

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

In the Matter of)
)
 M R) OAH No. 18-0092-SNA
) Agency No.
_____)

DECISION

I. Introduction

M R and her family received food stamp benefits from the Division of Public Assistance. Ms. R’s husband began a new job in May 2017, and Ms. R promptly reported this change to the division. However, the division did not process the report until November 2017. The division then notified Ms. R that it had overpaid her food stamp benefits for July, August, and September 2017. Ms. R requested a fair hearing.

Ms. R’s food stamp benefits were overpaid. Even though the overpayment was due to the division’s delay in processing Ms. R’s report of change, and not any fault on Ms. R’s part, the division is required under federal law to pursue the overpayment claim. The division’s establishment of a claim and repayment obligation in this case is upheld.

II. Facts

M R and her husband B R live together with two grandchildren. The grandchildren’s parents have waived their parental rights, and the Rs are in the process of adopting the grandchildren. Ms. R sought assistance from the division to help provide for the grandchildren.¹ The division provided food stamp and temporary assistance benefits.²

In April 2017, Ms. R completed a mandatory recertification application for the food stamp program, stating that she expected that her husband would be returning to work but she did not know the exact date he would start.³ On May 26, 2017, the division processed Ms. R’s recertification application, and recertified the family to receive food stamp benefits of \$640 a month.⁴ On May 30, 2017, the division received Ms. R’s report that her husband had returned to work at Company X on May 17, 2017.⁵ Ms. R provided a letter from Company X verifying Mr. R’s employment, hours, and hourly pay.⁶

¹ Testimony of R.
² Ex. 1.
³ Ex. 2.3.
⁴ Ex. 2.
⁵ Ex. 3.1.
⁶ Ex. 3.3.

Ms. R followed up on the report of change by providing copies of Mr. R's first two paystubs on June 13, 2017. Then, on June 23, 2017, she dropped off a copy of his June 15, 2017 paystub. She supplied additional paystubs in July 2017.⁷

Mr. R was laid off from his job at Company X on September 29, 2017. His employer wrote a letter verifying the layoff on October 9, 2017. The division received the letter on November 14, 2017, and also a copy of Mr. R's last paystub.⁸ That day, the division processed the May 2017 report that Mr. R had started work as well as the notice that he had been laid off. The division found that the R household's food stamp benefits had been overpaid in July, August, and September.⁹ On November 27, 2017, the division notified Ms. R that her household's food stamp benefits had been overpaid by \$1,920 due to agency error.¹⁰

Ms. R requested a fair hearing. The hearing was held on March 19, 2018. Ms. R represented herself. Fair Hearing Representative Sally Dial represented the division.

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 overpayment.¹¹ Because the division seeks to reduce Ms. R's food stamp benefits in this case, the division bears the burden of proof by a preponderance of the evidence.¹²

The problem in this case occurred because the division was notified of Mr. R's employment in May 2017, but did not process the report of change until November 2017, after Mr. R had been laid off. Ms. R did not dispute the accuracy of the division's overpayment calculations. Rather, she argued that she should not be held responsible for the overpayment in this case, because she did everything she was supposed to do but the division delayed in processing the report of change and gave her contradictory information.

The evidence shows that Ms. R was very conscientious and prompt about informing the division of changes in her household's income. She told the division on the

⁷ Ex. 3.5 - 3.9.

⁸ Ex. 3.10 - 3.11.

⁹ Ex. 3. The division also noted that the household had been paid less in benefits than it was entitled to for the month of October, 2017. Ex. 4.13 - 4.14.

¹⁰ Ex. 4 - 4.1.

¹¹ 7 U.S.C. § 2022(b)(1) (the "state agency shall collect any overissuance of benefits issued to a household"); Ex. 7 (7 C.F.R. § 273.18(a)(2) ("the state agency must establish and collect any claim")).

¹² 7 AAC § 49.135.

recertification application that she was expecting a change in the household's income when Mr. R went back to work. She notified the division when Mr. R went back to work. Mr. R's employer verified Mr. R's employment, and the Rs provided copies of several paystubs. The division admitted that the overpayment was due to agency error, specifically a delay in processing due to a backlog.¹³ Had the division promptly responded to the information Ms. R provided about Mr. R's employment, the overpayment would not have occurred.

However, federal law requires the division to pursue an overpayment claim even where the overpayment was caused by "an action or failure to take action by the State agency."¹⁴ The Alaska Supreme Court confirmed this in *Allen v. State*.¹⁵ In that case, two food stamp recipients received excess benefits due to agency error. The court in that case recognized that the federal law may raise a concern about fairness, but found that Congress had already taken this concern into account in shaping the policy behind the regulation:

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 Department of Health and Social Services, and support the division's conclusion that it is required to pursue a claim for the overpayment in this case, even though it caused the overpayment.

Ms. R also argued that she should not be required to repay the overpayment because she was given inconsistent and incorrect information by the division about her benefits. The two programs Ms. R's family participated in have different rules. The temporary assistance program is a state program, and it provides cash assistance for dependent children living with relatives who care for them.¹⁷ Sometimes the temporary assistance benefits for children are paid in lieu of child support.¹⁸

Alaska law establishes a repayment obligation under the temporary assistance program where a participant receives assistance the participant was not entitled to "because

¹³ Testimony of Dial.

¹⁴ Ex. 7 (7 C.F.R. § 273.18(b)(3)).

¹⁵ 203 P.3d 1155 (Alaska 2009).

¹⁶ *Id.* at 1164 (footnotes omitted).

¹⁷ AS 47.27.025.

¹⁸ Testimony of Dial.

the information provided by the applicant or participant was inaccurate or incomplete.”¹⁹ This standard holds participants responsible for inaccurate or incomplete information they provide, rather than division error. However, this standard only applies to the temporary assistance program, not the federally-funded food stamp program. If the division provided confusing or inconsistent information regarding repayment obligations under the two programs, as Ms. R asserts, it still does not change the federal overpayment rules the division is required to apply in Ms. R’s food stamp overpayment case.

The rules for the temporary assistance and food stamp programs differ. Because the division did not timely process the report of change, Ms. R’s food stamp benefits were overpaid. The division is required under federal law to pursue a claim for the overpayment of food stamp benefits to Ms. R’s household even though it was the division’s delay that caused the overpayment.

IV. Conclusion

The division has shown that Ms. R’s food stamp benefits were overpaid. Therefore, the division’s decision that Ms. R’s food stamp benefits were overpaid is upheld. However, nothing in this decision prevents Ms. R from requesting that the benefit issuance and recovery unit of the division compromise the claim.²⁰

Dated: March 22, 2018.

Signed _____

Kathryn L. Kurtz
Administrative Law Judge

¹⁹ AS 47.27.085(c).

²⁰ See Ex. 4.1.

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 6th day of April, 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.]