

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

In the Matter of)
)
 S K) OAH No. 16-1018-SNA
) Agency No.

DECISION

I. Introduction

S K applied to the Division of Public Assistance for food stamps. The division estimated Ms. K’ income based on her paystubs without asking about tips. When Ms. K submitted a recertification application and the division considered her income including tips, it found that Ms. K had been overpaid \$2,258 in food stamp benefits. The division notified Ms. K of the overpayment and requested repayment. Ms. K appealed.

Ms. K’ benefits were overpaid, and the division is required to collect the amount of the overpayment. The division’s decision is upheld.

II. Facts

Ms. K is recently divorced. She is a hairdresser. She works on commission, so her income fluctuates.¹ In November, she applied to the division for food stamps, health insurance, and temporary assistance.² She supplied one paystub. The division did not act immediately on her application, instead requesting additional paystubs as proof of Ms. K’ income. Ms. K provided the additional paystubs. In January, the division approved food stamp benefits for Ms. K based on average gross monthly income of \$1,324.³

In May, Ms. K submitted the required eligibility review form for the food stamp program.⁴ The division interviewed Ms. K, and Ms. K reported that in addition to her paycheck, she received rental income and tips. She provided tip ledgers for February through April, 2016, as well as an estimate of her tips received from November through June, 2016.⁵ The division recalculated Ms. K’ income, and found that her gross income including tips exceeded the program limit.⁶ The division calculated that Ms. K’ food stamp

¹ Testimony of K.
² Exhibit 2.2.
³ Exhibit 3.
⁴ Exhibit 4.1 - 4.8.
⁵ Exhibits 5.2 - 5.4, 6.7.
⁶ Exhibit 5.

benefits had been overpaid by \$2,258 from November 2015 through April 2016, due to the agency's failure to include her tips in her gross income.⁷ The division notified Ms. K that she would need to repay this amount.⁸ Ms. K appealed.

A telephonic hearing was held on September 20, 2016. Ms. K represented herself. Sally Dial, a Public Assistance Analyst with the division, represented the division.

III. Discussion

The food stamp program is a federally funded program administered by the state. When the state overpays a person's food stamp benefits, federal law requires the state to recover the amount of the overpayment.⁹ Federal law also permits the division to compromise an overpayment claim if it determines that "the household's economic circumstances dictate that the claim will not be paid in three years."¹⁰

In addition to requesting a fair hearing in this matter, Ms. K has requested that the division compromise its overpayment claim by reducing or eliminating the repayment obligation. The division has not yet decided whether it will compromise the claim.¹¹ Because the division has not yet decided whether to compromise the claim, this decision is only concerned with whether the division correctly determined that Ms. K's benefits were overpaid and that Ms. K has a repayment obligation. Nothing in this decision prevents the division from compromising the amount of the overpayment, or precludes Ms. K from appealing a decision on her request for compromise.

Ms. K did not dispute the fact of the overpayment or the amount of the overpayment. Ms. K contested the division's conclusion that she was obliged to repay the amount of the overpayment. Ms. K provided the information the division requested in a timely fashion. She initially provided income information that she felt was as accurate as possible, given that she works on commission. She provided information on tips when the division requested that information. She testified that she did not know that she was expected to include tips in her income, and pointed out that the tips were not a reliable source of income.¹² The division agreed that Ms. K had not been asked to provide tip information

⁷ Exhibit 6, 7.

⁸ Exhibit 7 - 7.1.

⁹ 7 U.S.C. 2022(b)(1); 7 C.F.R. §273.18(a)(2).

¹⁰ 7 C.F.R. §273.18(e)(7).

¹¹ Fair Hearing Position Statement at 2.

¹² Testimony of K.

when she initially applied for food stamps, and that this is what caused the overpayment.¹³ Ms. K argues that she should not be held responsible for the division's error.

However, federal law requires the division to attempt to recover overpaid food stamp benefits even if an overpayment is caused by the division's error. The Alaska Supreme Court confirmed this in *Allen v. State*. In that case, two food stamp recipients received excess benefits due to agency error. The court held that this did not prevent the division from collecting the overpayment:

We are sympathetic to the argument that it is unfair to require indigent food stamp recipients to repay benefits that were overissued to them through no fault of their own, but Congress has already made the policy decision that a ten dollar or ten percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness. Alaska's doctrine of equitable estoppel cannot be used to effectively override this policy decision.¹⁴

Thus, the court found that federal policy requires recoupment of overpayments, even where the overpayment is not the recipient's fault. Based on the precedent established in the *Allen* case, the division's acknowledgement of its own error does not bar the division from attempting to recover the overpayment of benefits to Ms. K.

Having established that there was an overpayment, the division is obligated to attempt to recover the amount of the overpayment, although it retains discretion to compromise the amount of the overpayment. The division acknowledged that the overpayment in this case was due to agency error. Nonetheless, under established state and federal law, the division is still required to attempt to recoup the overpayment.

IV. Conclusion

The division's determination that Ms. K was overpaid \$2,258 in food stamp benefits and is required to repay the overpayment is upheld.

Dated: September 27, 2016.

Signed
Kathryn L. Kurtz
Administrative Law Judge

¹³ Testimony of Dial; Exhibit 7.

¹⁴ *Id.* at 1164.

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 11th day of October, 2016.

By: *Signed* _____

Name: Kathryn L. Kurtz

Title: Administrative Law Judge

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