

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

In the Matter of	)	
	)	
U N	)	OAH No. 16-1093-SNA
	)	Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance (Division) notified U N that she had received overpaid Food Stamps benefits, due to an agency error that understated her monthly wage income. As a result of the error, the Division asserted that Ms. N’s household received \$2,148 in overpaid Food Stamp benefits from December 2015 through May 2016. It sought to recoup that amount.

This decision concludes that Ms. N’s household received \$2,148 more in Food Stamp benefits than it should have, for the months from December 2015 through May 2016. Therefore, the Division’s decision establishing a repayment obligation in that amount is affirmed.

**II. Facts**

The relevant facts are not in dispute. Ms. N is a current Food Stamp recipient.<sup>1</sup> Her household of seven includes herself, her husband, and her five children.<sup>2</sup> Ms. N works at Employer A, where she typically works 40 hours per week and earns \$19.50 per hour.<sup>3</sup> She is paid twice per month. Each paycheck is typically about \$1560, which results in gross monthly income of \$3120.<sup>4</sup>

On December 9, 2015, Ms. N applied for Food Stamp benefits.<sup>5</sup> At that time, she provided her employment and wage information, which the Division verified with her employer.<sup>6</sup> However, when it calculated the household’s Food Stamp benefits, the Division incorrectly entered Ms. N’s monthly income into the benefit formula. It entered a monthly household income of \$1560, which is half of the household’s actual income.<sup>7</sup> The Division approved and paid benefits for December 2015 through May 2016, based on this incorrect income figure.

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<sup>1</sup> Exhibit 1. The Food Stamp program is also known as the Supplemental Nutrition Assistance Program.  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibits 2.8, 3.9 – 3.10.  
<sup>4</sup> \$19.50/hour x 80 hours/pay period = \$1560 x 2 pay periods/month = \$3120/month. Testimony of Ms. N.  
<sup>5</sup> Exhibit 2.1 – 2.14.  
<sup>6</sup> Exhibit 2.  
<sup>7</sup> Exhibit 4.5.

On May 23, 2016, Ms. N submitted a Food Stamps recertification application.<sup>8</sup> The Division processed this application on June 6, 2016, and the agency realized its error. On August 12, 2016, it notified Ms. N that her household had received more Food Stamps than it was entitled to receive. It requested repayment of the overpaid benefits.<sup>9</sup> The Division initially calculated the total amount of the overpayment at \$1,935.<sup>10</sup>

Ms. N requested a hearing.<sup>11</sup> She asserted that she should not be responsible for the Division's error, and she cannot afford to repay the overpaid benefits.

Before the hearing, on September 15, 2016, the Division notified Ms. N that it had incorrectly calculated the amount of the overpayment, since it had improperly assumed the family was entitled to Food Stamp benefits for the entire month of December 2015. In fact, Ms. N had submitted her Food Stamp application on December 9, 2015, so the family's benefits should have been pro-rated from that date.<sup>12</sup> After making this adjustment, the Division determined that Ms. N received a total of \$2,148 in overpaid benefits for the six months at issue.<sup>13</sup>

The hearing took place on October 11, 2016. Ms. N appeared telephonically, represented herself, and testified on her own behalf. Sally Dial, a Public Assistance Analyst employed by the Division, also appeared telephonically, represented the Division and testified for the Division. All documents submitted to the record were admitted, and the record closed at the end of the hearing.

### **III. Discussion**

Ms. N does not contest the Division's determination that she received an overpayment of Food Stamps, nor does she challenge the Division's calculation of the overpayment amount. She contends that she should not be required to pay back any benefits that were erroneously issued to her. She argued that she provided accurate information to the Division. The overpayment was caused by the Division's error, and she could not have known benefits were being overpaid at the

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<sup>8</sup> Exhibit 3.1 – 3.8.

<sup>9</sup> Exhibit 4 – 4.1.

<sup>10</sup> Exhibit 4 - 4.12. Based on Ms. N's \$3120 monthly income, the Division calculated that the household should have received benefits of \$822 for each of the six months from December 2015 through May 2016, for total benefits of \$4,932. The household actually received benefits of \$6,867.  $\$6,867 - (\$822 \times 6) = \$1,935$ .

<sup>11</sup> Exhibit 5.

<sup>12</sup> Exhibit 6 – 6.3; Testimony of Ms. Dial. *See also* 7 C.F.R. § 273.10(a)(ii).

<sup>13</sup> Exhibit 7 – 7.8. The Division determined that the household should have received benefits of \$822 for each of the five months from January through May 2016, plus \$609 for the month of December 2015, for total benefits of \$4,719. *See* Exhibits 6.2 - 6.5, 7, 7.5. Actual benefits of \$6,867, minus the entitled benefits of \$4,719, results in an overpayment of \$2,148.  $\$6867 - \$4,719 = \$2,148$ .

time she received them. She also asserted that repayment would cause substantial hardship to her household.

Food Stamp benefits are governed by federal law, which establishes the rules for determining a household's monthly Food Stamp benefit. Benefit amounts are calculated based, in large part, on the number of people living in the household and the household monthly income.<sup>14</sup> When an overpayment of benefits occurs, federal law requires the Division to recoup it.<sup>15</sup> The federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.<sup>16</sup> This is true even when the overpayment is the result of the Division's own error.<sup>17</sup>

The Alaska Supreme Court has acknowledged the position that Ms. N asserts in this case. Nonetheless, it has confirmed that federal law obligates recipients of overpaid Food Stamps to repay those benefits. It stated:

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.<sup>18</sup>

The Division showed that Ms. N was overpaid \$2,148 in Food Stamp benefits for the months of December 2015 through May 2016. Ms. N is required to repay those benefits to the Division, regardless of the fact she was not at fault and the overpayment was caused by the Division's error.

Ms. N argued that repayment would cause significant financial hardship to her household. Federal regulations allow the Division discretion to compromise on all or a portion of the claim if "it can be reasonably determined that a household's economic circumstances dictate that the claim will not be repaid in three years."<sup>19</sup> The Division did not make a determination on possible compromise in this case, because Ms. N had not submitted a request to initiate that process. At

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<sup>14</sup> 7 C.F.R. § 273.10(e).

<sup>15</sup> 7 C.F.R. § 273.18(a)(2).

<sup>16</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

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

<sup>18</sup> *Allen*, 203 P.3d at 1164 (citations omitted).

<sup>19</sup> 7 C.F.R. § 273.18(e)(7).

the hearing, the Division discussed the process and pointed out the Request for Compromise form in the agency record.<sup>20</sup> Ms. N can pursue this option if she chooses.

#### **IV. Conclusion**

For the six months from December 2015 through May 2016, Ms. N received \$2,148 in Food Stamp benefits that she was not entitled to receive. This occurred because the Division erroneously calculated her family's benefits based on half of Ms. N's actual monthly income. The Division's decision to recover those benefits is affirmed.

DATED: October 31, 2016.

*Signed* \_\_\_\_\_  
Kathryn Swiderski  
Administrative Law Judge

### **Adoption**

The undersigned 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 15<sup>th</sup> day of November, 2016.

By: *Signed* \_\_\_\_\_  
Name: Kathryn A. Swiderski  
Title: Administrative Law Judge

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

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<sup>20</sup> See Exhibit 7.13.