

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

In the Matter of)
)
N W) OAH No. 17-1015-SNA
) Agency No.
_____)

DECISION

I. Introduction

N W receives food stamp benefits from the Division of Public Assistance. The division notified Mr. W that it had overpaid his food stamp benefits by \$108 because it had incorrect information about his monthly mortgage obligation, and that he would be held liable for repayment. Mr. W requested a fair hearing.

The division's decision that Mr. W's food stamp benefits were overpaid and that he is liable for repayment of \$108 is upheld.

II. Facts

N W lives with his daughter. Both receive benefits from the federal Social Security Administration. In addition, their household participates in the food stamp, temporary assistance, adult public assistance, and Medicaid programs.

The Division of Public Assistance processed a recertification application for Mr. W's household in July 2017. When the division processed Mr. W's food stamp recertification application on July 3, 2017, Mr. W reported \$500 a month in mortgage expenses.¹ This, combined with his other household income and expenses, resulted in a food stamp benefit of \$73 a month.

However, in August 2017 the division recalculated Mr. W's benefits, based on information that Mr. W's monthly mortgage obligation was only \$250 a month.² Using this figure, the division calculated that Mr. W's household was only entitled to \$19 a month in food stamp benefits.³ The division notified Mr. W that his food stamp benefits had been overpaid by a total of \$108 for the months of July and August 2017 due to inadvertent household error.⁴

¹ Division Exhibit 2, 2.3.

² Division Exhibit 3.

³ Division Exhibit 4.9.

⁴ Division Exhibit 4.

Mr. W testified that although his monthly mortgage obligation was only \$250, he was paying \$500 a month because a mortgage payment was returned, and he incurred overdraft fees and other related expenses.⁵ The division noted that he had been paying extra on his mortgage payments to catch up when it calculated that his food stamp benefits had been overpaid.⁶

A telephonic hearing was held on October 16, 2017. Mr. W represented himself. Sally Dial, a Public Assistance Analyst with the division, represented the division.

IV. 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.⁷

A. Excess shelter cost deduction

To calculate a household's food stamp benefits, the division first takes the household's income less a standard deduction. Then the division identifies the household's total monthly shelter costs, including rent or mortgage, insurance, property taxes, heat, and utilities. If monthly shelter costs exceed half of the household's total adjusted income, the division deducts the amount by which the shelter costs exceed half of the household income. This figure is used to determine eligibility for the food stamp program, and the household's food stamp benefit amount.⁸

The federal regulations governing the food stamp program offer a deduction for shelter costs that exceed half of a household's income after other deductions. However, the regulation also strictly limits what counts as a shelter cost. The regulation includes as a shelter cost "[c]ontinuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments."⁹

When he applied for recertification in July 2017, Mr. W reported to the division that he was paying \$500 a month on his mortgage.¹⁰ The division calculated his eligibility and benefit

⁵ Testimony of W. *See also* Division Exhibit 4.9.

⁶ Division Exhibit 4.9.

⁷ 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...") (emph. added).

⁸ *See* Exhibit 6 - 6.1.

⁹ Division Exhibit 8.2 (7 CFR 273.9(6)(ii)).

¹⁰ Exhibit 2, 2.3.

based on this, resulting in a food stamp benefit of \$73.¹¹ In August 2017, the division recalculated Mr. W's benefits, based on Mr. W's mortgage obligation of \$250 a month.¹²

Counting only the \$250 monthly mortgage obligation plus \$63 a month in property taxes and heat, Mr. W's shelter costs were less than half his total monthly income. With no deduction for excess shelter costs, the division calculated Mr. W's food stamp benefit at \$19 a month.¹³ When it made this calculation, the division erroneously found that Mr. W was no longer paying property taxes.¹⁴ However, in preparation for hearing, the division revised its calculations, correctly noting \$63.48 a month in property taxes paid by Mr. W. Nonetheless, the food stamp benefit under these revised calculations remained at \$19 a month.¹⁵

Although mortgage payments, including mortgage interest, are allowable shelter costs, the division's food stamp manual specifically disallows late fees and past due expenses previously billed from the shelter cost calculation.¹⁶ Mr. W's added mortgage costs, including the overdraft fee and additional amounts paid toward arrearages, were therefore correctly disallowed by the division. With no deduction for excess shelter costs, Mr. W was only entitled to \$19 a month in food stamp benefits for the months of July and August 2017. Consequently, Mr. W's benefits were overpaid by \$108.

B. Source of error and repayment obligation

In this case, the division attributed the overpayment to an "inadvertent household error," specifically Mr. W's report of the \$500 he was actually paying towards his mortgage obligation and associated costs, as opposed to the monthly principal and interest obligation of \$250. The term "inadvertent household error" refers to an overpayment "resulting from a misunderstanding or unintended error on the part of the household," as opposed to an overpayment "caused by an action or failure to take action by the State agency."¹⁷

At the hearing, Mr. W did not contest that his food stamp benefits were overpaid, and did not dispute that the agency had an obligation to recover the amount of the overpayment. Instead, he argued that money he was expecting from the state (apparently from one of the division's

¹¹ Exhibit 4.5.

¹² Exhibit 3.

¹³ Division Exhibit 4.6, 6 - 6.1.

¹⁴ Division Exhibit 4.

¹⁵ Division Exhibit 6 - 6.1, 7.

¹⁶ Division Exhibit 15.3 - 15.5 (Food Stamp Manual at 602-4 E(1)(c)).

¹⁷ Division Exhibit 9 (7 C.F.R. 273.18(b)).

other programs) was not timely deposited into his account. As a result, his mortgage payment was returned, and he incurred an extra \$230 in bank charges and fees which he then had to pay in cash. Thus, Mr. W argued that the overpayment of his food stamp benefits was caused by the state. Although he did not dispute the facts as presented by the division, he argued that under the circumstances, it was unfair to require him to repay the food stamp overpayment. Mr. W also argued that he does not have the money to repay the division for the food stamp overpayment.

The Alaska Supreme Court addressed the issue of fairness, federal policy, and food stamp overpayments in *Allen v. State*. 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.¹⁸

The Alaska Supreme Court recognized that the language of the federal statute and regulation require the division to collect an overpayment even if the division was at fault.¹⁹

Regardless whether the error was caused by the recipient or the agency (or both), federal law permits an agency to recoup the amount of the overpayment by withholding 10 dollars or 10 percent of the household's food stamp benefits per month, whichever is greater. A household may agree to withholding of a higher amount.²⁰ Mr. W is currently receiving food stamp benefits. At the hearing, he indicated that he did not oppose the reduction of his monthly food stamp benefit to repay the overpayment.²¹

¹⁸ *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155, 1164 (Alaska 2009).

¹⁹ *Id.* at 1163 (“The federal regulations implementing the Food Stamp Act also make clear that recoupment of overpayments to innocent households is required” and “the federal statutes and regulations implementing the food stamp program intend for state agencies to recoup food stamp overpayments from recipient households, whether the overpayments were caused by recipient fraud or entirely by agency error.”)

²⁰ 7 C.F.R. 273.18(g)(1)(iii). The allows for greater withholding in cases where there was an intentional program violation.

²¹ Testimony of W. *See also* Exhibit 4, indicating that the division “will automatically reduce your food stamp benefits by 10% or \$10, whichever is more and apply this to your overpayment balance.”

V. Conclusion

Mr. W’s food stamp benefits were overpaid by \$108 for the months of July and August 2017. Accordingly, the division’s decision to seek repayment of that amount is affirmed.

Dated: October 23, 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 8th day of November, 2017.

By: *Signed* _____
Name: Bride A. Seifert
Title: Administrative Law Judge

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