

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

In the Matter of )  
 )  
 N T-O ) OAH No. 16-0199-CMB  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The Division of Public Assistance notified N T-O that he had received more Food Stamp and Temporary Assistance benefits than he was entitled to receive, and that he was required to repay the amounts overpaid. Mr. T-O requested a hearing to challenge this determination. At hearing, Mr. T-O clarified that he disputes the Division’s right to recoup benefits once those benefits have been paid; he does not, however, dispute the Division’s calculations of amounts owed. Because it is a matter of established law that the Division is required to recoup overpaid benefits, no matter what the reason for the overpayment, the Division’s decision to require Mr. T-O to repay the Division amounts he was overpaid in Food Stamps benefits (\$496) and Temporary Assistance benefits (\$571) is affirmed.

**II. Relevant Factual and Procedural History**

**A. Background**

In October 2015, the Division notified N T-O that his Adult Public Assistance, Medicaid and Food Stamps benefits were being terminated based on a determination that his immigration status rendered him ineligible for these benefits.<sup>1</sup> Mr. T-O appealed these actions in OAH Case No. 15-1412-APA. Mr. T-O requested that his benefit levels remain unchanged during the pendency of his appeal, acknowledging that doing so could result in him later owing and having to repay amounts he had received to which he was not entitled.<sup>2</sup>

The February 9, 2016 final decision in OAH Case No. 15-1412-APA upheld the Division’s determination that Mr. T-O is ineligible for Food Stamps, Adult Public Assistance or Alaska Medicaid.<sup>3</sup> The final decision notified Mr. T-O that he could obtain judicial review of that decision by filing an appeal in Alaska Superior Court within thirty days.<sup>4</sup> Mr. T-O did not appeal the decision.

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<sup>1</sup> Ex. 2.1-2.2.  
<sup>2</sup> See Ex. 4, 7, 8, 10.  
<sup>3</sup> Ex.2.6.  
<sup>4</sup> Ex. 2.7.

## **B. Food Stamps recoupment**

Mr. T-O lives with his minor children, who remain eligible for Food Stamps.<sup>5</sup> However, the determination that Mr. T-O was not eligible affected the household's total benefit amount. This is because the countable size of the household was reduced by one person (Mr. T-O), which in turn lowers the monthly benefit amount.<sup>6</sup> Thus, the household's Food Stamps case was not closed. Rather, Mr. T-O was "coded" as ineligible.

As a result of the decision in OAH Case No. 15-1412-APA, the Division "coded" Mr. T-O as an ineligible alien. The Division then recalculated the amount of benefits to which Mr. T-O's now-smaller household was actually entitled during the prior year.<sup>7</sup> On February 17, 2016, the Division mailed Mr. T-O a Food Stamps recoupment letter, informing Mr. T-O that his household had been overpaid by \$989 in Food Stamps benefits.<sup>8</sup> The Division has since adjusted its calculations and determined that the household was overpaid by \$496; this is the amount the Division seeks to recoup and which is at issue in this appeal.<sup>9</sup> Mr. T-O does not believe he should have to repay any benefits that he or his family received.<sup>10</sup> However, he does not contest the Division's calculations as to the specific amounts the Division contends were overpaid.<sup>11</sup>

## **C. Alaska Temporary Assistance Program (ATAP) recoupment**

The decision in OAH Case No. 15-1412-APA also led the Division to conduct a similar recalculation of Alaska Temporary Assistance Program (ATAP) benefits paid to Mr. T-O's household. The specific category of ATAP benefits at issue are those provided to Mr. T-O's minor children in "Temporary Assistance – Adults Not Included" ("TA-ANI") benefits between the months of November 2015 and February 2016.<sup>12</sup> Mr. T-O's household began receiving these benefits from the Division in November 2015, receiving \$518 in November 2015, and \$554 per month from December 2015 through February 2016.<sup>13</sup>

The Division recalculated the household's TA-ANI benefit amounts following the February 2016 decision in OAH Case No. 15-1412-APA. While Mr. T-O was receiving Adult Public Assistance, his income was excluded from the household income in his children's TA-

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<sup>5</sup> Miller testimony; Ex. 1.

<sup>6</sup> Miller testimony; Ex. 6.4-6.5.

<sup>7</sup> Ex. 3-3.1; 4-4.1; Miller testimony.

<sup>8</sup> Ex. 6-6.23.

<sup>9</sup> Division's Revised Position Statement, p. 5; Ex. 30-33.

<sup>10</sup> T-O testimony; Ex. 7; Ex. 10.

<sup>11</sup> T-O testimony.

<sup>12</sup> Miller testimony; Ex. 11.2 (Household Type: "ANI").

ANI case.<sup>14</sup> As a result of the decision in OAH Case No. 15-1412-APA, the Division closed Mr. T-O's APA case, which had the collateral effect of making his income "countable" towards his children's TA-ANI case.<sup>15</sup> When the household's TA-ANI benefit amount was recalculated to reflect Mr. T-O's ineligibility, the corrected benefit amount was \$382 for November 2015, and \$409 per month for the remaining months.<sup>16</sup>

Accordingly, on February 19, 2016, the Division mailed Mr. T-O a Temporary Assistance recoupment letter, notifying Mr. T-O that his household had been overpaid by \$571 in ATAP benefits over this four-month period of time.<sup>17</sup> As with the Food Stamps benefits, Mr. T-O does not believe he should have to repay any benefits that he or his family received. However, he does not contest the Division's calculations as to the specific amounts allegedly overpaid.<sup>18</sup>

#### **D. Procedural History**

Between February 23, 2016 and March 2, 2016, Mr. T-O submitted several fair hearing requests, including a request for hearing on programs that Mr. T-O either does not participate in, or in which no action had been taken.<sup>19</sup> An Order was issued limiting the issues for hearing, and directing the Division to further clarify the issues for hearing.<sup>20</sup> The Division responded by identifying the issues for hearing as Temporary Assistance and Food Stamps recoupment.<sup>21</sup>

The hearing was held on May 5, 2016, with the assistance of a Spanish language interpreter. Mr. T-O represented himself and testified on his own behalf. Jeff Miller represented the Division and testified on its behalf.

At the hearing, Mr. Miller reviewed the history of adjustments to Mr. T-O's Food Stamps and ATAP benefits since the February 2016 decision on OAH Case No. 15-1412-APA. Mr. T-O explained that he does not believe he should have to repay any benefits that he or his family received. He also disagrees with the decision in OAH Case No. 15-1412-APA. He believes he is entitled to continue to receive benefits because he has lived in this country for a long time. However, he does not dispute the calculations presented by the Division.

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<sup>13</sup> Ex. 5.4; Ex. 11-11.2 (corrected, through letter dated May 2, 2016); Miller testimony.

<sup>14</sup> 7 AAC 45.390(a)(1); Miller testimony.

<sup>15</sup> 7 AAC 45.390(a)(1); Miller testimony.

<sup>16</sup> Ex. 5.4; Ex. 11-11.2 (corrected, through letter dated May 2, 2016); Miller testimony.

<sup>17</sup> Ex. 11. A corrected version of this letter was mailed to Mr. T-O on May 2, 2016, and submitted into the administrative record on that date.

<sup>18</sup> T-O testimony.

<sup>19</sup> Ex. 7, 8, 10.

<sup>20</sup> "Order Granting Partial Dismissal, Setting Briefing Schedule, and Cancelling Hearing on April 4, 2016," issued March 25, 2016.

Mr. T-O credibly testified that his family is experiencing significant financial hardship. Mr. Miller described for Mr. T-O the process by which a recipient who owes a recoupment amount can request that the Division compromise the amount owed, and urged Mr. T-O to pursue such relief.<sup>22</sup>

All of the Division's exhibits were admitted without objection. The record closed at the end of the hearing.

### **III. Discussion**

The Division has the burden of proving that Mr. T-O was overpaid, the amount of the overpayment, and that it is entitled to seek recoupment of that overpayment. Here, Mr. T-O has expressly indicated that he is not challenging the calculation of overpayment amounts. Rather, he disagrees with the premise of overpaid benefit recoupment. Having received the benefits, he argues, he cannot be required to return them. But Mr. T-O is mistaken as a matter of law. Both of the benefit programs at issue require the Division to seek the collection of overpaid benefits.

#### **A. Mr. T-O cannot relitigate issues already decided in OAH Case No. 15-1412-APA**

Mr. T-O argues that he was not overpaid benefits because he is legally entitled to such benefits based on his immigration status and work history.<sup>23</sup> But the Final Decision in OAH Case No. 15-1412-APA upheld the Division's decision to terminate Mr. T-O's Adult Public Assistance and Medicaid cases, and "code him out of" his family's Food Stamps case based on his immigration status.<sup>24</sup> Mr. T-O has not appealed that decision, and is not entitled to relitigate here the issues decided in that case.<sup>25</sup> Accordingly, and as previously held in the March 2016 Order granting partial dismissal, any such claims are barred.

#### **B. Recoupment of overpaid Food Stamps benefits**

The Food Stamp program is a federal program administered by the State.<sup>26</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

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<sup>21</sup> Ex. 32.

<sup>22</sup> Miller testimony; Ex. 6.21; Ex. 11.7.

<sup>23</sup> Ex. 7; Ex. 9; T-O testimony.

<sup>24</sup> Ex. 2-2.7.

<sup>25</sup> See generally, *Harrod v. State, Dep't of Revenue*, 255 P.3d 991, 1000 (Alaska 2011); *Holmberg v. State, Div. of Risk Mgmt.*, 796 P.2d 823, 825 (Alaska 1990).

<sup>26</sup> 7 C.F.R. § 271.4(a).

number of people living in the household.<sup>27</sup> The federal regulations require the Division to “establish and collect any claim” for overpaid Food Stamp benefits issued.<sup>28</sup>

Here, the Division seeks to recoup \$496 in overpaid Food Stamps benefits from Mr. T-O.<sup>29</sup> This amount represents an adjustment to benefits paid from February 2015 through January 2016, in recognition that Mr. T-O should have been “coded” an “ineligible alien” for purposes of determining household eligibility.

Mr. T-O does not dispute the Division’s calculations. Rather, he argues that it is inappropriate for the Division to recoup benefits once it has paid them. But as a matter of settled law, the Division is required to recoup overpaid benefits.<sup>30</sup> Accordingly, Mr. T-O’s argument fails. The Division met its burden of proving that Mr. T-O’s household was overpaid Food Stamp benefits between February 2015 and January 2016, and that it is entitled to recoup those benefits.

As discussed at hearing, the Division may have some discretionary authority to compromise its claim as to the overpayment in this case.<sup>31</sup> Mr. T-O presented compelling testimony that his family is currently experiencing significant hardship. The Division is urged to work cooperatively with Mr. T-O to determine the extent to which it may be possible to compromise the amounts owed or to otherwise minimize the financial hardship associated with the recoupment of these benefits.<sup>32</sup>

### **C. Recoupment of overpaid ATAP benefits**

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 and household size.<sup>33</sup> As with the Food Stamps program, the applicable regulations require the Division to seek collection of overpayments.<sup>34</sup>

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<sup>27</sup> 7 C.F.R. § 273.10(e)(2)(ii)(A).

<sup>28</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

<sup>29</sup> Division’s Revised Position Statement; Ex. 33-33.17.

<sup>30</sup> 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2); *Allen v. State, Dep’t of Health and Social Services*, 203 P.3d 1155, 1162 (Alaska 2009) (Because “federal food stamp law requires state agencies to recoup food stamp overpayments from recipient households, regulates the manner in which they must do so, and makes allowances for the fact that some overpayments will be recouped from totally innocent households,” applying Alaska’s law of equitable estoppel “to prohibit the recoupment of food stamp overpayments due to agency error would create an inescapable conflict with federal law”).

<sup>31</sup> *See* Ex. 6.21.

<sup>32</sup> *See* Ex. 6.21; Miller testimony.

<sup>33</sup> 7 AAC 45.525.

<sup>34</sup> 7 AAC 45.570(a).

Here, the Division seeks to recoup \$571 in overpaid Temporary Assistance benefits.<sup>35</sup> This amount represents benefits paid between November 2015 and February 2016. The overpayment occurred because, when the benefits were initially paid, Mr. T-O was “excluded” from his children’s TA-ANI case, meaning that his income was not counted in determining the benefit amount. Because the decision in OAH Case No. 15-1412-APA upheld the Division’s decision to close Mr. T-O’s APA case, the TA-ANI benefits were recalculated with that income included.<sup>36</sup>

In November 2015, Mr. T-O’s household received \$518 in TA-ANI benefits.<sup>37</sup> But Mr. T-O’s ineligibility for APA benefits meant that his income was countable when calculating this benefit amount.<sup>38</sup> Having originally excluded Mr. T-O’s income from the calculation resulted in an overpayment of \$136 for that month.<sup>39</sup> Likewise, excluding Mr. T-O’s income when calculating TA-ANI benefits for each of the months from December 2015 through February 2016 resulted in an overpayment of \$145 per month for three months.<sup>40</sup>

Mr. T-O does not dispute these calculations. Rather, as with the Food Stamps benefits, he argues that the Division should not be allowed to recoup benefits once they have been paid. But this argument fails as a matter of law because the program’s regulations direct the Division to pursue collection of overpaid benefit amounts.<sup>41</sup> As with the recoupment of overpaid Food Stamp amounts, however, the Division is urged to work cooperatively with Mr. T-O to explore whether it is possible to compromise the amounts owed.<sup>42</sup>

#### **IV. Conclusion**

The Division’s decision to require Mr. T-O to repay the Division in overpaid Food Stamp and Temporary Assistance benefits is affirmed. The Division may require Mr. T-O to overpay \$496 in Food Stamp Assistance, and \$571 in Temporary Assistance benefits. The parties are

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<sup>35</sup> Ex. 11 (corrected).

<sup>36</sup> Miller testimony; Ex. 11 (corrected).

<sup>37</sup> Ex. 5.4; Ex. 11 (corrected).

<sup>38</sup> Miller testimony; 7 AAC 45.390(a).

<sup>39</sup> Miller testimony.

<sup>40</sup> Ex. 5.4; Ex. 11; Miller testimony; *Allen v. State, Dep’t of Health & Social Svcs*, 203 P.3d at 1169-1170.

<sup>41</sup> 7 AAC 45.570(a).

<sup>42</sup> See Ex. 36.2; Miller testimony.

urged to work cooperatively to determine whether it is possible to compromise the amounts owed and/or the repayment schedule so as to minimize hardship.

DATED May 10, 2016.

By: Signed  
Cheryl Mandala  
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 25<sup>th</sup> day of May, 2016.

By: Signed  
Name: Jared Kosin  
Title/Agency: Executive Director, ORR, DHSS

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