

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

In the Matter of)	
)	
E Q)	OAH No. 19-0863-SNA
<hr style="width: 80%; margin-left: 0;"/>)	Agency No.

DECISION

I. Introduction

E Q is an Alaska Food Stamps recipient. She provided correct household income information to the Department of Health and Social Services, Division of Public Assistance (Division). Nevertheless, the Division failed to account for all her income and, as a result, Ms. Q received an overpayment of Food Stamps. The Division notified Ms. Q of the overpayment and sought recoupment. Ms. Q requested a Fair Hearing to challenge the repayment requirement.

The evidence in this case shows that Ms. Q received more Food Stamp benefits than she should have, and that the overpayment was due to the Division’s error, and not caused by Ms. Q. But, because the Division is required to pursue overpayments, regardless of fault, the Division’s requirement that Ms. Q repay it \$360.00 is affirmed.¹

II. Facts

The following facts were established by a preponderance of the evidence and are not contested.

Ms. Q, a Food Stamps recipient, submitted a Food Stamps renewal application in January 2019.² Ms. Q identified her household income as \$375.00 for SSI, \$338.00 for SSA, and “foster parent stipend.”³ She filed a Change Report Form with the Division on January 8, 2019, where she notified the Division that her granddaughter was residing with her after being placed there by OCS.⁴ However, the Division did not follow up with this information and calculated her income without the foster care stipend, which was \$26.03 per day.⁵

On July 24, 2019, Ms. Q applied to renew her Food Stamp benefits; this time the Division included the foster care payments when it calculated Ms. Q’s income.⁶

¹ The Division overpaid Ms. Q a total of \$1,583.00. The Division requested a hardship reduction on her behalf prior to the hearing, and the overpayment was reduced to \$360.00.

² Exhibit 1; 2.1-2.8.

³ Exhibit 2.3; Exhibit 4.3.

⁴ Exhibit 3-3.3.

⁵ Ms. Dial testimony; \$26.03 per day translates to \$780.90 per month for months with 30 days and \$806.93 per month for months with 31 days. See Exhibit 4.9.

⁶ Exhibit 4-4.9; Ms. Dial testimony.

Consequently, the Division discovered it had failed to calculate the foster care payments dating back to January 2019, which resulted in Ms. Q an overpayment of Food Stamps totally \$1,583.00.⁷

The Division notified Ms. Q of the overpayment on August 14, 2019, along with a recoupment notice, advising her that she owed \$1,583.00 in overpayments.⁸ Initially the Division concluded Ms. Q had not properly notified it of the foster care payments, but on subsequent review, the Division found Ms. Q had properly advised the Division of the change in the household income and it was an agency error in not following up on that information.⁹

Ms. Q requested a Fair Hearing on September 9, 2019.¹⁰

That same day, Ms. Dial notified Ms. Q that she had requested a compromise based on hardship on Ms. Q's behalf based on the agency error.¹¹ The compromise reduced Ms. Q's overpayment to \$360.00.¹²

The Fair Hearing was conducted telephonically on October 8, 2019. Ms. Dial presented the Division's position and testified. Exhibit 1-10.2 were admitted. Ms. Q testified on her own behalf.

At the hearing, there was no disagreement about Ms. Q's income, expenses, or the calculations of what Food Stamps. Ms. Q agreed she had received the amount alleged, but was rightfully frustrated that she was asked to repay the overpayment when the error was caused by the Division.

III. Discussion

The Food Stamps program is a federally funded program administered by each state. When the state overpays a person's benefits, federal law requires the state to recover the overpayments, even when it is the Division's fault.¹³

⁷ Exhibit 5.18. Ms. Q received \$244.00 per month but was supposed to receive \$19.00 per month for a total of \$1,583.00 in overpayment.

⁸ Exhibit 5.1-5.2.

⁹ Ms. Dial testimony.

¹⁰ Exhibit 6.

¹¹ Ms. Dial testimony; Exhibit 7.

¹² Ms. Dial testimony; Exhibit 7.

¹³ 7 U.S.C. § 2022(b)(1) (the "state agency shall collect any over issuance of benefits issued to a household); Ex. 8 (7 C.F.R. § 273.18(a)(2) ("the state agency must establish and collect any claim"); *In re M.R.*, (OAH No. 18-0092-SNA) (April 2018) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6184>

The facts in this case are not in dispute. Ms. Q does not contest the income calculation, nor does she contest that she was overpaid by \$1,583.¹⁴ The evidence shows Ms. Q notified the Division of the change to her household income, but the Division failed to take action to follow up on the reported change, which resulted in an overpayment of benefits.¹⁵

Ms. Q did not dispute the Division's evidence regarding its income calculations or the amount of the benefit overpayments. However, she asserts she should not be responsible for the Division's mistakes, and that she did nothing wrong. Ms. Q met her obligation to report changes in her household's income and the overpayment was the result of Division error. In essence, she argued that the Division created this situation, and therefore the Division should be required to live by its own miscalculation. Any other result, from her perspective, is unfair.

And while that may be true, federal law requires the Division to pursue overpayment even when it was caused by "an action or failure to take action by the State agency."¹⁶ The Alaska Supreme Court, in *Allen v State* found that Congress considered the unfairness component when drafting the regulation:

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.¹⁷

The federal regulations and *Allen* decision are binding on the Division. Regardless of fault, the Division is required to pursue recoupment of overpayments made. The federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.¹⁸ The Division met its burden of burden of proof that Ms. Q was overpaid Food Stamp benefits.

IV. Conclusion

Ms. Q's situation is sympathetic, and her frustration is certainly understandable. However, there is no legal mechanism to conclude differently. The Division is required to seek reimbursement even though its error caused the overpayment. Because the money was

¹⁴ Ms. Q testimony.

¹⁵ Exhibit 2.1-2.6; Exhibit 3 -3.3; Exhibit 4.1-4.6; Ms. Dial testimony.

¹⁶ 7 C.F.R. §273.18 (b) (3).

¹⁷ 203 P.3d 1155 (Alaska 2009).

¹⁸ 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2).

overpaid, and the Division is required to pursue reimbursement, the Division's decision is affirmed.

Dated: October 21, 2019

Signed

Hanna Sebold

Administrative Law Judge

Adoption

The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, adopts this Decision and Order 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. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of November, 2019.

By: *Signed*

Name: Hanna Sebold

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.]

Non-Adoption Options

A. The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2019.

By: _____

Signature

Name

Title

B. The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set forth below, and adopts the proposed decision as revised:

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 _____ day of _____, 2019.

By: _____

Signature

Name

Title

C. The undersigned, on behalf 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:

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 _____ day of _____, 2019.

By: _____
Signature

Name

Title

D. The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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 _____ day of _____, 2019.

By: _____
Signature

Name

Title

Certificate of Service: I certify that on _____, a true and correct copy of this order was distributed as follows: E Q (by mail); Sally Dial, DPA (by email).

By: _____
Office of Administrative Hearings