

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

In the Matter of)	
)	
U P)	OAH No. 17-0594-SNA
)	Agency No.

DECISION

I. Introduction

Due to an agency error, U P received more Food Stamp benefits from January through April 2017 than he was entitled to receive. The Division of Public Assistance (Division) notified Mr. P that he is required to repay excess benefits totaling \$872. He requested a hearing.

The hearing took place on June 20, 2017. Mr. P represented himself and testified on his own behalf. Jeff Miller, a public assistance analyst with the Division, represented the Division.

Mr. P received \$872 more in Food Stamp benefits than he should have, and the Division's decision establishing a repayment obligation in that amount is affirmed. The overpayment occurred because the Division did not include Mr. P's unemployment income in its Food Stamp benefit calculation. This was an inadvertent agency error.

II. Facts

The following facts were established by a preponderance of the evidence.

Mr. P lives in Town X, in a household of two.¹ He applied for Food Stamp benefits in November 2016, and the Division approved the application. From January 2017 through April 2017, the Division's Food Stamp calculation assumed that the household received no countable income from any sources.² As a result, Mr. P received the maximum Food Stamp allotment of \$435 per month for a household of two.³

On December 1, 2016, Mr. P reported that he had started receiving unemployment benefits in November 2016.⁴ His gross unemployment benefits were \$370 per week, or \$740 every two weeks.⁵ This translates to monthly unemployment income of \$1,591.⁶

¹ Exhibit 2.

² See Exhibits 1.1, 2, 6.5.

³ Exhibits 1.1, 6.5.

⁴ Exhibits 4, 5-5.1.

⁵ Exhibit 5-5.1 (Mr. P report); Exhibit 5.2-5.3 (Dep't of Labor data). Unemployment benefits are paid bi-weekly.

The Division should have included this income in Mr. P's case and adjusted his Food Stamp benefits beginning with the month of January 2017.⁷ However, the agency did not include it, and the household continued to receive \$435 in monthly benefits.

On April 28, 2017, the agency processed Mr. P's April 2017 recertification application, and it realized its error. It recalculated his benefits, including the unemployment income, resulting in a Food Stamp benefit entitlement of \$217 per month for January through April 2017.⁸ The Division calculated overpayments of \$218 per month for these four months, or \$872 in total.⁹ It sent Mr. P notice of the overpayment, which it attributed to inadvertent agency error, and it informed him that he must repay the \$872 in erroneously-issued benefits.¹⁰

Mr. P did not dispute that he was overpaid Food Stamp benefits or the amount of the overpayment. He disagreed with the requirement that he repay the benefits, because the overpayment was caused by the Division's own error. He argued the Division should have found the mistake and corrected its calculations more quickly, and it is unreasonable to require him to repay all four months of overpayments.

III. Discussion

The issue in this case is whether Mr. P is required to pay back \$872 in Food Stamp benefits that were issued to him in error. No facts are in dispute. The Division acknowledges that the overpayment was due to agency error and Mr. P did nothing wrong.

The Food Stamp program is a federal program administered by the State.¹¹ Food Stamp benefits are governed by federal law. When an overpayment of benefits occurs, federal law requires the Division to recoup it.¹² Federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.¹³ This is true even when the overpayment is the result of the Division's own error.¹⁴

⁶ Exhibit 6.10. *See also* Food Stamp Manual §603-1B (benefits paid every two weeks are converted to a monthly amount by multiplying the two-week amount by 2.15). $\$740 \times 2.15 = \$1,591$ per month. Mr. P confirmed this income during the hearing.

⁷ *See* 7 C.F.R. § 273.13(a) (ten-day notice requirement before adverse action becomes effective).

⁸ Exhibit 6.5-6.10; Exhibit 8-8.1.

⁹ Exhibits 1.1, 6.5-6.10. $\$435(\text{paid}) - \$217(\text{entitled}) = \$218$ overpayment. $\$218 \times 4$ months = \$872.

¹⁰ Exhibit 6.

¹¹ 7 C.F.R. § 271.4(a).

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

¹³ 7 C.F.R. § 273.18(a)(1)(i), (a)(2).

¹⁴ 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 – 1166 (Alaska 2009).

The Alaska Supreme Court has addressed this issue, including the same argument Mr. P makes: that it is unfair to require recipients to repay benefits when the Division made the mistake. In *Allen v. State of Alaska, Department of Health & Social Services*, the court concluded that federal law requires the state to pursue repayment of all overpaid Food Stamp benefits.¹⁵ It then observed:

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.^{16]}

The federal regulations and the *Allen* decision are binding on the Division.¹⁷

IV. Conclusion

The Division showed that Mr. P received overpaid Food Stamp benefits totaling \$872 for the months of January 2017 through April 2017. Mr. P is required to repay those benefits to the Division, regardless of the fact that he was not at fault and the overpayment was caused by the Division's error. The Division's decision requiring repayment of \$872.00 is affirmed.

Dated: June 21, 2017.

Signed

Kathryn Swiderski
Administrative Law Judge

¹⁵ 203 P.3d 1155 (Alaska 2009).

¹⁶ *Id.* at 1164 (footnotes omitted).

¹⁷ As referenced in *Allen*, Mr. P could request that the Division compromise (write-off or forgive) all or a portion of the overpaid benefits. See 7 C.F.R. § 273.18(e)(7). However, the Division may only compromise 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." *Id.* During the hearing, the Division indicated that Mr. P's household would not meet this standard, and a compromise therefore is not available.

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 6th day of July, 2017.

By: *Signed* _____

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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