

II. Facts

A. *Ms. K's Gross Household Income During the Period at Issue*

Ms. K has a household of three persons, consisting of herself and her two minor children.⁶ She works full-time for No Name Foundation, but often has to miss work because of health problems.⁷ Her household income consists primarily of her wages from employment, and periodic child support payments.⁸

During the last five months of 2015, Ms. K's gross income from employment was as follows: August = \$1,164.31; September = \$2,236.35; October = \$2,969.26; November = \$2,148.88; and December = \$1,504.78.⁹ During the last five months of 2015, Ms. K's gross income from child support payments was as follows: August = \$598.00; September = \$598.00; October = \$598.00; November = \$1,288.00; and December = \$2,483.11.¹⁰ When Ms. K's gross income from employment and her gross income from child support are added together, her total gross income during the last five months of 2015 is as follows: August = \$1,762.31; September = \$2,834.35; October = \$3,567.26; November = \$3,436.88; and December = \$3,987.89.

Ms. K submitted an application for Food Stamp benefits in January 2015, her application was approved, and her household began receiving benefits.¹¹ On May 26, 2015, Ms. K submitted an eligibility review form to renew her household's Food Stamp benefits for another six months.¹² On May 28, 2015, Ms. K submitted a letter from her employer stating that she would be returning to work on June 1, 2015, and that she would be working four hours per day at a wage of \$27.14 per hour.¹³

On June 10, 2015, Ms. K participated in an eligibility interview with one of the Division's eligibility technicians (ETs).¹⁴ Because the letter from Ms. K's employer did not state the number of days per week that Ms. K would be working, the ET asked Ms. K.¹⁵ Ms. K told the ET that she would be working full-time (40 hours per week) at the rate of \$27.14 per hour. Based on these figures, the ET calculated that Ms. K's gross income from employment would be \$4,668.08

⁶ Exhibits 1, 2.0, 2.1.

⁷ Exhibit 2.0; D K's hearing testimony.

⁸ D K's hearing testimony.

⁹ Exhibits A1 - A10, 6.9 - 6.11, 31.0 - 31.9.

¹⁰ Exhibit 6.12.

¹¹ Exhibits 1, 2.

¹² Exhibits 2.1 - 2.8.

¹³ Exhibit 2.9.

¹⁴ Exhibit 2.0.

¹⁵ Exhibit 2.0.

per month.¹⁶ This was almost \$2,000.00 over the gross income limit for a three-person household at that time, and on June 11, 2015, the Division mailed a notice to Ms. K denying her renewal application.¹⁷

On July 1, 2015, Ms. K contacted the Division, stating that there had been a mistake regarding her employment income.¹⁸ Ms. K advised that she had been confused during her eligibility interview and did not actually work full-time. Ms. K stated that she actually worked four hours per day, five days per week (half time). An ET then contacted Ms. K's employer, who confirmed that she was working only half time. Based on this new information, the Division calculated that Ms. K's gross income was really only \$2,334.04 per month, and that her net income was only \$1,128.86 per month, making Ms. K's household financially eligible to receive Food Stamp benefits. Accordingly, on July 2, 2015, the Division reopened Ms. K's Food Stamp case and notified her that her household would be receiving \$259.00 per month in Food Stamp benefits. The notice also advised Ms. K that she would need to contact the Division if her monthly household income were to exceed \$2,681.00.

On December 15, 2015, Ms. K submitted an eligibility review form to renew her household's Food Stamp benefits for another six months.¹⁹ She included copies of some recent pay statements from her employer.²⁰ On January 4, 2016, Ms. K participated in an eligibility interview with an ET.²¹ Based on the information provided by Ms. K, and information on child support which the ET obtained through the Child Support Services Division (CSSD), the ET concluded that Ms. K's gross income exceeded the Food Stamp program's monthly gross income limit for a three-person household.²²

B. Relevant Procedural History

On January 12, 2016, the Division notified Ms. K that her Food Stamp renewal application had been denied because her monthly gross income exceeded the Food Stamp program's applicable monthly income limit.²³ On February 22, 2016, the Division notified Ms. K that, during the period from August 2015 through December 2015, her household had received \$1,376.00 more in Food

¹⁶ Exhibit 2.0.

¹⁷ Exhibits 3.0, 15.

¹⁸ All factual findings in this paragraph are based on Exhibits 4 and 5 unless otherwise stated.

¹⁹ Exhibits 6.1 - 6.8.

²⁰ Exhibits 6.9 - 6.11.

²¹ Exhibit 6.0.

²² Exhibits 6.0, 6.12.

²³ Exhibit 7.

Stamp benefits than it had been eligible to receive, and that she was required to reimburse the Division for the overpayments.²⁴

On May 13, 2016, Ms. K requested a hearing to contest the Division's determination.²⁵ Ms. K's hearing was held on June 13, 2016. Ms. K participated in the hearing by phone, represented herself, and testified on her own behalf. Sally Dial participated in the hearing by phone and represented the Division. At the end of the hearing, the record was left open for four days for post-hearing filings. Both parties subsequently submitted post-hearing filings, and the record closed on June 17, 2016.

III. Discussion

A. *The Food Stamp Program - Overview and Income Eligibility Rules*

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 (DHSS) administers the Food Stamp program in Alaska and has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

In general, the greater a household's income, the less Food Stamp benefits the household will receive.²⁶ In order to qualify for Food Stamp benefits, a household is required to satisfy both a gross income eligibility standard and a net income eligibility standard.²⁷ These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. § 9902(2) and are adjusted periodically for inflation.²⁸ The current income limits are published in the Division's Food Stamp Program Manual at Addendum 4.²⁹ For the period from October 2014 through September 2015, the income limits for a three-person household were \$2,681.00 (gross) and \$2,062.00 (net).³⁰

²⁴ Exhibits 8.0 - 8.13.

²⁵ Exhibit 9.

²⁶ See Alaska Food Stamp Manual, Addendum 4.

²⁷ 7 C.F.R. § 273.9(a). Congress originally restricted eligibility for Food Stamps to families of limited means, but made no attempt to define income, leaving that to the individual states. See *Strickland v. Commissioner*, 48 F.3d 12 (1st Cir. 1995). However, in 1971, Congress directed the Secretary of Health and Human Services to establish uniform standards of eligibility. *Id.*

²⁸ 7 C.F.R. § 273.9(a).

²⁹ The Division's Food Stamp Manual and addendums are available online at <http://dpaweb.hss.state.ak.us/manuals/fs/fsp.htm>.

³⁰ Exhibits 8.4, 8.5, 15, 16.

For the period from October 2015 through September 2016, the income limits for a three-person household were \$2,722.00 (gross) and \$2,094.00 (net).³¹

B. Was Ms. K's Household Income-Eligible During the Period at Issue?

The process for determining gross income, specified by the Food Stamp regulations, has two steps.³² The Division first determines gross monthly income by adding the total non-exempt income from all sources, earned and unearned.³³ Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household's size (set forth in the Food Stamp Manual at Addendum 4).

The gross monthly income limit for a household of three, during August and September 2015, was \$2,681.00.³⁴ In August 2015, Ms. K's gross income of \$1,762.31 was \$918.69 less than the applicable gross income limit of \$2,681.00, and was also \$299.69 less than the applicable net income limit of \$2,062.00. Accordingly, Ms. K was income-eligible for Food Stamp benefits during August 2015. In turn, because Ms. K was income-eligible in August 2015, her household was entitled to the \$259.00 in benefits that it received that month. For that reason, there was no overpayment in August 2015.

In September 2015, Ms. K's gross income of \$2,834.35 was \$153.35 *more than* the gross income limit of \$2,681.00. Ms. K's household thus failed the gross income test. In determining income eligibility for the Food Stamp program, an applicant's expenses are only considered *if the applicant first passes the gross income test*.³⁵ In this case, had Ms. K's gross income been \$2,681.00 or less, the Division would *then* have deducted various expense items from Ms. K's gross income and proceeded to determine her *net* income. However, pursuant to the regulations, because Ms. K did not pass the gross income test in September 2015, the eligibility analysis ended there, without proceeding to the net income test.

Because Ms. K was not income-eligible in September 2015, her household was not entitled to the \$259.00 in benefits that it received that month. For that reason, there was an overpayment of \$259.00 in September 2015.

³¹ Exhibits 8.4, 8.5, 15, 16.

³² See 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska's Food Stamp Manual at § 603-2.

³³ Congress intended to cast the broadest possible net, and include all forms of income, in defining "income" for purposes of Food Stamp eligibility. See *Meyer v. Lyng*, 859 F.2d 62 (8th Cir. 1988).

³⁴ Exhibits 8.4, 15.

³⁵ See State of Alaska Food Stamp Manual at § 603-2.

In October 2015, Ms. K's gross income of \$3,567.26 was \$845.26 *more than* the gross income limit, which was raised that month from \$2,681.00 to \$2,722.00. Accordingly, Ms. K was not income-eligible for Food Stamp benefits during October 2015. In turn, because Ms. K was not income-eligible in October 2015, her household was not entitled to the \$286.00 in benefits that it received that month. For that reason, there was an overpayment of \$286.00 in October 2015.

In November 2015, Ms. K's gross income of \$3,436.88 was \$714.88 more than the applicable gross income limit of \$2,722.00. Accordingly, Ms. K was not income-eligible for Food Stamp benefits during November 2015. In turn, because Ms. K was not income-eligible in November 2015, her household was not entitled to the \$286.00 in benefits that it received that month. For that reason, there was an overpayment of \$286.00 in November 2015.

Finally, in December 2015, Ms. K's gross income of \$3,987.89 was \$1,265.89 more than the applicable gross income limit of \$2,722.00. Accordingly, Ms. K was not income-eligible for Food Stamp benefits during December 2015. In turn, because Ms. K was not income-eligible in December 2015, her household was not entitled to the \$286.00 in benefits that it received that month. For that reason, there was an overpayment of \$286.00 in December 2015.

In summary, during the period from September 1, 2015 through December 31, 2015, Ms. K received a total of \$1,117.00 in Food Stamp benefits for which she was not eligible. The next issue is whether the Division is entitled to seek repayment of the \$1,117.00 in overpayments.

C. Is the Division Entitled to Recover the Overpaid Food Stamp Benefits?

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 the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, it is 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 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.³⁶

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.³⁷ 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.³⁸

IV. Conclusion

Ms. K's household's gross monthly income exceeded the Food Stamp program's gross income limit for a three-person household during the months of September 2015 through December 2015. During these four months, Ms. K's household received \$1,117.00 in Food Stamp benefits for which it was not financially eligible. Federal Food Stamp regulations require that the Division seek to recover these overpaid benefits. Accordingly, the Division was correct to seek recoupment of these benefits from Ms. K. The Division's revised recoupment claim, in the amount of \$1,117.00, is therefore affirmed. However, Ms. K has the right to request that the Division write-down or reduce the amount to be repaid based on financial hardship.³⁹ If Ms. K 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 compromise/reduction/write-down issue.

Dated this 24th day of June, 2016.

Signed _____
Jay Durych
Administrative Law Judge

³⁶ Ms. K 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).

³⁷ *See* 7 C.F.R. § 273.18(g)(1).

³⁸ *See* 7 C.F.R. § 273.18(g).

³⁹ *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 6th day of July, 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.]