

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

In the Matter of)	
)	
E U)	OAH No. 17-0750-SNA
_____)	Agency No.

DECISION

I. Introduction

E U receives food stamps for his household. The Division of Public Assistance notified him that it had erred in granting his household a heating utility allowance, causing an overpayment of his food stamp by \$534, and that he would need to repay this amount. Mr. U requested a fair hearing.

Mr. U failed to participate in the hearing. Mr. U's benefits were overpaid, and the division is required to collect the amount of the overpayment. The division's decision is upheld.

II. Facts

On a food stamp recertification application received by the division in April 2016, Mr. U reported that he was responsible for paying the cost of heating his home, and that he heated his home with wood. However, he did not claim any monthly expense for wood.¹ The division approved the recertification application. But, because Mr. U had not claimed any expense for wood, and previous case notes indicated that Mr. U chops his own wood, the division concluded that it had been allowing him a heating deduction in error.² This resulted in an overpayment of food stamp benefits for the months of November 2016 through April 2017 of \$534. The division notified Mr. U of its error, and of his obligation to repay the overpayment through an automatic reduction in the amount of his food stamp benefits or a repayment agreement. Mr. U requested a fair hearing.³

The hearing was scheduled for August 10, 2017 at 1:00 p.m. Mr. U was given notice of the hearing date, time, and place, and how to participate by telephone. Mr. U was contacted by telephone for the hearing, but the telephone connection was lost shortly after the hearing

¹ Exhibit 2.3.
² Exhibit 2, 4.
³ Exhibit 5-5.1.

convened, while the Administrative Law Judge was explaining the hearing procedures. After the connection was lost, the Administrative Law Judge made an immediate attempt to call Mr. U back, and a second attempt approximately ten minutes later. Mr. U did not answer either call, and there was no opportunity to leave a message. There is no record that Mr. U called OAH back on August 10, 2017 or thereafter. OAH issued a notice of opportunity to show good cause for failing to participate. The notice cautioned Mr. U that his case might be dismissed, or the division's decision affirmed. The notice gave Mr. U until August 23, 2017 to show good cause for failing to participate in his hearing. OAH did not receive a response to the notice.

III. Discussion

Mr. U's request for a hearing clearly stated his concern with the division's decision to recover the overpayment. Mr. U believes he should not be held responsible for the overpayment because he "provided all necessary information when applying for services. The error was made by your personnel in your office and they should be the ones to have to repay that amount. I had no control over their actions and feel that I should not be the one penalized."⁴

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.⁵ This is the case even where the overpayment was caused by the division, not the recipient.⁶ 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

⁴ Exhibit 5-5.1.

⁵ 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).

⁶ See OAH 15-0001-SNA.

equitable estoppel cannot be used to effectively override this policy decision.⁷

Thus, even where an overpayment is the division's fault, federal law requires the division to recover the amount of the overpayment.

The division's food stamp manual provides that "households are not entitled to the heating utility standard when [t]hey use wood for their primary heating source but do not pay for it. The costs of gathering the wood, such as gas and oil for chain saws and transportation to get the wood, cannot be counted since the shelter cost is only allowed for the heating fuel itself." Mr. U did not argue that he pays for the wood he uses to heat his home, or that he was entitled to the heating deduction. On this record, I cannot find that the division erred in concluding that Mr. U was not entitled to the heating deduction, and that his food stamp benefits were overpaid.

IV. Conclusion

The division's decision that Mr. U's food stamp benefits were overpaid by \$534 and that Mr. U must repay this amount is affirmed.

DATED: August 25, 2017.

Signed

Kathryn L. Kurtz
Administrative Law Judge

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 12th day of September, 2017.

By: *Signed*

Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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

⁷ *Allen v. State, Dep't of Social Services, Division of Public Assistance*, 203 P.3d 1155, 1164 (Alaska 2009).