

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

In the Matter of)	
)	
T H)	OAH No. 19-0225-SNA
_____)	Agency No.

DECISION

I. Introduction

T H and the four members of her household are Food Stamp recipients.¹ The Division of Public Assistance (Division) notified her that her household had received \$4,275 in Food Stamp benefits that they were not entitled to receive and informed Ms. H that she was required to repay that amount.² The Division stated that this overpayment resulted from the Division’s failure to count her husband’s workers compensation payments when it processed her initial food stamps application in August of 2018. Ms. H requested a hearing on March 11, 2019. At telephonic hearing held on April 12, 2019, Ms. H appeared on her own behalf. Jeff Miller, a Fair Hearings Representative, represented the Division and also testified on the Division’s behalf.

Ms. H and her household received \$4,275 more in Food Stamp benefits than she should have received due to the Division’s error. Although this overpayment was caused by the Division’s error, Ms. H is required to repay those benefits. The Division’s decision establishing a repayment claim in that amount is affirmed.

II. Facts

A. The H Household Submits a Food Stamp Application

Ms. H submitted a Food Stamp application on August 6, 2018 for her household, which consisted of herself, her husband, and their three minor children.³ On the application, she disclosed that her husband, M H, was “on workers comp.”⁴ Mr. H provided three pay stubs showing his bi-weekly workers compensation payments in conjunction with the application.⁵ Unfortunately, the agency representative processing Ms. H’s application on August 17, 2018 failed to enter Mr. H’s workers

¹ 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.

² The Division made an error in its notice letter to Ms. H sent on February 20, 2019 regarding the amount of overpayment. *See* Exh.3. It corrected that error in a notice letter dated March 29, 2019, which stated that the household had received \$4,275 in Food Stamp benefits that it was not entitled to receive. *See* Exh. 24.

³ Exhs. 1.1-1.14.

⁴ Exh. 1.8.

⁵ Exh. 1.19; *see also* Exhs. 1.15-1.17.

compensation income into the Division's computer system.⁶ Consequently, Mr. H's workers compensation payment of \$1,595.06 every two weeks was not used to calculate the H household's eligibility for Food Stamps.⁷

On August 20, 2018, the Division notified Ms. H that she and her household would receive \$764.00 in Food Stamp benefits for the month of August and then would be receiving \$911.00 in Food Stamp benefits each month thereafter.⁸ The notice sent by the Division advised Ms. H that "[W]e are not counting any income for your food stamps."⁹

B. Ms. H Files a Food Stamp Recertification Application

In December of 2018, Ms. H filed a recertification application for Food Stamps.¹⁰ Ms. H again disclosed that her husband was receiving workers compensation benefits.¹¹ While processing this recertification application, the Division's representative discovered that the Division had not been counting Mr. H's workers compensation income since the household began receiving Food Stamps in August of 2018.¹²

Mr. Miller testified that he verified with Mr. H's worker compensation adjuster that Mr. H had been receiving a worker compensation checks in the amount of \$1,595.06 every two weeks since August.¹³ Since his workers compensation payments were issued on a bi-weekly basis, Mr. H normally received two checks a month, which totaled \$3,190.12.¹⁴ However, because the checks were issued on a bi-weekly basis, several times a year Mr. H receives a third payment during the month.¹⁵ In November of 2018, Mr. H received three workers compensation payments, which totaled \$4,785.18.¹⁶

C. The Division Seeks Recoupment

On February 20, 2019, the Division sent Ms. H a notice stating that she and her household had received \$4,429 in Food Stamp benefits from August 6, 2018 through December

⁶ Division's Position Statement (revised April 5, 2019), p. 2.

⁷ Division's Position Statement (revised April 5, 2019), p. 2.

⁸ Exh. 1.23.

⁹ Exh. 1.23.

¹⁰ Exhs. 2-2.6.

¹¹ Exh. 2.3.

¹² Division's Position Statement, at p. 2; *see also* Testimony of Mr. Miller.

¹³ Division's Position Statement, at p. 3; Exhs. 1.18, 25.1; Testimony of Mr. Miller. Exhibit 1.18 contains a calendar which shows when Mr. H's workers compensation checks were issued.

¹⁴ Division's Position Statement, at pp. 3-4; Testimony of Mr. Miller.

¹⁵ Division's position Statement, at p. 3; Testimony of Mr. Miller; Exhs. 1.18, 24.19, 25.1.

¹⁶ Division's Position Statement, at pp. 3-4; Testimony of Mr. Miller.

2018 when her household was only entitled to \$160 in benefits during that period.¹⁷ While processing this case for a hearing, Mr. Miller discovered a processing error, which increased the overpayment amount by \$6.¹⁸ He recalculated the household's Food Stamp allotment and determined that the H household should only have received \$154 in monthly food stamp benefits.¹⁹ As a result, Ms. H and her household had received \$4,275 in Food Stamp benefits they were not entitled to receive due to the Division's error.²⁰ Subsequently, the Division issued a revised notice on March 29, 2019 stating there had been an overpayment in the amount of \$4,275 because the Division had failed to count Mr. H's workers compensation as income when determined the household's food stamp allotment.²¹ The Division's notice advised Ms. H that she would need to repay the overpayment amount.²²

It is undisputed that: (1) the H household's income from August through December 2018 included Mr. H's bi-weekly workers compensation payments in the amount of \$1,595.06; and (2) the Division failed to include this income when it processed Mrs. H's August 2018 application and determined her household's Food Stamp allotment.²³ When the Division took into account this income, it impacted on the household's Food Stamp allotment and, in November 2018, on the household's eligibility for Food Stamps.²⁴

In November, the H household was ineligible for Food Stamp benefits because the household income was \$4,785.18, which was over the Food Stamp program's gross income limit of \$3,985 for a household of five.²⁵ Consequently, although the H household had received \$918 in Food Stamp benefits in November of 2018, it should not have received any benefits that month.²⁶

During the remaining months at issue – August, September, October, and December – the household's gross income totaled \$3,190.12 which resulted in the H household being eligible for

¹⁷ Exh. 3.

¹⁸ Testimony of Mr. Miller. The original Food Stamps application was dated August 6, 2018 so the benefits for that month should have been prorated. *See* Exhs. 6-6.1, 25; Testimony of Mr. Miller.

¹⁹ Exhs. 20, 24.16-24.20, 25.1.

²⁰ Division's Position Statement, at p. 4.

²¹ Exh. 24

²² Exh. 24.

²³ Testimony of Mr. Miller; Exhs. 3, 24.

²⁴ Testimony of Mr. Miller; Exhs. 24.16—24/20, 25.1.

²⁵ Testimony of Mr. Miller; Exhs. 24.13, 25.1.

²⁶ *See* Exhs 8, 24.19, 25.1.

Food Stamp benefits.²⁷ In computing the household's monthly food stamp allotment for these four months, the Division allowed the following monthly deductions: rent (\$490), homeowners insurance (\$83.34), property taxes (\$19.78), garbage collection (\$75), and the standard utility deduction.²⁸ Using its worksheets, the Division found that the H household was entitled to \$29 in Food Stamp benefits in August.²⁹ In September, the household was entitled to receive \$35 in Food stamp benefits and in October and December, the H household was entitled to receive \$45 in Food Stamp benefits.³⁰

In calculating the amount of the overpayment, the Division subtracted the amount of monthly Food Stamp benefits the household was entitled to receive (\$154) from the amount of Food Stamp benefits that the H household *actually* received during those months (\$4,429).³¹ These calculations showed that the H household had received \$4,279 in Food Stamp benefits which the household was not entitled to receive.³² The Division acknowledged that this overpayment was due to the Division's error and that the H household did nothing wrong.³³

Ms. H did not dispute the Division's calculations concerning her household's income, deductions, or the correct amount of her Food Stamp allotment from August through December of 2018.³⁴ Instead, she focused on the fact that the error was not her fault, argued that the agency or the person who made the mistake should be liable for paying back the overpayment, and stated that it would be a considerable financial hardship for her family of five to pay back the overpayment amount. Ms. H pointed out that she was a family in need, yet she was the one being asked to bear the burden of a trained employee's mistake and felt this was unfair. Finally, Ms. H noted that she had supplied all the information she had been asked to provide, somebody else's error had put her family in a bad position, and that she was being penalized for somebody else's mistake.³⁵

²⁷ Division's Position Statement, at pp. 3-4, Exhs. 24.10-24.12, 24.14.

²⁸ Division's Position Statement, at p. 4; Exhs. 6-8. The H household is located in City A, and thus receives the standard utility deduction for the Northern Utility region. *See* Ex. 24.6. When calculating the household's food stamp allotment for August 2018, the Division used the appropriate deduction. *See* Ex. 6. However, it erroneously used the Central Utility region deduction for the months of September, October, and December in 2018. *See* Exh. 7. This error, however, does not change the result: even if the Northern Utility region standard utility deduction had been used, the monthly shelter costs (which include the standard utility deduction) were not high enough to allow for an "excess shelter cost" deduction.

²⁹ Exhs. 6-6.1; 24.10, 25.1.

³⁰ Exhs. 24.11-24.12, 24.14, 25.1.

³¹ Exhs. 24, 24.14; 25.1.

³² 24.10-24.17; *see also* Exh. 24.

³³ Division's Position Statement, p. 2; *see also* Testimony of Mr. Miller.

³⁴ Testimony of Ms. H.

³⁵ Testimony of Ms. H.

III. Discussion

The issue in this case is whether Ms. H is required to pay back \$4,275 in Food Stamp benefits the Division issued to her and her household in error.

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 that the “state agency *shall* collect any issuance of benefits issued to the household . . .” “[emphasis added]. This statute requires, on its face, that the Division attempt to recover overpaid Food Stamp benefits.

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 that “the State agency *must* establish and collect any claim . . .” Under 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.” In addition, 7 AAC 273.18(1)(3)(i) specifically makes the person “who was an adult member of the household when the overpayment . . . occurred” responsible for paying a claim.³⁶ Thus, federal law requires that the Division attempt to recover overpaid Food Stamp benefits, even if the overpayment is the result of the Division’s error.

The Alaska Supreme Court, in *Allen v. State of Alaska Department of Health & Social Services*, has acknowledged the position that Ms. H asserts in this case. Nevertheless, it has confirmed that federal law requires the State to pursue repayment of all overpaid Food Stamp benefits. The Court has 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.

Here, the Division established that Ms. H and her household was overpaid \$4,275 in Food Stamp benefits for the months of August 2018 through December 2018. Ms. H is required to repay that amount to the Division, although she was not at fault and the overpayment was solely caused by the Division’s error.

³⁶ Exh. 18.

Ms. H has argued that repayment would cause significant financial hardship to her household. Federal regulations allow the Division discretion to compromise on all or a portion of the claim if “it can be reasonably determined that a household’s economic circumstance dictate that the claim will not be repaid in three years.” The Division did not make a determination on possible compromise in this case, because Ms. H has not yet submitted a request to initiate that process. At the hearing, the Division noted that it had discussed this process shortly before the hearing with Ms. H. Ms. H can pursue this option if she so chooses.

IV. Conclusion

Ms. H and her household received an overpayment of Food Stamp benefits. Although the overpayment was not her fault, she is still required to repay the excess benefits if she is able to do so. Accordingly, the Division’s decision to require repayment of \$4,279 is upheld.

Dated: May 6, 2019

Signed _____
Kathleen A. Frederick
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 14th day of May, 2019.

By: *Signed* _____
Name: Kathleen A. Frederick
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]