

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

In the Matter of  <div style="text-align: center; width: 100px; margin-left: auto;">T J</div> <hr style="width: 300px; margin-left: 0;"/>	) ) ) ) ) ) ) ) )	OAH No. 13-0660-CMB Division No.
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**DECISION**

**I. Introduction**

T J is a Food Stamp<sup>1</sup> and Temporary Assistance recipient. The Division of Public Assistance (Division) sent her notice that she had received \$2,872 more in Food Stamp benefits and \$1,632 in Temporary Assistance benefits than she was entitled to receive, and that she was required to repay those amounts. Ms. J requested a hearing.

Ms. J’s hearing was held on June 4, 2013. She represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division.

Because Ms. J received \$1,632 more in Temporary Assistance benefits than she should have, the Division’s decision to require her to repay that amount is affirmed. Ms. J also received more Food Stamp benefits than she should have, and she is required to repay those. However, the Division is to recalculate the amount of the overpaid Food Stamp benefits as discussed below.

**II. Facts**

The following facts were established by a preponderance of the evidence.

Ms. J has been receiving Food Stamp and Temporary Assistance benefits since at least May 2011.<sup>2</sup> Ms. J has three minor children. She shares custody of two of those children with her ex-husband. On March 12, 2012, the trial court issued a custody order that gave Ms. J extended summer visitation with her and her ex-husband’s two children for all but two weeks each summer. Ms. J provided the Division with a copy of that order on March 13, 2012.<sup>3</sup>

The Division provided Ms. J with Food Stamp benefits for a four person household, which included Ms. J, her separate child, and her two children for whom she had shared custody, for eight months when the two shared children were not in her household, May 2012 and September 2012

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<sup>1</sup> Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). However, the program is still commonly referred to as the Food Stamp program.  
<sup>2</sup> Ex. 1.  
<sup>3</sup> Exs. 2.1 – 2.6.

through March 2013.<sup>4</sup> Similarly, the Division provided her with Temporary Assistance benefits, for a four person household, when there were only two persons in her household, during those same eight months.<sup>5</sup>

The Division calculated that the inclusion of the two shared children in her household caused Ms. J to be overpaid \$1,632 in Temporary Assistance benefits.<sup>6</sup> The Division similarly calculated that Ms. J received \$2,872 in Food Stamps, which she should not have received.<sup>7</sup> The period of time involved consists of May 2012, and September 2012 through March 2013, a total of eight months. The Division did not claim that Ms. J was at fault, and acknowledges that the overpayments resulted from the Division's failure to follow up on information that was available to it.<sup>8</sup>

Ms. J received \$1,025 in Temporary Assistance benefits during each of the eight relevant months.<sup>9</sup> This was the maximum Temporary Assistance benefits a four person household could receive.<sup>10</sup> When the Division recalculated those benefits, it determined she should have received \$821 per month, which is the maximum a two person household could receive. The difference of \$204 per month, for eight months, comes to a total of \$1,632.<sup>11</sup>

The Division's calculations for the Food Stamp benefits Ms. J should have received for a household of two persons, rather than four, were based upon Ms. J having \$1,025 in monthly Temporary Assistance income, \$-0- in earned income for May, September, and October 2012 with \$60 in self-employment income for November 2012 through March 3012, monthly rent of \$950 for May and September 2012 through January 2013, and standard deductions for electricity and telephone. Monthly rent was counted at \$1,000 beginning with February 2013.<sup>12</sup> However, Ms. J's rent was raised to \$1,000 per month beginning in July 2012.<sup>13</sup> There were apparently notice problems from the property management company that resulted in Ms. J reporting on two public assistance renewal applications that her rent was only \$950 per month after July 2012. However, Ms. J found out about the rent change in December 2012 when she was provided an eviction notice. She has been on a

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<sup>4</sup> Ex. 2.8.

<sup>5</sup> Ex. 2.7.

<sup>6</sup> Ex. 2.48.

<sup>7</sup> Ex. 2.70.

<sup>8</sup> Exs. 2.48, 2.70.

<sup>9</sup> Ex. 2.7.

<sup>10</sup> 7 AAC 45.523(a)(1); *Alaska Temporary Assistance Manual Addendum 2*.

<sup>11</sup> Exs. 2.7, 2.38,

<sup>12</sup> Exs. 2.13, 2.15, 2.19, 2.24, 2.33 – 2.34, 2.62 – 2.66.

<sup>13</sup> J testimony; Ex. A, p. 1.

payment plan to catch up on the rent arrears.<sup>14</sup> She notified the Division of her rent increase on January 11, 2013, which would have been shortly after she found out about the retroactive rent increase.<sup>15</sup> Additionally, Ms. J's self-employment income was derived from a short-lived attempt to start a home cleaning business. On November 9, 2012, she notified a Division Eligibility Technician that she made \$60 in September, and \$120 in October, and expected to make the same amount in November and December. The Division counted her net self-employment income at \$60 per month beginning in November.<sup>16</sup> Ms. J, however, did not continue in her self-employed cleaning business beyond November 2012.<sup>17</sup> Regardless, there is no evidence in the record that she informed the Division that she was no longer self-employed. It is therefore more likely true than not true that Ms. J did not inform the Division that she stopped earning self-employment income.

### **III. Discussion**

#### *A. Temporary Assistance Program*

The Temporary Assistance Program provides a monthly cash payment to eligible families with minor children. The amount of the monthly payment is dependent upon the eligible family's financial situation (income, etc.) and the household size.<sup>18</sup> \$821 is the maximum monthly payment a household of two persons could possibly receive, assuming no income and maximum allowable deductions.<sup>19</sup> It is undisputed that Ms. J had only two persons in her household during the relevant months, yet she received the maximum benefit available for a four person household - \$1,025. The Division agrees that she was entitled to the maximum payment for a two person household, \$821, during each of the relevant months. As a consequence, Ms. J was overpaid by \$204 during each of the relevant eight months, for a total overpayment of \$1,632.

Ms. J argued that she should not be responsible for repaying the Division for its overpayment because the overpayment was caused by the Division's error, not hers. The applicable Temporary Assistance regulation, 7 AAC 45.570(a), requires the Division to pursue collection of an overpayment caused by its own error, when the overpayment exceeds \$100. The amount of the

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<sup>14</sup> J testimony.

<sup>15</sup> Ex. A, pp. 2 – 3.

<sup>16</sup> Ex. 2.28.

<sup>17</sup> J testimony.

<sup>18</sup> 7 AAC 45.525.

<sup>19</sup> 7 AAC 45.523(a)(1); *Alaska Temporary Assistance Manual Addendum 2*.

overpayment in this case, \$1,632, clearly exceeds \$100. The Division is therefore required to pursue collection and Ms. J is required to pay the Division the overpaid amount.<sup>20</sup>

*B. Food Stamps*

The Food Stamp program is a federal program administered by the State.<sup>21</sup> The Code of Federal Regulations (C.F.R.) contains the rules for determining a household's monthly Food Stamp payment. Food Stamp benefit amounts are calculated based upon the monthly income, after applicable deductions, received by all household members, and upon the number of people living in the household.<sup>22</sup>

As an initial matter, it must be noted that it is undisputed that Ms. J received benefits for a four person household when she should have only received them for a two person household. Consequently, it is undisputed that she was overpaid Food Stamp benefits. Ms. J argued that she should not have to repay the Division because its own error had caused the overpayment. The federal regulations are clear that the Food Stamp Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.<sup>23</sup> This is true even when the overpayment is caused by the Division's error.<sup>24</sup> Adult members of the Food Stamp recipient's household are the persons responsible for repaying overpaid Food Stamp benefits.<sup>25</sup> As a matter of law, Ms. J was overpaid Food Stamp benefits and is required to repay those benefits to the Division, regardless of the fact she was not at fault and the overpayment was caused by the Division's error.

The Division's calculations of Ms. J's overpaid Food Stamp benefits were based upon her income, her household size of two persons, and her shelter (housing) expenses. It is undisputed that Ms. J had monthly Temporary Assistance income of \$1,025 during each of the eight relevant months. The Division's calculations show two items in dispute. Ms. J proved that her rent increased from \$950 to \$1,000 beginning in July 2012, and the Division's calculations only provide her with that rent increase effective February 2013. In addition, the Division continued to count Ms. J as having \$60 in monthly self-employment income for November 2012 forward, when Ms. J's uncontested testimony showed that she did not continue on in her cleaning business beyond November.

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<sup>20</sup> 7 AAC 45.570.

<sup>21</sup> 7 C.F.R. § 271.4(a).

<sup>22</sup> 7 C.F.R. § 273.10(e)(2)(ii)(A).

<sup>23</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

<sup>24</sup> 7 C.F.R. § 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166(Alaska, 2009)

<sup>25</sup> 7 C.F.R. § 273.18(a)(4)(i).

The facts show that the Division was not informed about Ms. J stopping her cleaning business. The facts also show that the Division was not informed about Ms. J's July 2012 rent increase to \$1,000 until January 11, 2013. However, the effectively retroactive rent increase explains that delay. In repayment cases, the Division is required to "determine the correct amount of benefits for each month that a household received an overpayment" and then "subtract the correct amount of benefits from the benefits actually received" to arrive at the overpayment amount.<sup>26</sup> In determining public assistance benefits, when a recipient requests a hearing, the Administrative Law Judge "considers all evidence available at the time of the hearing that bears on the circumstances that existed at the time of the decision under review," even when those facts were not known to the agency at the time of its decision.<sup>27</sup> Therefore in order to follow the regulatory mandate that the Division determine the "correct" amount of benefits that Ms. J should have received, it is necessary to take into account Ms. J's actual income and expenses during the relevant months, regardless of the fact that Ms. J did not inform the Division of those income and expense items at the time in question.

There is no question that Ms. J was overpaid because she received Food Stamp benefits for a four person household when she should have received them for a two person household. However, given the information adduced during the hearing, the Division's calculations of the overpaid amount must be recalculated. The changes are that she only had self-employment income of \$60 for November 2012 and none thereafter, and that her rent changed to \$1,000 effective July 1, 2012. Other than those changes, the Division is to use the same Temporary Assistance income amount and the standard electric and telephone deductions.

#### **IV. Conclusion**

The Division's decision to require Ms. J to repay the Division in overpaid Food Stamp and Temporary Assistance benefits is affirmed. The amount of Temporary Assistance she is required to repay is \$1,632. However, the Food Stamp overpayment amount must be recalculated, to take into

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<sup>26</sup> 7 C.F.R. § 273.18(c)(1)(ii)(A) and (C).

<sup>27</sup> *In the Matter of V. D. M.*, OAH Case No. 12-0612-MDE, p. 2 (Office of Administrative Hearings 2012) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE120612.pdf>); *See Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M.App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); *see also* 42 C.F.R. § 431.242(c), (e); *cf. Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind.App. 2010) (noting limits on scope of *de novo* inquiry).

account her rent increase from \$950 to \$1,000 beginning on July 1, 2012, and the fact that she only had self-employment income of \$60 for one month, November 2012.

DATED this 27<sup>th</sup> day of June, 2013.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
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 11<sup>th</sup> day of July, 2013.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge, DOA/OAH

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