

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

In the Matter of)
)
S Q) OAH No. 19-0342 SNA
) Agency No.
_____)

DECISION

I. Introduction

S Q is a Food Stamps recipient. On three occasions, she provided correct household income information to the Department of Health and Social Services, Division of Public Assistance (Division). Nevertheless, the Division incorrectly calculated Ms. Q’s monthly household income, and as a result, Ms. Q received an overpayment of Food Stamps from April 2018 to March 2019. The Division notified Ms. Q of the overpayment and sought recoupment. Ms. Q requested a Fair Hearing, asserting that the overpayment was a result of the Division’s repeated error and she should not have to reimburse it. Because the Division is required to pursue overpayments, regardless of fault, the Division’s recoupment efforts are affirmed.

II. Facts

Ms. Q resides with her 8-year-old daughter, Z. She and Z each received social security survivors’(SS) benefits following the suicide of her husband in June 2017. Ms. Q and Z each received \$407.00 per month from April to November 2018, for a total gross monthly income of \$814.00.¹ Her total gross monthly income increased to \$836.00 (\$418 each) beginning December 2018, until March 2019, when the review was conducted.² Although Ms. Q provided correct monthly household income information as part of her continued eligibility reviews on February 22, 2018, August 28, 2018 and March 1, 2019, the Division continued to overpay Ms. Q Food Stamps based on the lower household income calculation that included only one of the family’s SS payments.³

The Division sent a recoupment notice to Ms. Q on April 3, 2019 advising her that she owed \$1,959.00 in overpayments.⁴ The Division calculated that from April 2018 to September 2018 it had paid her \$422.00 per month, but after rent and utility deductions, she

¹ Exhibit 2.2.
² Exhibit 5.1.
³ Exhibits 2.2, 3.2, 4.2.
⁴ Exhibit 6-6.23

was only eligible for \$259.00 per month.⁵ From October to December 2018 she was paid \$425.00 per month but was only eligible for \$265.00 per month.⁶ And, from December 2018 to March 2019 Ms. Q was paid \$425.00 per month but was only eligible for \$258.00 in benefits.⁷

Ms. Q requested a Fair Hearing on April 22, 2019.⁸ The Fair Hearing was conducted telephonically on May 14, 2019. Jeff Miller presented the Divisions position. S Q testified on her own behalf.

III. Discussion

The facts in this case are not in dispute. Ms. Q does not contest that she received the overpayments, nor does she contest the amount. Her position is that she told the Division three times they were not calculating her income correctly and she should not be responsible for their multiple mistakes, especially because she cannot afford to repay the amount.

The Food Stamps program is a federal funded program administered by each state. When the state overpays a person's benefit's, federal law requires the state to recover the overpayments, even when it is the Division's fault.⁹

The evidence shows Ms. Q was very conscientious, forthcoming, and prompt in informing the Division of her monthly household income. In fact, she did so on three separate occasions. The Division admits the error was their fault. However, 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."¹⁰ This was affirmed by *Allen v State*, which found that Congress considered the unfairness component this when drafting the regulation:

We are sympathetic to the argument that it is unfair to require indigent food stamps 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.¹¹

⁵ Exhibit 1.1; Exhibit 5.

⁶ *Id.*

⁷ *Id.*

⁸ Exhibit 7.

⁹ 7 U.S.C. § 2022(b)(1) (the "state agency shall collect any over issuance of benefits issued to a household); Ex. 7 (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>

¹⁰ 7 C.F.R. §273.18 (b) (3).

¹¹ 203 P.3d 1155 (Alaska 2009).

The federal regulations and *Allen* decision are binding on the Division, and the Office of Administrative Hearings. The Division was required to pursue the reimbursement even though it is at fault.

IV. Conclusion

Ms. Q's situation is sympathetic, and her frustration is certainly understandable. However, there is no legal mechanism to conclude differently. Because Ms. Q does not contest that the money was overpaid, and the Division is required to pursue reimbursement, the Division's decision is affirmed.¹²

Dated: May 28, 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 11th day of June, 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.]

¹² Jeff Miller explained that the recoupment office could negotiate a settlement or payment plan, so Ms. Q is encouraged to do so.