

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

In the Matter of: )  
 )  
 Q M ) OAH No. 14-1720-CMB  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

Q M receives Social Security, Adult Public Assistance (APA), and Food Stamp benefits.<sup>1</sup> In August 2014 Mr. M's Social Security benefits increased. In response, the Division of Public Assistance (DPA or Division) reduced Mr. M's APA and Food Stamp benefits. Mr. M requested a hearing, which was held on November 14, 2014. Mr. M attended the hearing in person, represented himself, and testified on his own behalf. The Division was represented at hearing by Public Assistance Analyst Jeff Miller, who participated by phone.

Mr. M does not claim that the Division improperly calculated the amount of his APA or Food Stamp benefits. Rather, he argues that the benefits are insufficient for him to meet his needs. However, the amount of a recipient's APA and Food Stamp benefits are based on formulas, dictated by applicable regulations, which neither the Division nor the administrative law judge may disregard. The Division correctly applied the relevant formula when it determined the amount of Mr. M's APA benefits. However, an error was made in the calculation of Mr. M's Food Stamp benefits. Accordingly, the Division's determination is affirmed in part and reversed in part.

**II. Facts**

Q M resides in an apartment by himself.<sup>2</sup> He began receiving disability benefits from the Social Security Administration (SSA) in 2010, based on a disability that has existed since 2009.<sup>3</sup> He subsequently applied for and began receiving APA and Food Stamp benefits. As of August 2011, in addition to his Social Security benefit, Mr. M was eligible for a monthly APA benefit of \$256.00,<sup>4</sup> and a monthly Food Stamp benefit of \$27.00.<sup>5</sup> Because he was unable to subsist on these

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246, Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutritional Assistance program ("SNAP"). This decision follows the common usage of referring to SNAP as the Food Stamp program.

<sup>2</sup> *See* Ex. 6.2; Ex. 7; Ex. 9.

<sup>3</sup> *See* Ex. 4.

<sup>4</sup> Ex. 7.1.

benefits, Mr. M returned to work in 2012 for a period of time, but his condition worsened and he was unable to continue working.<sup>6</sup> As of March 2014, Mr. M was eligible for a gross monthly Social Security benefit of \$855.90,<sup>7</sup> APA in the amount of \$248.00 per month,<sup>8</sup> and Food Stamp benefits in the amount of \$73.00 per month.<sup>9</sup> At that time, Mr. M was eligible for a total of approximately \$1,176.90 per month in public assistance benefits (\$855.90 plus \$248.00 plus \$73.00 equals \$1,176.90). In addition, the State of Alaska was paying Mr. M's monthly Medicare insurance premium (\$104.90).

In April 2014 the Social Security Administration began withholding all of Mr. M's disability payments, to make up for an earlier overpayment.<sup>10</sup> With the loss of income from the Social Security Administration, Mr. M's Food Stamp benefit was increased to \$226.00 per month,<sup>11</sup> but his APA benefit remained at \$248.00 per month.<sup>12</sup> Thus, for several months Mr. M received a total of only \$474.00 per month in public assistance benefits (\$226.00 plus \$248.00 equals \$474.00). This was \$702.90 less than Mr. M had previously received each month.

In July 2014 the Social Security Administration notified Mr. M that, effective in August 2014, it would resume payment of his full disability benefits, less his Medicare Part B insurance premium (gross benefit amount of \$911.90, minus the Medicare Part B insurance premium of \$104.90, equals a net payment of \$807.00).<sup>13</sup> Mr. M provided a copy of the Social Security Administration's notice to the Division. The Division then recalculated Mr. M's APA and Food Stamp benefits. However, the Division based its new calculations on the figures shown in the Division's computer interface with the Social Security Administration, rather than on the figures contained in the Social Security Administration's notice. The computer interface showed that, in September 2014, Mr. M would be paid a Social Security benefit of \$911.90.<sup>14</sup> The Division

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<sup>5</sup> Ex. 8.1. The Division reduced the payment to Mr. M by \$10.00 per month, to \$17.00 per month, to recoup an earlier overpayment. *Id.*; J. Miller testimony.

<sup>6</sup> See P. M testimony; Ex. 7.1, 8.1.

<sup>7</sup> See Ex. 2. Presumably, this figure includes \$104.90 that was being paid for Mr. M's Medicare insurance premium. See also, Ex. 7.1 (showing net countable income, for APA purposes, of \$855.00). According to Exhibit 4, Mr. M was eligible for a gross payment of \$927.00 per month at that time. See Ex. 4.

<sup>8</sup> See Ex. 7.1.

<sup>9</sup> See Ex. 8.1. The Division continued to reduce the payment to Mr. M by \$10.00 per month, to \$63.00 per month, to recoup the prior overpayment. *Id.*; J. Miller testimony.

<sup>10</sup> See Ex. 2.

<sup>11</sup> Ex. 8.1. The Division reduced the payment to Mr. M by \$23.00 per month, beginning in June 2014, to recoup the prior overpayment. *Id.*; J. Miller testimony. Pursuant to 7 AAC §273.9(b)(5), income for purposes of the Food Stamp program does not include an amount withheld from an assistance program or other income source "to repay a prior overpayment from that income source."

<sup>12</sup> Ex. 7.1.

<sup>13</sup> See Ex. 3.1.

<sup>14</sup> Ex. 7.

calculated Mr. M's APA benefit as \$191.00 per month and his Food Stamp benefit as \$71.00 per month (increasing to \$75.00 per month in October 2014).<sup>15</sup> With these changes, Mr. M would receive a total of \$1,174.00 in public assistance benefits in September 2014, increasing to \$1,178.00 per month in October 2014 (\$912.00 plus \$191.00 plus \$71.00 equals \$1,174.00).

The Division notified Mr. M of the changes in his APA and Food Stamp benefits on August 6, 2014.<sup>16</sup> On August 18, 2014 Mr. M hand delivered an appeal to one of the Division's offices in Anchorage.<sup>17</sup>

In November 2014 the Social Security Administration notified Mr. M that it would refund to him \$1,049.00, representing the amount it had deducted from his Social Security benefit payments for Medicare Part B insurance premiums over the last ten months (*i.e.* \$104.90 per month from February 2014 - November 2014). SSA's deductions were duplicative because the State of Alaska had been paying Mr. M's Medicare Part B insurance premiums during that period.<sup>18</sup>

### **III. Discussion**

#### **A. The Timeliness of Mr. M's Hearing Request**

The Division's regulations require that an APA appeal be filed within 30 days of the date the Division notifies the applicant of a change in the benefit amount. Prior to the hearing, the Division asserted that Mr. M had not filed his APA appeal within 30 days of August 6, 2014 (the date on which Mr. M was notified of the changes), and asked that Mr. M's appeal be dismissed. At the hearing, Mr. M testified that he hand delivered his letter of appeal (hearing request) to the Division's Anchorage office on August 18, 2014. His testimony was detailed and persuasive, and he provided a copy of the letter that he testified he had delivered. Based on Mr. M's testimony and the other evidence in the record, the undersigned finds that Mr. M's APA appeal was timely filed.

#### **B. Amount of Benefits**

Mr. M did not assert that the Division incorrectly calculated his benefits. Rather, because Mr. M is in financial distress, he asked for additional assistance to accommodate his needs. Mr. M's financial situation worsened for several months when, due to prior overpayments, his Social Security benefits were cut off. Fortunately, those benefits have now resumed. In any event, the Division does not have legal authority to provide APA or Food Stamps benefits in excess of the

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<sup>15</sup> See Ex. 7.1, 8.1.

<sup>16</sup> See Ex. A; Ex. 5-5.1.

<sup>17</sup> P. M Testimony. See Ex. A.

<sup>18</sup> Ex. 4; Supp. Ex.

amount as determined by law.<sup>19</sup> The undersigned likewise has no such authority. Thus, the only issue to be determined is whether the Division correctly calculated Mr. M's benefits.

### 1. *Adult Public Assistance*

The governing rules for determining an applicant's APA benefits are set out in the Alaska Administrative Code. An applicant's APA benefit is determined by subtracting his total monthly income from the monthly payment standard for the applicant's household type.<sup>20</sup> Mr. M is an individual living independently.<sup>21</sup> For such a person, the monthly payment standard for 2014 is \$1,083.00.<sup>22</sup>

In September 2014 Mr. M received a payment of \$807.00 from the Social Security Administration, the amount paid after deducting his Medicare Part B insurance premium (\$104.90) from his gross benefit amount (\$911.90). Mr. M also received Food Stamps benefits of \$191.00. In addition, the State of Alaska paid Mr. M's Medicare insurance premium of \$104.90 that month.

For purposes of the APA program, Mr. M's monthly income for September 2014 includes his Social Security payment (\$807.00)<sup>23</sup> and the State of Alaska's payment for his Medicare Part B premium (\$104.90),<sup>24</sup> but excludes a \$20.00 "disregard"<sup>25</sup> and his Food Stamps benefits.<sup>26</sup> Accordingly, Mr. M's income for September 2014 totaled \$891.90 (\$807.00 plus \$104.90, minus \$20.00, equals \$891.90). Therefore, Mr. M's September 2014 APA benefit amount, rounded to the nearest dollar, was correctly set by the Division at \$191.00 (\$1,083.00 - \$891.90 = \$190.90).

### 2. *Food Stamps*

The governing rules for determining an applicant's Food Stamps benefits are set out in the Code of Federal Regulations. An applicant's Food Stamp benefits are determined based on the size and income of the applicant's household, minus allowable deductions.<sup>27</sup> As noted above, Mr. M's household consists of one person, himself.

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<sup>19</sup> See, e.g., *Burke v. Houston NANA, LLC*, 222 P.3d 851, 868-869 (Alaska 2010) ("Administrative agencies are bound by their regulations just as the public is bound by them"); 7 AAC 49.170 ("the role of the [Office of Administrative Hearings] is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them").

<sup>20</sup> 7 AAC 40.370(b).

<sup>21</sup> See Ex. 6.2; Ex. 7; Ex. 9.

<sup>22</sup> Ex. 26.1.

<sup>23</sup> 7 AAC 40.300(a)(3).

<sup>24</sup> 7 AAC 40.320(a)(2).

<sup>25</sup> 7 AAC 40.320(a)(23).

<sup>26</sup> 7 AAC 40.320(a)(5). The division treats Food Stamps benefits as "social services" within the meaning of this regulation. See, e.g., *In Re T. F.*, at 3, OAH No. 13-0454-APA (Commissioner of Health and Social Services 2013); Adult Public Assistance Manual §442-3B (needs-based assistance excluded from income).

<sup>27</sup> See 7 C.F.R. §273.9.

As noted above, in September 2014 Mr. M received a payment of \$807.00 from the Social Security Administration, the amount paid after deducting his Medicare Part B insurance premium (\$104.90) from his gross benefit (\$911.90). He also received APA benefits in the amount of \$191.00. In addition, the State of Alaska paid Mr. M's Medicare premium of \$104.90 that month.

The Division calculated Mr. M's income for purposes of the Food Stamps program as \$1,102.90. This amount represents the sum of Mr. M's total Social Security benefit, including the amount withheld from his payment to cover his Medicare premium (\$807.00 plus \$104.90 equals \$911.90), plus Mr. M's monthly APA benefit of \$191.00 (\$1,102.90 plus \$191.00 equals \$1,102.90).<sup>28</sup> It is clear that the Division correctly included the Social Security Administration's payment to Mr. M (\$807.00)<sup>29</sup> and the APA benefit (\$191.00).<sup>30</sup> In addition, the Division correctly included as income the \$104.90 withheld from Mr. M's Social Security benefits and paid to cover his Medicaid.<sup>31</sup>

The Division subtracted only one deduction from Mr. M's income, the standard deduction of \$260.00. This resulted in net income after deductions of \$842.90 (\$1,102.90 minus \$260.00 equals \$842.90).<sup>32</sup> The Division did not provide any deduction for the cost of Mr. M's insurance premium. However, under the applicable regulations, applicants are entitled to a deduction for medical costs in excess of \$35.00 per month, including the cost of health insurance premiums.<sup>33</sup> Providing Mr. M that additional deduction (\$104.90 minus \$35.00 equals \$69.90) results in net income, after allowable deductions, of \$773.00 (\$842.90 minus \$69.90 equals \$773.00). Based on net income of \$773.00, the formula by which Food Stamp benefits are determined yields a Food Stamp benefit for Mr. M of \$103.00 per month.<sup>34</sup>

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<sup>28</sup> See Ex. 9.

<sup>29</sup> See 7 C.F.R. §273.9(b)(2)(i) (including as income "Assistance payments from Federal...public assistance programs, such as supplemental security income (SSI)". See also 7 C.F.R. §273.9(b)(2)(ii) (including as income "disability benefits").

<sup>30</sup> See 7 C.F.R. §273.9.

<sup>31</sup> See 7 C.F.R. §273.9(b)(2)(i) (including as income "Assistance payments from Federal...public assistance programs, such as supplemental security income (SSI)...even if provided in the form of a vendor payment...unless the vendor payment is specifically exempt...under [7 C.F.R. §273.9(c)(1)]"). A "vendor payment" is "a money payment made...directly to either the household's creditors or to a person or organization providing a service to the household." 7 C.F.R. §273.9(c)(1). Public assistance vendor payments are not counted as income if they are made for medical assistance. 7 C.F.R. §273.9(c)(1)(i)(A). Insurance premium payments are not medical assistance.

<sup>32</sup> Ex. 9, line G.

<sup>33</sup> 7 C.F.R. 273.9(d)(3)(iv). The Division's internal policy manual states that the medical costs deduction is limited to Special Category (SPECAT) households. Alaska Food Stamp Manual §603-2B(5). Mr. M is a member of such a household. See *id.*, §600-2. It is therefore not necessary to consider whether the manual's limitation of the medical costs deduction to SPECAT households is consistent with the controlling federal Food Stamp regulations.

<sup>34</sup> See Ex. 9-9.1.

3. *Medicare Part B Insurance Premium Refund*

As indicated in the foregoing discussion, from February 2014 - November 2014 the Social Security Administration erroneously deducted \$104.90 each month from Mr. M's Social Security payment to cover a Medicare Part B insurance premium that was, in fact, being paid by the State of Alaska. To correct this error, in November 2014 the Social Security Administration refunded to Mr. M the \$1,049.00 it had previously deducted. The Division will need to determine the effect this refund has on Mr. M's eligibility and/or benefit levels for the APA and Food Stamp programs for November 2014.<sup>35</sup>

**IV. Conclusion**

The Division correctly calculated Mr. M's September 2014 APA benefit amount. However, the Division erred in calculating Mr. M's monthly Food Stamp benefit amount. Accordingly, the Division's determination is affirmed in part and reversed in part. Mr. M's Food Stamp benefit amount shall be recalculated in accordance with this decision.

DATED this 28th day of November, 2014.

*Signed* \_\_\_\_\_

Jay D. Durych

Administrative Law Judge

**Non-Adoption**

C. The undersigned, by delegation from of the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects, modifies, or amends one or more factual findings as follows, based on the specific evidence in the record described below:

*Mr. M's benefit was correctly calculated by the Division because the State of Alaska paid the Medicare premium and therefore Mr. M cannot claim that premium as an expense per 7 CFR 273.10(d)(1).*

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 24<sup>th</sup> day of December, 2014.

By: *Signed* \_\_\_\_\_

Name: Ree Sailors

Title: Deputy Commissioner, DHSS

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

<sup>35</sup> See 7 C.F.R. §273.9(c)(8) (excluding from income, for purposes of Food Stamps, "Money received in the form of a nonrecurring lump-sum payment").