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

In the Matter of	)	
	)	
Q D	)	OAH No. 18-0980-SNA
	)	Agency No. 05936893

DECISION

I. Introduction

Q D applied and was approved for Supplemental Nutrition Assistance Program, commonly called "Food Stamp" benefits beginning in April 2018. For the months of June and July 2018 she received $572 in total Food Stamp benefits calculated as the amount for which she was eligible for her household of two, herself and her grandson, L T. Ms. D timely reported that L T was receiving Supplemental Security Income (SSI), however the Division did not timely process this information and failed to count L T's income in calculating Ms. D's Food Stamp benefits. The Division later learned of its error and notified Ms. D that she had received an overpayment of $554 in benefits. The Division required her to repay that amount, and Ms. D requested a hearing.

Ms. D's hearing was held on October 17, 2018. Ms. D was represented by her daughter, Ms. T who appeared in person. Ms. D appeared at the hearing by telephone. Michelle Cranford, Public Assistance Analyst with the Division, represented the Division.

Because Ms. D received $554 more in Food Stamp benefits than she should have and because the Division is required to seek recoupment of overpaid benefits even when the overpayment is caused by Division error, the Division's decision establishing a repayment obligation of $544 is affirmed.

II. Facts

Ms. D applied for Food Stamps in March 2018. In her application she listed her grandson, L T, as living with her.[1] In the section concerning income she listed her SSI and an amount for L.[2] On March 30, 2018, Ms. D's application was approved for Food Stamps beginning in April 2018.[3] In May 2018, the Division was notified by the Social Security Administration that L T's SSI benefits would increase to $750 starting in June 2018.[4] The Division failed to timely act on this information and provided Food Stamp benefits for the months of June and July without including L T's SSI income in its eligibility

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[1]   Exhibit 2 – 2.23.
[2]   Exhibit 2.6.
[3]   Exhibit 6.
[4]   Exhibit 5 – 5.3.

calculations. On July 17, 2018, the Division noticed the error and determined that Ms. D had received an overpayment of $536 in Food Stamps for the two months.[5] The Division then sent Ms. D a notice stating that her Food Stamp benefits would change beginning in the month of August 2018, due to the inclusion of L T's SSI income. On August 23, 2018, the Division notified Ms. D of the overpayment and sought repayment of $536.[6]

On August 27, 2018, the Division received information that L T began working May 2018 and received his first paycheck on June 1, 2018. Based on the income reported for Mr. T, the Division later recalculated Ms. D's eligibility for the months of June and July and determined that, using L T's income for those two months, reduced Ms. D's entitlement to $18 a month causing an overpayment of $554 for June and July 2018. On October 2, 2018, the Division sent a Ms. D a notice replacing the previous notice and setting forth the new calculations and request for prepayment of $554.[7] The notice admitted that the overpayment was due to agency error.[8]

Ms. D requested a hearing in September 2018.[9] The hearing was held on October 17, 2018. At the hearing, Ms. T spoke for Ms. D. Ms. T pointed out that the original application listed SSI income for L T, and the Division appeared to have erred in not considering this income from the beginning. Ms. T also noted that her mother, Ms. D, is over 80 years old and that she had not been permitted to be present with her mother to help with the Food Stamp eligibility interview as she was working on her own benefit application. Ms. T did not dispute the Division's calculations but pointed out that the Division's documents were confusing, and especially so for an elderly person such as her mother.[10] Ms. T provided a packet of exhibits pointing out the Division's errors and her position on behalf of her mother. All exhibits, those supplied by the Division and provided by Ms. T, were accepted into evidence.

III.   Discussion

The issue in this case is whether Ms. D is required to pay back $554 in Food Stamp benefits that were issued to her in error. No facts are in dispute. The overpayment was due to Division error.

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[5]   Exhibit 8.
[6]   Exhibits 9 and 12 – 12.10.
[7]   Exhibits 27 and 28.
[8]   Exhibit 28. In August 2018, Ms. D informed the Division of changes in her household. Her daughter and grandson D T moved in with her and she requested that her grandson, L T, be removed from her food stamp case. Exhibits 10 – 10.6.
[9]   The hearing request was submitted in response to the first notice of overpayment but was applicable to the second notice of overpayment correcting the amount for which the Division seeks recoupment.
[10]   Testimony of M T.

The Food Stamp program is a federal program administered by the State.[11] Eligibility for Food Stamp benefits is dependent on household size, income and certain deductions.[12] For a household that contains an elderly member, such as Ms. D, only the net income after deductions is considered for eligibility.[13] However, the Division must count all income received in the household in determining eligibility and benefits.[14]

There is no dispute that the Division erred in not considering L T's income for the months of June and July 2018 when calculating the amount of Food Stamp benefits to which Ms. D was entitled.[15] Ms. D noted that L T was receiving SSI in her original application, and the Division received notice of the amount of those benefits in May 2018. However, the federal regulations make clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.[16] This is true even when the overpayment is caused by the Division's error.[17] As a matter of law, Ms. D was overpaid $554 in Food Stamp benefits and federal law requires her to repay those benefits to the Division regardless of the fact that she was not at fault and the overpayment was caused by the Division's error.

Ms. T pointed out on her mother's behalf, that Ms. D is elderly and does not have the resources to pay back this amount of money. Federal law permits compromising or writing off a claim, but at the Division's discretion.[18] The issue of setting a repayment schedule, compromise or write off is not a part of this hearing. The undersigned will simply urge that the Division review the issue carefully in conjunction with Ms. D and her daughter Ms. T.

IV.   Conclusion

The Division's decision to recover $554 in Food Stamp benefits overpaid to Ms. D is affirmed.

Dated: October 29, 2018

By: *Signed*_____
Name: Karen L. Loeffler
Title: Administrative Law Judge

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[11]   7 C.F.R. § 271.4(a).
[12]   7 C.F.R. § 273.10(e)(2)(ii)(A).
[13]   7 C.F.R. § 273.9.
[14]   7 C.F.R. § 273.10(c).
[15]   Ms. D did not report L T's employment. However, Ms. T explained that any failure to report his employment was due to confusion. In any event, L T's employment resulted in a small adjustment to the amount of overpayment, which, for the most part, was due to agency error.
[16]   7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).
[17]   7 C.F.R. § 273.18(b0; *Allen v. State, DHSS* 2033 P.3d 1155, 1164 (Alaska 2009).
[18]   7 C.F.R. § 273.18(e)(7)

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 ___13th___ day of _____November___, 20_18__.

By: *Signed*_____

Name: Karen L. Loeffler

Title: Administrative Law Judge