to seek reimbursement from Ms. S for the overpaid Food Stamp benefits. Accordingly, the Division's decision establishing a claim against Ms. S for \$410.00 in overpaid Food Stamp benefits is affirmed. However, now that an overpayment has been established, Ms. S has the right to request that the Division reduce the amount to be repaid based on financial hardship. If Ms. S makes such a request, and if she is not satisfied with the Division's decision, she will have the right to request a hearing on this write-down issue.

II. Facts

A. *The Situation Giving Rise to the Overpayment at Issue*

The facts of this case are not in dispute. Ms. S's household consists of herself and her 12-year-old son.² Ms. S receives Adult Public Assistance (APA), and APA-related Medicaid.³ Ms. S's monthly household income consists of \$1,293.00 in Social Security, \$452.00 in Alaska Temporary Assistance Program (ATAP) benefits, and \$1.00 per month in APA benefits.⁴

¹ Congress amended the Food Stamp Act in 2008. The 2008 amendments changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program ("SNAP"). However, because the program is still commonly known as the Food Stamp program, this decision will refer to the program as the "Food Stamp program."

² Ex. 1.

³ Ex. 1. Given her age, Ms. S's receipt of these benefits indicates she has been found to be disabled.

⁴ Ex. 2.

Ms. S's household applied for and began receiving Food Stamp benefits in November 2014.⁵ From January 2015 through October 2015, Ms. S's household received \$41.00 per month in Food Stamp benefits.⁶ Thus, over this ten-month period, Ms. S's household received a total of \$410.00 in Food Stamp benefits.

On December 14, 2015 the Division realized that it had made a mistake when it had processed Ms. S's Food Stamp application back in November 2014.⁷ Ms. S had properly disclosed to the Division that, in 1999, a felony conviction involving the possession, use, or distribution of a controlled substance had been entered against her in California.⁸ Based on this information, the eligibility technician (ET) who originally processed Ms. S's application *should* have entered the code "DF" into the Division's electronic information system (EIS).⁹ This would have programmed the EIS to calculate benefits for Ms. S's household based on a one-person household (including only her son) instead of a two-person household.¹⁰ Had the ET entered the correct code, the EIS would have calculated that Ms. S's household of one was not entitled to Food Stamp benefits based on applicable income standards.¹¹ Instead, due to the ET's use of an incorrect code, Ms. S's household was found eligible for benefits, and received \$41.00 per month more in benefits than it should have received during the period from January 2015 through October 2015.¹²

At the hearing, Ms. S did not dispute the Division's calculation of the amount of overpaid Food Stamp benefits.¹³ Rather, she emphasized that the overpayments were not her fault, and that requiring repayment of the over-issued Food Stamp benefits would impose a financial hardship on her family.¹⁴

B. Relevant Procedural History

On January 20, 2016 the Division mailed a notice to Ms. S stating that, during the months of January 2015 through October 2015, she had been paid \$410.00 more in Food Stamp benefits

⁵ Ex. 1.

⁶ Exs. 3.6, 3.7. Of the original \$41.00 gross monthly benefit amount, the Division withheld \$10.00 per month, presumably to correct a prior overpayment. Thus, the net benefit amount actually *received* by Ms. S's household during this period was only \$31.00 per month. In any event, Ms. S did not dispute the Division's calculations.

⁷ Exs. 3.16, 3.17.

⁸ Exs. 3.16, 3.17.

⁹ Exs. 3.16, 3.17.

¹⁰ Exs. 3.16, 3.17, 5.0, 5.1.

¹¹ Exs. 3.8 - 3.12.

¹² Exs. 3.6 - 3.12; Exs. 3.16 - 3.17.

¹³ B S hearing testimony.

¹⁴ B S hearing testimony.

than she should have received, and that the Division was requiring repayment of that amount.¹⁵ The notice acknowledged that the overpayments were due to errors by the Division and were not the fault of Ms. S.¹⁶ However, the notice asserted that federal Food Stamp regulations required the Division to seek recovery of the overpaid benefits, regardless of which party was at fault.¹⁷

On January 26, 2016 Ms. S requested a hearing on the overpayment collection issue.¹⁸ Ms. S's hearing was held on February 23, 2016. Ms. S participated in the hearing by phone, represented herself, and testified on her own 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. The record closed at the end of the hearing.

III. Discussion

A. The Food Stamp Program - Overview and Provisions Regarding Overpayments

The Food Stamp program is a federal program administered by the states.¹⁹ Food Stamp benefit amounts are based primarily on the number of people living in the household, and on the monthly income (after applicable deductions) received by those household members.²⁰ In general, the greater a household's income, the smaller the amount of Food Stamp benefits the household will receive each month.²¹

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C.A. § 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 overpaid Food Stamp benefits.

The federal 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” Subsection (e)(1) of that regulation also provides in relevant part that “state agencies *must* begin collection action *on all claims*” 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

¹⁵ Exs. 3.0 – 3.1.

¹⁶ Ex. 3.0.

¹⁷ Exs. 3.0 – 3.1.

¹⁸ Ex. 4.

¹⁹ 7 C.F.R. § 271.4(a).

²⁰ 7 C.F.R. § 273.10(e)(2)(ii)(A).

²¹ See Alaska Food Stamp Manual, Addendum 4.

clear that federal regulation 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 own error*. This was recently confirmed by the Alaska Supreme Court in the case of *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 the Office of Administrative Hearings.²²

B. Program Disqualification of Persons Convicted of Drug-Related Felonies

In 1996 Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, popularly known as the Welfare Reform Act.²³ This act made persons convicted of certain drug-related felonies ineligible to receive benefits under the Food Stamp Program.²⁴

Federal Food Stamp regulation 7 C.F.R. § 273.11(m) is the regulation implementing the legislation referenced above (21 U.S.C. § 862a(a)(1)). Regulation 7 C.F.R. § 273.11(m) states the Food Stamp eligibility rules applicable to persons convicted of felony drug charges as follows:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in . . . 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion

The states have the discretion to exempt recipients from the drug felony eligibility rule pursuant to 21 U.S.C.A. § 862a(d)(1) and 7 C.F.R. § 273.11(m) (quoted above). To date, however, the State of Alaska has not enacted legislation either exempting Alaska state residents from ineligibility under 7 C.F.R. § 273(1)(b)(7)(vii) or limiting the period of program ineligibility.²⁵

²² Ms. S does, however, have the right to request that the Division compromise (write-off or forgive) all or part of the overpaid benefits. See Food Stamp regulation 7 C.F.R. § 273.18(e)(7).

²³ See Public Law No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); *In re Cervantes*, 219 F.3d 955, 958, fn. 5 (9th Cir. 2000).

²⁴ 21 U.S.C.A. § 862a (a)(1), (d)(2). 21 U.S.C.A. § 862a(a)(1) provides in relevant part that “[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.].” This includes the Food Stamp Program.

²⁵ See A.S. §§ 47.25.975 – 990; 7 A.A.C. § 46.010 *et. seq.*

C. 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:²⁶

(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.²⁷ 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.²⁸

D. Application of the Law to the Facts of This Case

It was not disputed that Ms. S has an old (1999) felony conviction in California involving the possession, use, or distribution of a controlled substance. Following her conviction, Ms. S was no longer eligible to receive Food Stamp benefits under 21 U.S.C. § 862a(a)(1)) and 7 C.F.R. § 273.11(m). Thus, the Division made a mistake by issuing Food Stamp benefits to Ms. S. However, under 7 C.F.R. § 273.18, the Division is required to attempt to recover overpaid Food Stamp benefits, even when (as here) the overpayment is the result of the Division's own error. It was not disputed that, due to the Division's error, Ms. S received \$410.00 more in Food Stamp benefits than she should have received. Accordingly, under the applicable federal regulations, the Division is required to seek recovery of the \$410.00 in Food Stamp benefits overpaid to Ms. S's household.

²⁶ 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).

²⁷ 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).

²⁸ 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).

E. Though the Result in This Case May Seem Unfair, the Division Does Not Have the Authority to Disregard the Applicable Federal Regulations

The Division did not dispute that Ms. S's household has a significant need for financial and nutritional assistance. However, the Division is required to follow federal Food Stamp regulations as currently written.²⁹ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to federal Food Stamp regulations.³⁰ To provide Food Stamp coverage for someone in Ms. S's situation would require changes in state law. Those changes cannot be made through the hearing process.

If a household that received an overpayment is still receiving benefits, and the household is unable or does not wish 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.³¹ If a household is no longer receiving benefits, the overpayment may be repaid through a lump-sum payment, installment payments, public service, or involuntary collection efforts.³²

IV. Conclusion

The overpayment at issue was not Ms. S's fault. However, the applicable federal regulations make clear that the state agencies administering the Food Stamp program “must establish and collect any claim” for overpaid Food Stamp benefits. Accordingly, the Division was correct to seek recovery of the \$410.00 in Food Stamp benefits which the Division mistakenly paid to Ms. S's household during the period from January 2015 through October 2015. The Division's determination is therefore affirmed. However, Ms. S has the right to request that the Division write-down or reduce the amount to be repaid based on financial hardship.³³ If Ms. S makes such a request, and if she is not satisfied with the Division's decision, she will have the right to request a hearing on the write-down issue.

Dated this 26th day of February, 2016.

Signed _____
Jay Durych
Administrative Law Judge

²⁹ “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).

³⁰ See 7 AAC 49.170 (limits of the hearing authority).

³¹ 7 C.F.R. § 273.18(g)(1).

³² 7 C.F.R. § 273.18(g).

³³ See 7 CFR 273.18(e)(7).

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 8th day of March, 2016.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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