

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

In the Matter of )  
 )  
D J ) OAH No. 17-0103-SNA  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

D J had been receiving food stamps for herself and her granddaughters who lived with her. When her granddaughters went off to college, she reported the change to the Division of Public Assistance. The division did not immediately process the report of change, and Ms. J’s food stamps were overpaid by \$492 as a result. The division notified Ms. J of the overpayment and requested repayment. Ms. J appealed.

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

**II. Facts**

Ms. J was receiving food stamps based on a household that included her granddaughters, L and K Q.<sup>1</sup> On August 31, 2016, Ms. J called the division to report that her granddaughters had left for college.<sup>2</sup> She reported the change within 10 days, as required by the program.<sup>3</sup> She called the division again on September 2, 2016, and specifically requested that her benefits be recalculated. However, the division did not immediately act on Ms. J’s report of change. On October 4, 2016, Ms. J called again, and expressed concern that she was not entitled to the benefit amount she received.<sup>4</sup> The division processed Ms. J’s report of change on October 4, 2016.<sup>5</sup>

Ms. J’s benefits for October were overpaid by \$492.<sup>6</sup> The division notified Ms. J that it would be taking action to recover the overpayment.<sup>7</sup> Ms. J appealed.<sup>8</sup>

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.2, 5.  
<sup>3</sup> Exhibit 5.  
<sup>4</sup> Exhibit 2.2.  
<sup>5</sup> Exhibit 3.  
<sup>6</sup> Exhibit 3, 4.6.  
<sup>7</sup> Exhibit 4.  
<sup>8</sup> Exhibit 5.

A telephonic hearing was held on February 27, 2017. Ms. J 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.<sup>9</sup> This is the case even where the overpayment was caused by the division, not the recipient.<sup>10</sup> The Alaska Supreme Court confirmed this in the case of *Allen v. State, Department of Health and Social Services*. 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.<sup>11</sup>

Thus, even where an overpayment is the division's fault, federal law requires the division to recover the amount of the overpayment. This is the result reached in a previous case with facts similar to those in this case. In the earlier case, the household notified the division that a child was going off to college, and the division failed to process the report of change promptly. Still, repayment was required.<sup>12</sup>

Ms. J did not dispute the fact that her benefits were overpaid, or challenge the division's calculation of the amount of the overpayment. She argued that she had done everything she was required to do by timely reporting when her granddaughters moved out of the household. She argued that when she called the division about the excess benefits on

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<sup>9</sup> 7 U.S.C. 2022(b)(1) (the "state agency shall collect any overissuance of benefits issued to a household"); 7 C.F.R. §273.18(a)(2) ("the state agency must establish and collect any claim"). 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." 7 C.F.R. §273.18(e)(7).

<sup>10</sup> See OAH No. 15-0001-SNA.

<sup>11</sup> *Allen v. State, Dep't of Social Services, Division of Public Assistance*, 203 P.3d 1155, 1164 (Alaska 2009).

<sup>12</sup> *In re T.C.*, OAH No. 15-0001-SNA.

her card, the division told her to go ahead and spend the benefits. She argued that the benefits were spent as intended, on food for her granddaughters.<sup>13</sup>

In this case, Ms. J did everything she was required to do and more. She not only notified the division of the change in her household, she then called twice more to follow up. The division has acknowledged that it was at fault for the overpayment, and that it should have removed the granddaughters from the household before the October benefit was issued.<sup>14</sup> However, having established that there was an overpayment in this case, the division is obligated to recover the overpayment, even though the overpayment was due to the division's error and no fault of Ms. J.

That Ms. J spent the excess benefit primarily on food for her granddaughters does not change the outcome, since they were no longer in the household in October. Ms. J may have been advised by the division that she could go ahead and use her October benefits, but again, this does not negate the repayment obligation.

Ms. J also argued that being required to repay the benefits will cause her a hardship. That argument does not change the conclusion here. However, Ms. J may apply to the division for a compromise of the overpayment, and nothing in this decision prevents the division from compromising the claim.<sup>15</sup>

#### **IV. Conclusion**

The division's decision that Ms. J was overpaid \$492 in food stamp benefits and is required to repay the overpayment is upheld.

Dated: February 28, 2017.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
Administrative Law Judge

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<sup>13</sup> Exhibit 5; J testimony.

<sup>14</sup> Exhibit 3, 4.

<sup>15</sup> See Exhibit 4.1.

## 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 17th day of March, 2017.

By: *Signed* \_\_\_\_\_

Name: Kathryn L. Kurtz

Title: Administrative Law Judge

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