

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

In the Matter of)
)
D Q) OAH No. 18-0195-SNA
) Agency No.
_____)

DECISION

I. Introduction

D Q received food stamp benefits from the Division of Public Assistance. The division notified Mr. Q that it had overpaid his food stamp benefits by \$1,723 for August 2017 through December 2017 because it had not timely processed his report of change notifying the division of his award of social security disability insurance benefits. The division found Mr. Q liable for repayment of \$1,723. Mr. Q's authorized representative E Q requested a fair hearing on Mr. Q's behalf. The division subsequently compromised the overpayment claim, reducing the amount it seeks to collect from Mr. Q to \$360.

Mr. Q's food stamp benefits were overpaid due to agency error. Because the agency has an obligation to recoup overpayments regardless of fault, the division's decision to recover from Mr. Q the overpayment claim as compromised to \$360 is upheld.

II. Facts

D Q is 30 years old.¹ About two years ago he began having focal seizures. These and two subsequent brain surgeries have left him disabled. E Q, Mr. Q's mother and authorized representative, has assisted Mr. Q with the process of obtaining public assistance and social security benefits.²

Mr. Q began receiving food stamp and interim assistance benefits from the division in July 2016.³ He also applied for social security disability benefits. The Social Security Administration found that Mr. Q became disabled in November 2015, and was entitled to social security disability insurance benefits (SSDI) starting April 2016. Mr. Q's monthly benefits are \$1,226. A copy of the notice from the Social Security Administration to Mr. Q was filed with the division in July 2017.⁴ Also in July 2017, Mr. Q reported the addition of his daughter B to his household.⁵ B receives \$625 a month in social security benefits.

¹ Ex. 1.
² Testimony of E. Q.
³ Ex. 1.
⁴ Ex. 2.4.
⁵ Ex. 2.1 - 2.3.

In response to Mr. Q's report of change, the division added B to the household and increased Mr. Q's monthly food stamp benefits from \$233 a month to \$419 a month.⁶ However, the division failed to adjust Mr. Q's food stamp benefits to reflect the increase in his income. When the division found its error, in December 2017, it recalculated Mr. Q's benefit entitlement for August through December 2017. The recalculation showed that Mr. Q was not eligible for any food stamp benefits during that period and that his benefits had been overpaid by \$1,723.⁷

A hearing was held on March 14, 2018. E Q represented Mr. Q. 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.⁸ Because the division seeks to reduce Mr. Q's food stamp benefits in this case, the division bears the burden of proof by a preponderance of the evidence.⁹

The problem in this case occurred because after Mr. Q reported his social security benefits to the division in July 2017, the division did not adjust his food stamp benefits until January 2018. Furthermore, the division increased Mr. Q's food stamp benefits to reflect the addition of his daughter to his household, without adjusting the household's income to reflect her social security benefits.

Ms. Q did not dispute the accuracy of the division's overpayment calculations. Rather, Ms. Q argued that Mr. Q should not be held responsible for the overpayment in this case, because he provided timely notice of the change in his income and household composition. Had the division promptly responded to the information Mr. Q provided, 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."¹⁰

The Alaska Supreme Court confirmed this in *Allen v. State*.¹¹ In that case, two food stamp recipients received excess benefits due to agency error. The court in that case recognized

⁶ Ex. 2.

⁷ Ex. 3.

⁸ 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").

⁹ 7 AAC § 49.135.

¹⁰ Ex. 7 (7 C.F.R. § 273.18(b)(3)).

¹¹ 203 P.3d 1155 (Alaska 2009).

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.¹²

The federal regulations and the *Allen* decision are binding on the Department of Health and Social Services.

The division is required to attempt to recover the overpayment of benefits to Mr. Q, even though it was the division's delay that caused the overpayment. In this case, the division has already compromised the claim against Mr. Q, reducing it from \$1,723, the amount of the overpayment, to \$360, the amount it can collect by withholding \$10 in food stamp benefits from Mr. Q's allotment each month for the next three years.

IV. Conclusion

The division has shown that Mr. Q's food stamp benefits were overpaid. It has also already compromised its claim against Mr. Q, reducing it to \$360. The division's decision that Mr. Q's food stamp benefits were overpaid is upheld. Mr. Q's repayment obligation is limited to \$360, in accordance with the division's compromise of the claim.

Dated: March 22, 2018.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

¹² *Id.* at 1164 (footnotes omitted).

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

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