

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

In the Matter of	)	
	)	
S U	)	OAH No. 17-0497-SNA
_____	)	Agency No.

**DECISION**

**I. Introduction**

S U applied for food stamps for himself and his three children, for whom he shares custody with the children’s mother. He did not include the children’s supplemental security income as part of the household’s income because that money is paid to the children’s mother. The Division of Public Assistance approved the application. After learning that the children had additional income, however, the Division imputed the children’s income to Mr. U’s household, and determined that he was not eligible for food stamp benefits. The Division subsequently reversed its approval, and required that Mr. U repay the two months’ worth of benefits that he received. Mr. U appealed, and a fair hearing was held.

At the hearing, Mr. U’s argued that it was wrong for the Division to impute income to his household when his household did not receive that income. The law, however, requires that the children’s income be imputed to whatever household applies for food stamps on behalf of the children. Because no exceptions to this law apply to the facts and circumstances here, the Division’s decisions are affirmed. The Division shall, however, allow Mr. U an opportunity to amend his application so that the repayment can be deducted from his ongoing benefit.

**II. Facts**

S U is a resident of No Name. He has three children who live with him three days per week. The remainder of the week, the children stay with their mother.

Mr. U receives both pension income and social security. His total income is \$1809.55 per month.<sup>1</sup> He is disabled, and can earn additional income only sporadically.

Mr. U has been receiving food stamps for himself as a household of one. When his recertification for food stamp eligibility became due, Mr. U reapplied for food stamps in February 2017. This time, however, he included his children as members of his household.<sup>2</sup>

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<sup>1</sup> Division Exhibit 2.3  
<sup>2</sup> Division Exhibit 2.1-2.8.

Mr. U's children each receive supplemental security income of \$515 per month.<sup>3</sup> The children's mother is the payee of this income, meaning that the checks come to her and she determines how to spend the money as appropriate for the children.<sup>4</sup> In his application, Mr. U did not include the children's income as income to his household.<sup>5</sup>

The Division approved Mr. U's application based on a household of four, for a benefit level of \$462, beginning March 2017.<sup>6</sup> In March, however, the Division learned that Mr. U's children receive social security income. It then recalculated his benefit level, based on the combined income for himself and his children. It determined that because the combined income, \$3,086.55, exceeded the allowable income, \$2,532, Mr. U was ineligible for food stamps.<sup>7</sup>

The Division notified Mr. U that he was not eligible for food stamps. The timing of the notice, however, meant that Mr. U still received the \$462 benefit for March and April. Later, the Division notified him that it would undertake a recoupment action to reclaim the amount overpaid to him, \$462 per month for both March and April.<sup>8</sup> Mr. U appealed both decisions. A fair hearing was held on May 30, 2017.

### **III. Discussion**

Mr. U does not dispute any of the Division's findings of facts regarding the amount of his income or the children's income. He does not dispute the Division's mathematical determinations. He does not dispute that if the benefits he received are considered overpayments, then he must pay the money back. He vigorously disputes, however, that the children's income should be imputed to his household.

Mr. U argues that Division's action of imputing the children's income to his household makes no sense. The children's money is not part of his household's income. The only income he has to feed himself and two hungry teenagers and one hungry preteen is his own income, which is not sufficient to meet the need.

The Division counters that the law requires it to include the children's income in the income of whichever household applies for food stamps on behalf of the children. How the two parents divide up the money, or, indeed, if one parent ends up keeping all the money, is not the

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<sup>3</sup> Division Exhibit 4.

<sup>4</sup> U testimony.

<sup>5</sup> Division Exhibit 2.3.

<sup>6</sup> Division Exhibit 3.

<sup>7</sup> Division Exhibit 5

<sup>8</sup> Division Exhibit 7-7.1.

Division’s concern—that is for the two parents to work out among themselves. The Government has no role in that issue, and will treat the income as the children’s income.

To determine who is correct requires an examination of the law that governs the food stamp program. The food stamp program is a federal program administered by the State of Alaska.<sup>9</sup> The Division administers the program and calculates food stamp benefits according to federal law.<sup>10</sup> Under federal regulations, the Division “must establish and collect” overpaid food stamp benefits.<sup>11</sup> Federal law also specifies exactly what the Division must include when calculating a person’s income.

**A. Is the children’s social security income counted as income of Mr. U’s household?**

The applicable federal law specifies that “[h]ousehold income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.”<sup>12</sup> It specifically applies to “[a]ssistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI).”<sup>13</sup> That sentence means what it says—unless exempted by a different provision of law, the children’s social security must be included in the income of the household that receives the food stamps, even if the social security is actually spent in a different household.

The law includes an explicit list of circumstances for when income received by a household is not included in income for purposes of food stamps.<sup>14</sup> None of those circumstances, however, applies to the supplemental security income received by Mr. U’s children. Because Mr. U’s circumstances are not described in this list of exceptions to the rule that *all* income must be included, it means that his case is not an exception to the rule.

This decision must follow the law. The law is clear that supplemental security income must be included unless it falls under one of the exclusions listed in 7 C.F.R. §273.9(c). Although Mr. U is correct that the law does not specifically address the situation where children’s income is paid to a parent who is not a member of a household, the law does address situations where the household’s money is paid to a third-party—that is, to a person who is not connected to the household.<sup>15</sup> Under that provision, money that is “legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household

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<sup>9</sup> 7 C.F.R. 271.4(a).

<sup>10</sup> 7 AAC 46.010.

<sup>11</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

<sup>12</sup> 7 C.F.R. §273.9(b) (attached as Division Exhibit 10-1).

<sup>13</sup> 7 C.F.R. §273.9(b)(2)(i) (attached as Division Exhibit 10-1).

<sup>14</sup> 7 C.F.R. §273.9(c) (attached as Division Exhibit 10.2-10.9).

<sup>15</sup> 7 C.F.R. §273.9(c)(1)(vii).

expense shall be counted as income and not excluded.”<sup>16</sup> The money would not count as income, however, if it is not “otherwise payable” to the household. For example, if a court ordered that the money be paid to a third party for specific purpose, the money is not counted as income.<sup>17</sup>

I have studied whether this regulation could apply to Mr. U’s situation. If the children’s mother is considered a third-party, and if social security diverted the payment from the children to her under a legally-binding agreement for a specific purpose, then, the money might not be “otherwise payable” to the children. If that were the case, the money would not be counted as income to Mr. U’s household.

This interpretation of the facts, however, is not tenable. The examples that describe how the regulation work make clear that the “third party” to whom the money is diverted must use the money for a legally-required purpose for the money to not be income.<sup>18</sup> That is what makes the money not otherwise payable to the household member and, hence, not income. Here, in contrast, the children’s mother, as payee, may use the money for any purpose appropriate for the children. She could, for example, give some of the children’s social security to Mr. U for him to use to feed the children during the three days that they live with him. Because she has the opportunity to spend the money in that way, the money is correctly considered income to the children (even though, under the facts described by Mr. U, this is not what happens). Therefore, under the law, for purposes of computing food stamp eligibility, the children’s money is considered otherwise payable to the household that claims the children for food stamp purposes. In this case, that household is Mr. U’s household.

In short, the binding legal authority that governs the treatment of the children’s supplemental security requires that the money be treated as part of Mr. U’s household income. Although the result seems wrong to Mr. U because he has no access to the money, the law applies the same whether he and the children’s mother agree to share the money, or whether she spends the entire amount. Because this law is binding, the Division’s order denying Mr. U’s application for a household of four because the household is over income is affirmed.

#### **B. Was Mr. U overpaid food stamp benefits for March and April 2017?**

The Division’s decision finding an overpayment for the time that Mr. U received benefits for a household of four is also affirmed, with one condition. At the hearing, Mr. U stated his

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* See also, e.g., *In re KQ*, OAH Case No. 14-1152-SNA (Dep’t of Health and Soc. Servs. 2014) (holding that money required to be paid to escrow agent to pay down home loan is not income for food stamp purposes because it is not “otherwise payable” to the household).

<sup>18</sup> 7 C.F.R. §273.9(c)(1)(vii)(C).

intent to amend his application if this decision is not in his favor, to apply for a household of one, retroactive to March. The division indicated that if he does so, he will be eligible for benefits, which will reduce his overpayment amount slightly. Mr. U's eligibility for ongoing benefits will enable the Division to deduct a portion of his ongoing benefits to pay back the overpayment, instead of requiring him to pay the sum out of pocket. Mr. U explained that this procedure is very important to him, because he simply does not have the money to repay the overpayment out of pocket. Accordingly, the Division is instructed to wait twenty days after receiving the final decision in this case, and to consider his amended application, before determining the amount of the overpayment, so that Mr. U's ongoing benefits can be taken into account. Mr. U is strongly encouraged to amend his application as soon as possible after receiving this decision.

#### **IV. Conclusion and Order**

The Division's decision that Mr. U is not eligible for food stamp benefits for a family of four is affirmed. The Division's decision that Mr. U must pay back the amount of overpaid benefits is affirmed. The Division shall wait twenty days from the date this decision becomes final before computing the amount of the overpayment. If Mr. U amends his application to apply for benefits for a household of one, the amended application will be retroactive to March 2017, and the Division will compute the amount of overpayment accordingly. If Mr. U amends his application and receives an ongoing benefit, the overpayment will be deducted from Mr. U's ongoing benefit based on the minimum deduction required by law.

DATED this 6th of June, 2017.

By: Signed  
Stephen C. Slotnick  
Administrative Law Judge

## Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 22nd day of June, 2017.

By: *Signed* \_\_\_\_\_  
Name: Stephen C. Slotnick  
Title: Administrative Law Judge

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