

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

In the Matter of )  
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D F ) OAH No. 16-1428-SNA  
 ) Agency No.  
\_\_\_\_\_ )

In the Matter of )  
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D F ) OAH No. 16-1411-ATP  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

D F applied for and received Supplemental Nutrition Assistance Program (Food Stamps) and Alaska Temporary Assistance Program (ATAP) benefits. The Division of Public Assistance notified Ms. F that it issued her Food Stamp and ATAP benefits that she was not entitled to, and that she was required to repay the overpayment amount back.<sup>1</sup> The overpayments occurred because the Division did not take action on income changes reported by Ms. F.<sup>2</sup> Ms. F requested a hearing.<sup>3</sup>

Because Ms. F received \$1,334 more in Food Stamp benefits and \$2,570 in ATAP benefits than she should have, the Division's decision establishing a repayment obligation in those amounts is affirmed.

**II. Facts**

Ms. F's household consists of her and her two young children.<sup>4</sup> Ms. F submitted an eligibility review form for the Food Stamp and ATAP programs on February 29, 2016.<sup>5</sup> In April, Ms. F began a job at No Name Company. Ms. F worked part-time as a No Name Assistant, making \$16 per hour, and also as a No Name Company 2 provider, making \$13.50 per

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<sup>1</sup> Exhibit 6; Ex. 8. The Division's initial overpayment notices used a conversion factor based on reported pay, instead of actual income. The Division recalculated once it received verification of actual income from Ms. F. This causes her ATAP overpayment to increase and her Food Stamp overpayment to decrease. *See* Amended notices, Ex. 49-50.

<sup>2</sup> Ex. 49-50.

<sup>3</sup> Ex. 8.2.

<sup>4</sup> Ex. 1. Ms. F moved in with her mother by the hearing date, which changed her household composition.

<sup>5</sup> Ex. 1.

hour.<sup>6</sup> She reported her new job and income to her case manager.<sup>7</sup> The Division did not process the new information.<sup>8</sup> Ms. F continued to report income changes in May, June, and August 2016.<sup>9</sup> Again the Division did not take action and review how this income change would affect Ms. F's eligibility.<sup>10</sup>

In mid-August 2016, the Division recognized that it had not processed Ms. F's income changes.<sup>11</sup> The Division contacted Ms. F and verified her continued employment.<sup>12</sup> The Division recalculated Ms. F's benefit calculations and determined that it overpaid her \$1,903 in ATAP and \$1,510 in Food Stamp benefits for the months of June, July, and August 2016.<sup>13</sup> This matter only addresses overpayment findings from June through August 2016.<sup>14</sup>

On November 15, 2016, the Division sent Ms. F notice that it overpaid her \$1,903 in ATAP benefits.<sup>15</sup> On November 23, 2016, the Division notified Ms. F that her household received \$1,510 in Food Stamp benefits that she was not entitled to, due to the Division's "agency error".<sup>16</sup> The record contains no information why the Division knew of the overpayments in August, but did not issue overpayment notices until November.

Ms. F requested a fair hearing.<sup>17</sup> In preparation for hearing, the Division reviewed Ms. F's case. The Division recalculated her overpayments based on actual, not reported pay. That recalculation resulted in a finding that the Division sent Ms. F \$1,344 in Food Stamp overpayments and \$2,570 in ATAP overpayments.<sup>18</sup> On December 29, 2016, the Division sent Ms. F an updated Food Stamp overpayment notice.<sup>19</sup> On January 4, 2017, it sent Ms. F the updated ATAP overpayment notice.<sup>20</sup>

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<sup>6</sup> F testimony.

<sup>7</sup> Ms. F's case manager works for Nine Star, which offers education and employment support. Ms. F's case manager passed the information along to DPA.

<sup>8</sup> Position statement; Miller testimony; Ex. 6; Ex. 8; Ex. 49-50.

<sup>9</sup> Position statement; Ex. 3-3.6; Ex. 8.11.

<sup>10</sup> Position statement; Miller testimony; Ex. 6; Ex. 8; Ex. 49-50.

<sup>11</sup> Ex. 3; Ex. 5.

<sup>12</sup> Ex. 3.

<sup>13</sup> Ex. 6.8; Ex. 8.5; Ex. 8.11;

<sup>14</sup> The Department refers cases to the OAH. OAH's jurisdiction is limited to issues contained in the referrals. The only Division actions referred to in this matter were limited to the notices of overpayment from June-August 2016.

<sup>15</sup> Ex. 6.

<sup>16</sup> Ex. 8; Miller testimony; position statement.

<sup>17</sup> Ex. 7; Ex. 9-9.1.

<sup>18</sup> Ex. 49 – 50; Miller testimony.

<sup>19</sup> Ex. 49.

<sup>20</sup> Ex. 50.

The hearing convened on January 5, 2017. Ms. F represented herself and Jeff Miller presented the Division's position. At the beginning of hearing, the Division informed Ms. F that it has just sent new notices to her. Ms. F stated that she had yet to receive the updated notices from the Division. She was given the opportunity to continue the hearing in order for her to receive and review the new information and new overpayment finding amounts. Ms. F chose to go forward with the hearing.

Ms. F testified that repayment would be difficult. She also expressed dissatisfaction with the Division's failure to follow through on reported changes. Ms. F was most upset by a telephone conversation she had with the Division. During that conversation, a Division supervisor directed a staff member to "Just give her the \$859. We don't have time to tell her."<sup>21</sup>

### **III. Discussion**

The issue in this case is whether Ms. F is required to pay back \$1,334 in Food Stamp benefits and \$2,570 in ATAP benefits that were issued to her in error. No facts are in dispute. Ms. F supplied the required information in a timely manner and the overpayment was due solely to Division error.

The Food Stamp program is a federal program administered by the State.<sup>22</sup> 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.<sup>23</sup> The Division is required to give 10 days' notice before reducing benefits.<sup>24</sup>

The federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.<sup>25</sup> This is true even when the overpayment is caused by the Division's error.<sup>26</sup> Ms. F was overpaid \$1,334 in Food Stamp benefits and is required to repay those benefits to the Division, regardless of the fact that the overpayment was caused by the Division's error.

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<sup>21</sup> F testimony; Ex. 7; Ex. 9.

<sup>22</sup> 7 C.F.R. § 271.4(a).

<sup>23</sup> 7 C.F.R. § 273.10(e)(2)(ii)(A).

<sup>24</sup> 7 C.F.R. §273.13(a)(1).

<sup>25</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

<sup>26</sup> 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

Federal law permits compromising or writing off a claim, but only if the claim cannot be paid off in three years.<sup>27</sup> As of the hearing date, Ms. F had not requested the Division reduce her repayment amount. If she chooses, Ms. F may still request a compromise of the overpayment finding.<sup>28</sup> The Division has discretion whether to grant a compromise request.<sup>29</sup>

Like Food Stamps, the Division must pursue collection of ATAP benefit overpayments, regardless of why the overpayment occurred, if the overpayment exceeds \$100, as is the case here.<sup>30</sup>

Ms. F is understandably upset by a Division supervisor directing staff to issue payments they knew to be overpayments. The only explanation for issuing known overpayments would be if the Division did not have the 10 days required before reducing benefits. That does not appear to be the case for the benefits at issue here. The Division contacted Ms. F on August 10, 2016, after the release of her August benefits.<sup>31</sup>

Mr. Miller believes this may have been the case with Ms. F's September 2016 conversation with the Division. Mr. Miller stated that from his records (not part of the hearing record) it appears Ms. F also received September benefits. Unfortunately, the hearing request and overpayment notices referred to this office only address June through August 2016. This decision cannot address September overpayments, if they occurred.

#### **IV. Conclusion**

The Division's decision to recover \$1,334 in Food Stamp and \$2,570 in ATAP benefits overpaid to Ms. F is affirmed.

DATED January 30, 2017.

*Signed*  
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Bride Seifert  
Administrative Law Judge

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<sup>27</sup> 7 C.F.R. § 273.18(e)(7).

<sup>28</sup> Ex. 7.12; Ms. F may call or write the Division to request compromise, or she may use the Request for Compromise form at Ex. 7.19.

<sup>29</sup> 7 C.F.R. § 273.18(e)(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.

<sup>30</sup> 7 AAC 45.570(a).

<sup>31</sup> Ex. 3.

## 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 21<sup>st</sup> day of February, 2017.

By: Signed  
Name: Kathryn L. Kurtz  
Title: Administrative Law Judge

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