

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

In the Matter of)	
)	
B Q)	OAH No. 14-0972-CMB
_____)	Agency No.

DECISION

I. Introduction

B Q received Alaska Temporary Assistance (ATAP) and Food Stamps benefits beginning in December of 2013. In June of 2014, the Division of Public Assistance (Division) notified her that, due to agency error, she had been paid \$1,971 more in ATAP benefits and \$702 more in Food Stamps than her household was entitled to receive, and that she was required to repay that amount. She requested a hearing on both matters, and the cases were consolidated.

After a delay caused by the agency, Ms. Q’s hearing took place on August 20, 2014. She represented herself and testified on her own behalf. Public Assistance Analyst Jeff Miller represented the Division.

The process of preparing for the hearing caused the agency to recalculate the amount of the overpayments, resulting in a dramatically reduced recoupment claim. Ms. Q continued to contest the matter. At the hearing she showed that she had been scrupulous about meeting her own obligations to report income and employment, and that the overpayment was the result of Division errors that she could not have been expected to identify or correct. However, because Ms. Q did receive an overpayment, the Division’s decision requiring repayment must be affirmed. For purposes of the requirement to repay, the reason for the overpayment is immaterial.

II. Facts

No facts are in dispute in this case. B Q applied for ATAP and Food Stamps benefits for her household on December 12, 2013.¹ She disclosed full-time employment with No Name.

Ms. Q fulfilled all of her obligations with regard to reporting income, but the agency miscalculated the monthly income amount and therefore miscalculated the benefits payable to the household. In May, the agency recognized that it had made an error, but regrettably there was a further miscalculation that greatly overestimated the size of the error. Ms. Q was asked to repay a

¹ Ex. 2.

total of \$2,673, consisting of \$1,971 to the ATAP program and \$702 to the Food Stamps program.²

Fortunately, Ms. Q appealed. In preparing for the hearing, Division representative Jeff Miller discovered the second miscalculation. He reduced the recoupment claim to \$1,116, consisting of \$851 in ATAP overpayments and \$265 in Food Stamps overpayments.³ His calculation is set out in detail in the revised position statement he supplied to Ms. Q.

At the hearing, Ms. Q did not challenge the revised calculation.

III. Discussion

Ms. Q does not dispute—and it is now clear—that an agency error caused the agency to pay her \$1,116 in benefits to which she was not legally entitled. She expresses frustration with the agency errors that created this situation, and advocates that the agency should be required to live by its own initial miscalculation.

This is not possible. First, as to ATAP, the department’s administration of the program is governed by the department’s regulations. Regulation 7 AAC 45.570(a) provides:

Except as provided in (k) of this section, the department will pursue collection from . . . a former recipient of ATAP . . . benefits who received an overpayment, *regardless of the amount or cause of the overpayment*, unless the overpayment was caused by the department, in which case the department will pursue collection only if the overpayment exceeds \$100.⁴

The referenced exception in (k) is not within the scope of this case.⁵ The amount of the overpayment exceeds \$100. Thus, the department must recover from Ms. Q “regardless of the . . . cause” of the erroneous payments.

The same is true of the overpaid Food Stamps benefits. Food Stamp benefits are governed by federal law. The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C. §2022. Subsection (b)(1) of that statute provides in relevant part that the “state agency *shall* collect any overissuance of benefits issued to a household” [emphasis added]. This statute requires, on its face, that the division attempt to recover overpaid Food Stamp benefits.

² See Ex. 11, 22.

³ Revised Fair Hearing Position Statement, filed July 24, 2014.

⁴ Only the relevant portion of the provision has been quoted. The italics have been added.

⁵ The exception discusses (i) forbearance when collection efforts cease to be cost-effective and (ii) a ten-percent limitation on benefit reductions to collect amounts owed by a recipient. 7 AAC 45.570(k).

The federal implementing regulation pertaining to the recoupment of Food Stamp benefits is 7 C.F.R. §273.18. Subsection (a)(2) of that regulation provides in relevant part that “the State agency *must* establish and collect any claim” Subsection (e)(1) of that regulation also provides in relevant part that “state agencies *must* begin collection action *on all claims*” Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, federal law requires the department to attempt to recover overpaid Food Stamp benefits, even if the overpayment is the result of the agency’s own error.

The no-fault rule in recovering overpaid public benefits has been confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*.⁶ In that case, after holding that federal law required the state to pursue repayment of all overpaid Food Stamp benefits, the court observed:

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.^[7]

Likewise, the ATAP program has been designed with a policy choice to require wrongly-distributed benefits to be returned to the program, subject to certain limitations that do not apply to Ms. Q.

IV. Conclusion

The Division's decision, as revised, to seek recovery of the \$851 in Temporary Assistance and \$265 in Food Stamps benefits which were overpaid to Ms. Q between December 2013 and June 2014, is affirmed.

DATED this 30th day of November, 2014.

Signed

Andrew M. Lebo
Administrative Law Judge

⁶ 203 P.3d 1155 (Alaska 2009).

⁷ *Id.* at 1164 (footnotes omitted). *Allen* held that Alaska common law regarding estoppel against the government would have to yield to federal preemption in the context of Food Stamps. There would be no such preemption of estoppel in an ATAP case. However, Ms. Q falls short of establishing the elements of estoppel, which require considerably more than a governmental error. *Cf. In re C.G.*, OAH No. 13-0119-MDE (Comm’r of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE130119.pdf>).

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 16th day of December, 2014.

By: *Signed* _____
Name: Andrew M. Lebo
Title: Administrative Law Judge

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