

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

In the Matter of	)	
	)	
M Q	)	OAH No. 17-1250-SNA
_____	)	Agency No.

**DECISION**

**I. Introduction**

M Q received food stamp benefits from the Division of Public Assistance. The division determined that it had overpaid Ms. Q’s benefits and notified Ms. Q the she must repay the overpayment. Ms. Q requested a hearing.

Because the division overpaid Ms. Q’s food stamp benefits by \$2,260, Ms. Q must repay that amount.

**II. Facts**

M Q is a single parent with four children, two of whom are in daycare.<sup>1</sup> She recently received a degree in engineering, and in August 2017 began work on a master’s degree in civil engineering at the No Name University.<sup>2</sup>

In June 2017, Ms. Q began working for Employer A as a student intern, a temporary summer position. Her internship paid \$20 an hour, and both Ms. Q and her employer anticipated that she would be working approximately 40 hours a week through the end of August.<sup>3</sup> Ms. Q informed the division of this change in her employment on July 7, 2017, providing a copy of her first paystub.<sup>4</sup> Ms. Q’s internship led to a permanent position as an engineer in training, which began in October 2017 at \$30 an hour for 30 hours a week. Ms. Q also reported this change in her employment to the division.<sup>5</sup>

The division did not act on Ms. Q’s July 2017 report of change until October 2017. Initially, when the case worker processed the report of change, the caseworker calculated Ms. Q’s total earnings incorrectly, counting only about half of her estimated monthly wages.<sup>6</sup> Still, the division found an overpayment and notified Ms. Q that she would need to repay the excess benefits. The division recognized its error and recalculated.<sup>7</sup> On November 22, 2017, the

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<sup>1</sup> Div. Ex. 1; Div. Ex. 13 (No Name Daycare August 2017 invoice).  
<sup>2</sup> Testimony of Q; Q January 22, 2018 email; 2<sup>nd</sup> letter of Appeal dated 11/29/17.  
<sup>3</sup> Div. Ex. 2.1, 2.4, 2.5.  
<sup>4</sup> Div. Ex. 2.1 - 2.6.  
<sup>5</sup> Q January 22, 2018 email; Div. Ex. 2.7, 2.8, 2.11.  
<sup>6</sup> Division Position Statement at 2; Div. Ex. 2.  
<sup>7</sup> Div. Ex. 4, 4.12.

division notified Ms. Q that her food stamp benefits for August 2017 through October 2017 had been overpaid by \$2,789. The division's notice attributed the overpayment to inadvertent agency error.<sup>8</sup> Ms. Q requested a fair hearing.

The hearing began on January 18, 2018 and continued January 23, 2018. Administrative Law Judge Bride Seifert presided over the hearing. Ms. Q represented herself. Fair Hearing Representative Sally Dial represented the division. The matter was reassigned to Administrative Law Judge Kathryn Kurtz, who listened to audio recordings of both hearing sessions and reviewed the hearing record (including the agency record as well as the supplemental materials provided by the parties).

### **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> The recipient must repay the overpayment regardless whether a program violation, a household error, or an agency error caused the overpayment.<sup>10</sup> Because the division is seeking to reduce the amount of Ms. Q's benefits, the division has the burden of proving the overpayment by a preponderance of the evidence.<sup>11</sup>

#### ***A. Did the division overpay Ms. Q's food stamp benefits for August, September, and October 2017?***

The division does not dispute that Ms. Q timely reported her change in income in July 2017, or that the division failed to process that report until October 2017. After the division took Ms. Q's employment at Employer A into account, it concluded that Ms. Q was not eligible for any food stamp benefits for the months of August, September, or October 2017. Unfortunately, it had already issued Ms. Q \$939 in benefits for August, \$939 for September, and \$911 for October. The division's November 22, 2017 notice sought recovery of all benefits paid for these three months, a total of \$2,789.<sup>12</sup> Ms. Q argued that the division had calculated the amount of the overpayment incorrectly. She also argued that under the circumstances, she should not be required to repay an amount greater than the balance remaining on her benefit card.

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<sup>8</sup> Div. Ex. 4.

<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...") (emph. added).

<sup>10</sup> Div. Ex. 10 (7 C.F.R. § 273.18).

<sup>11</sup> 7 AAC 49.135.

<sup>12</sup> Div. Ex. 4 - 4.12.

During the hearing process, Ms. Q provided additional information about her expected and actual earned income, child support payments received, child care expenses, housing costs, and utility payments.<sup>13</sup> After considering this information, the division recalculated, and concluded that Ms. Q was eligible for \$328 in food stamp benefits for August 2017.<sup>14</sup> However, the division maintained that Ms. Q's gross income exceeded the program limit during September and October 2017, making Ms. Q ineligible for benefits during those months.<sup>15</sup>

Food stamp benefits are based on a household's monthly income less allowable deductions. When a person applies for food stamps, the division estimates the person's household income going forward to determine eligibility. This process is prospective.<sup>16</sup> However, the division may rely on actual income figures (if available) to calculate overpayments.<sup>17</sup>

#### 1. Conversion factor

When the division initially calculated the amount of the overpayment, it used the wrong factor to convert Ms. Q's hourly wages to estimated monthly earnings. According to the division's food stamp manual, when a case worker causes an income error in a food stamp calculation by using the wrong conversion factor, the division remedies the error by applying the correct conversion factor and recalculating benefits.<sup>18</sup>

In October, when Ms. Q reported her permanent salaried position at Employer A to the division, the eligibility worker who spoke with her recalculated her eligibility for food stamps back to August to reflect Ms. Q's internship with Employer A. He noted that there had been an overpayment. Unfortunately, the eligibility worker multiplied Ms. Q's wages of \$20 an hour for 40 hours a week as a Employer A intern by an incorrect conversion factor (2.15 instead of 4.3) to translate this into estimated monthly earnings of \$1,720.<sup>19</sup> Ms. Q received a notice stating that she would have to repay \$1,067.<sup>20</sup> The division corrected this error before it issued the November 22, 2017 replacement notice of overpayment, using an estimated monthly earned income figure

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<sup>13</sup> Q January 22, 2018 email and attachments.

<sup>14</sup> Division January 23, 2018 email and attachments.

<sup>15</sup> See Div. Ex. 7 - 7.2; Argument of Dial at hearing.

<sup>16</sup> 7 AAC § 46.021(a)(48); 7 C.F.R. § 273.21(a)(2).

<sup>17</sup> Div. Ex. 11.1 (Alaska SNAP Manual § 607-1 A) (“[C]alculate the amount of the corrected benefit by adding the actual income . . . that was not included by the caseworker to the income already used in the budget. Do not include previously estimated income that was not actually received.”) See also *In re D.C.*, 16-1094-SNA at 4 (Commissioner of Health and Social Services 2016), available at <http://aws.state.ak.us/officeofadminhearings/Category.aspx?CatName=SNA>.

<sup>18</sup> Div. Ex. 11.2.

<sup>19</sup> Div. Ex. 2; Division Position Statement.

<sup>20</sup> Q Letter of Appeal dated 10/30/17 at 1.

for Ms. Q of \$3,440 to arrive at an overpayment of \$2,789.<sup>21</sup> For purposes of establishing the amount of the overpayment in the calculations underlying the November 22, 2017 notice, the division used the correct conversion factor. Nonetheless, Ms. Q argued that the division overestimated her income when it calculated the overpayment of her food stamp benefits.

## 2. Ms. Q's estimated income

When it calculated the amount of the overpayment for the November 22, 2017 notice, the division estimated Ms. Q's income at \$3,440 a month, based on 40 hours a week at \$20 an hour from the Employer A internship.<sup>22</sup> Ms. Q argued that this monthly income figure was too high, because Employer A only guaranteed her 32 hours of work per week at \$20 an hour, not 40 hours.<sup>23</sup> She submitted a letter from her employer noting that she worked on an "as required basis" as an intern.<sup>24</sup> However, when Ms. Q submitted the report of change in July, both she and Employer A expected that she would be working 40 hours a week.<sup>25</sup>

In Ms. Q's view, because she was employed as a temporary summer intern, her earnings should also have been averaged over a longer period of time, since she had no guarantee of continued employment.<sup>26</sup> However, although the division's food stamp manual provides a procedure for budgeting and annualizing seasonal self-employment income, it does not provide an analogous process for seasonal wages.<sup>27</sup> Furthermore, as it happened, Ms. Q's seasonal employment as a summer intern led to a permanent position with the same employer.

The division's estimate of Ms. Q's monthly earnings was reasonable given the information Ms. Q had provided.

## 3. August calculations

When the division originally calculated the amount of the overpayment, it used estimated earnings of \$3,440, and unearned income of \$701 for August, September, and October 2017.<sup>28</sup> The division recalculated the overpayment in preparation for the hearing, this time using the estimated earnings of \$3,440 and \$611.58 in unearned income, corresponding to the amount of

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<sup>21</sup> Div. Ex. 4 - 4.12.

<sup>22</sup> Div. Ex. 4.6 - 4.9.

<sup>23</sup> Q January 22, 2018 email.

<sup>24</sup> 8/3/17 Letter from Employer A, filed by Q January 22, 2018.

<sup>25</sup> Div. Ex. 2.4 and 2.5.

<sup>26</sup> See Ex. 2.4.

<sup>27</sup> See Food Stamp Manual 605-2.D.6 and 7.

<sup>28</sup> Div. Ex. 4.7 - 4.9.

child support Ms. Q actually received.<sup>29</sup> The resulting total gross monthly income of \$4,051.58 exceeded the \$3,853 program limit.<sup>30</sup>

However, the day before the hearing, Ms. Q furnished additional information, including paystubs showing her actual earnings. In August 2017, according to her paystubs from Employer A, Ms. Q earned \$3,200, less than the division's \$3,440 earnings estimate. The division recalculated Ms. Q's eligibility for benefits based on her actual earnings of \$3,200 and actual child support received of \$611.58. Together, this resulted in a gross monthly income figure of \$3,811.58, less than the program limit of \$3,853.

Based on this, the division went on to calculate Ms. Q's net income, subtracting an earned income deduction and standard deduction. The division subtracted \$521 in child care costs, the amount Ms. Q paid to No Name Daycare for care in August 2017.<sup>31</sup>

However, Ms. Q's actual child care expenses for August included a \$438 deposit paid to a new child care provider, Jane Doe, to secure care in September in addition to the \$521 to No Name Daycare for the month of August, a total of \$959.<sup>32</sup> She provided documentation to show that she paid No Name Daycare \$521 on August 4, 2017 for care in August 2017. She also provided invoices from Jane Doe showing payments of \$438 in August 2017 towards a two-week deposit.<sup>33</sup>

Federal regulation permits deduction of dependent care expenses as follows:

(4) Dependent care. Payments for dependent care when necessary for a household member to search for, accept or continue employment, comply with the employment and training requirements as specified under § 273.7(e), or attend training or pursue education that is preparatory to employment, except as provided in § 273.10(d)(1)(i). Costs that may be deducted are limited to the care of an individual for whom the household provides dependent care, including care of a child under the age of 18 or an incapacitated person of any age in need of care. The costs of care provided by a relative may be deducted so long as the relative providing care is not part of the same SNAP household as the child or dependent adult receiving care. Dependent care expenses must be separately identified, necessary to participate in the care arrangement, and not already paid by another source on behalf of the household. If a household incurs attendant care costs that could qualify under both the medical deduction of § 273.9(d)(3)(x) and dependent care deduction of § 273.9(d)(4), the costs may be deducted as a medical expense or a dependent care expense, but not both. Allowable dependent care costs include:

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<sup>29</sup> Div. Ex. 7 - 7.2; Child Support Services Division Audit Report Summary filed by Q January 22, 2018.

<sup>30</sup> Div. Ex. 7.

<sup>31</sup> Division January 23, 2018 email and attachments. Although the budget worksheet lists the \$521 as a child support deduction rather than a dependent care cost, this is obviously an error, and its placement on the wrong line of the form does not affect the calculation.

<sup>32</sup> Q "Letter of Appeal" dated 10/30/2017 at 2, filed by Q January 22, 2018.

<sup>33</sup> Q January 22, 2018 email and attachments.

- (i) The costs of care given by an individual care provider or care facility;
- (ii) Transportation costs to and from the care facility; and
- (iii) Activity or other fees associated with the care provided to the dependent that are necessary for the household to participate in the care.<sup>34</sup>

The deposit paid by Ms. Q in August for care in September appears to meet the three criteria specified in this regulation: it was separately identified, necessary to participate in the new care arrangement with Ms. Doe, and not already paid by another source on Ms. Q's behalf.

If the calculations for August 2017 were to be based on estimated income and expenses, the division's use of the \$521 deduction for child care expenses each month including August would be consistent. However, since the division has based the August calculation on actual earnings, it makes sense to consider actual child care costs as well, particularly under the unique factual circumstances of this case. As explained below, Ms. Q's gross income exceeded the limit for the month of September, so no child care deduction will be made for that month. However, nothing in the federal regulation precludes deducting actual child care expenses for the month of September 2017 that were paid in August 2017. Ms. Q should receive a child care deduction of \$959 for the month of August 2017, to reflect actual child care expenses paid.

Ms. Q also argued that the division did not give her the correct housing deduction.<sup>35</sup> The federal regulations governing the food stamp program offer a deduction for "excess 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."<sup>36</sup> Monthly shelter costs also include heat, and households with heating costs receive the "heating utility standard" specified in the Food Stamp Manual.<sup>37</sup> The division included Ms. Q's mortgage of \$960 and the standard utility deduction of \$578, instead of actual heating and electrical utility costs, in accordance with the Food Stamp Manual.<sup>38</sup> The division calculated Ms. Q's monthly shelter costs correctly.

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<sup>34</sup> 7 C.F.R. § 273.9(d)(4).

<sup>35</sup> Q "Letter of Appeal" dated 10/30/2017 at 2, filed January 22, 2018.

<sup>36</sup> Div. Ex. 9.12 (7 CFR 273.9(d)(6)(ii)).

<sup>37</sup> Alaska Food Stamp Manual Addendum 4, Program Standards and Maximum Allotments.

<sup>38</sup> See Alaska Food Stamp Manual 602-4 E.2.a. The heating utility standard of \$578 exceeds the \$382 in average actual fuel and electricity costs cited by Ms. Q in her 10/30/2017 letter of appeal.

The division's food stamp budget worksheet for August 2017 submitted to the record on January 23, 2018 should be adjusted accordingly, with a child support deduction of \$968 instead of \$521. Ms. Q's total adjusted income then becomes \$1,935.58. Half of that is \$967.79. Total monthly shelter costs of \$1,538 less half of total adjusted income in the amount of \$967.79 results in a deduction of \$570.21 for excess shelter costs, and a monthly net income of \$1,365.37. Multiplying the monthly net income by .3 to find the adjusted food stamp income yields \$409.61. The maximum allotment of \$939 for a family of five less the adjusted food stamp income yields a monthly food stamp benefit amount of \$529.

Ms. Q qualified for \$529 in food stamp benefits for August 2017. She received \$939. Her benefits for August 2017 were overpaid by \$410.

#### 4. September income

Ms. Q received an unexpected \$375 child support payment in September 2017, from an obligor with an erratic payment history. She argued that this should not be counted against her in the calculation of the food stamp overpayment, as she could not have anticipated receiving these funds and was unlikely to receive further payments from this obligor in the future.<sup>39</sup>

For the month of September, the division used the estimated earnings figure of \$3,440. To this it added the actual child support payments received by Ms. Q during the month of September, totaling \$986, rather than the \$611 Ms. Q expected to receive.<sup>40</sup> However, if the division had used estimated earnings of \$3,440 and estimated child support payments of \$611, the total gross income of \$4,051 would still exceed the \$3,853 program limit.

Furthermore, if the division had used actual wages and actual child support payments in its calculations, the calculations would again have shown that Ms. Q was not eligible for food stamp benefits. Ms. Q's paystubs show that she received \$4,430 from Employer A, and \$899 from the University in September, so her actual earnings were higher than the division's estimate.<sup>41</sup>

Regardless whether actual or estimated income figures are used, Ms. Q's total gross income for the month of September 2017 exceeds the food stamp program limit. The division correctly concluded that Ms. Q did not qualify for food stamps in September 2017. Therefore, her benefits were overpaid by \$939 for September 2017.

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<sup>39</sup> Child Support Services Division Audit Report Summary filed by Q January 22, 2018; Div. Ex. 2.6.

<sup>40</sup> Div. Ex. 7.1; Div. Ex. 2.6; Q January 22, 2018 email and attachments.

<sup>41</sup> Div. Ex. 2.9 - 2.10; Q January 22, 2018 email and attachments.

## 5. October income

At the January 23, 2018 hearing session, Ms. Q acknowledged that her benefits were overpaid in October 2017, and chose not to offer additional evidence about her actual income in that month.<sup>42</sup> The division presented evidence sufficient to support its conclusion that Ms. Q's gross income exceeded the program limit in October 2017. Because Ms. Q did not challenge the division's calculations for October or provide actual income information for October, the division's conclusion that Ms. Q was overpaid \$911 in food stamp benefits for the month of October 2017 should be upheld.

### **B. Is Ms. Q required to repay the overpayment?**

The division has shown that Ms. Q's food stamp benefits were overpaid by a total of \$2,260 for the months of August, September, and October 2017. The division seeks repayment. Ms. Q argues that she should not be required to repay the overpayment for reasons of fairness, estoppel, and policy.

First, Ms. Q argued that it was unfair to require her to repay the full amount because she provided a timely notice of change, and the division's failure to act on the notice caused the overpayment. She cited the division's failure to act according to its own 10/10/10 rule, requiring action on a report of change within 10 days of the report.<sup>43</sup> In addition, Ms. Q noted that she did not use the benefits issued to her in October 2017, following advice from the eligibility worker she spoke to in October that her benefit amounts for September and October might be adjusted.<sup>44</sup> The underlying suggestion is that the division should be estopped from collecting more against the overpayment than the amount remaining on the benefit card, because of what Ms. Q was told by the eligibility worker.

Equitable estoppel may apply in favor of a private party against a state agency if four elements are present: "(1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury."<sup>45</sup> Ms. Q has argued these elements in her case. However, the Alaska Supreme Court has considered and rejected the application of equitable estoppel in food stamp overpayment cases. In *Allen v. State*, two

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<sup>42</sup> Testimony of Q.

<sup>43</sup> Q January 22, 2018 email at 2.

<sup>44</sup> Q January 22, 2018 email attachment, 2d Letter of Appeal at 2.

<sup>45</sup> *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155, 1164 (Alaska 2009).



food stamp recipients received excess benefits due to agency error. The recipients argued that the doctrine of equitable estoppel should bar the division from recovering the overpayment, since they had relied on the division's eligibility determination. The court found that Alaska's doctrine of equitable estoppel conflicted with the congressional objective of recouping food stamp overpayments from recipients.<sup>46</sup> The court wrote:

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>47</sup>

The court recognized that the language of the federal statute and regulation require the division to collect an overpayment even where a division error caused the overpayment.<sup>48</sup> Thus, the fact that the division admitted that agency error caused the overpayment in this case does not affect Ms. Q's repayment obligation.

Ms. Q argued that it was poor policy to collect the overpayment in her case because she had chosen not to participate in the Temporary Assistance for Needy Families program. If she had enrolled in TANF, Ms. Q argues, it would have cost the state more in benefits payable to her, but the transitional benefits provided under the TANF program would have prevented the food stamp overpayment problem. Unfortunately, there is no exception to the repayment requirement under the food stamp program for recipients who voluntarily forego TANF benefits. The division is still required to attempt to recover the amount of the overpayment, even if the beneficiary may have saved the division money by not signing up for other benefits.

This decision upholds the division's overpayment finding reduced as discussed above. It does not prevent Ms. Q from seeking a compromise of the overpayment claim from the division. Federal regulations permit the division to compromise an overpayment claim if "it can be

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<sup>46</sup> *Allen v. State*, 203 P.3d 1155, 1162 - 1164 (Alaska 2009).

<sup>47</sup> *Id.* at 1164.

<sup>48</sup> *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.")

reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years."<sup>49</sup>

#### **IV. Conclusion**

Ms. Q's food stamp benefits for August, September, and October 2017 were overpaid by a total of \$2,260. The Division's decision that Ms. Q is required to repay the amount of the overpayment is affirmed.

DATED: March 4, 2017.

*Signed*  
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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 21<sup>st</sup> day of March, 2018.

By: *Signed*  
\_\_\_\_\_  
Name: Kathryn L. Kurtz  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>49</sup> Div. Ex. 10.4 (7 C.F.R. § 273.18(e)(7)).