

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

In the Matter of)
)
N C) OAH No. 19-0741-SNA
) Agency No.
_____)

DECISION

I. Introduction

N C was a Food Stamp recipient who received Food Stamp benefits from November 2018 through April 2019. In May 2019, the Division of Public Assistance (Division) notified her that she should not have received Food Stamp benefits during January through April 2019, and that she was required to repay the Division for the full amount of the benefits she received during that time, \$3,492.

Ms. C requested a hearing to challenge the Division’s demand for repayment.¹ Ms. C’s hearing was held on September 23, 2019. Ms. C represented herself and testified on her own behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, represented the Division.

The evidence at hearing showed that Ms. C did not attend an eligibility interview that was required in order for her to continue receiving Food Stamp benefits after December 2018. The Division therefore should have terminated her benefits at the end of December 2018. It erroneously failed to do so, and as a result, Ms. C continued to receive benefits during January through April of 2019, in the total amount of \$3,492. Even though the continued benefits resulted from the Division’s error, and not Ms. C’s error, the Division is legally required to seek repayment of the benefits she should not have received. Accordingly, Ms. C is required to repay the Division the \$3,492.

II. Facts

Ms. C applied for Food Stamp benefits on November 19, 2018 for her five-person household, which consisted of her and her four minor children. At the time, Ms. C was unemployed, and her only income was from child support.² A Division Eligibility Technician

¹ Ms. C requested a hearing on July 17, 2019. The Division was required to refer this case to the Office of Administrative Hearings no “later than 10 days after the [Division] receives a hearing request.” 7 AAC 49.080. The Division did not refer the case until August 14, 2019.

² Exs. 2 – 2.14.

attempted to contact her for an interview on November 20, 2019 for a telephonic interview and was unable to reach her.³ The Division then provisionally approved her application on an expedited basis, without requiring her to first participate in an interview. The Division issued her benefits for November and December and sent her notice on November 21, 2018, that she would have to participate in an interview if she wanted to continue receiving Food Stamp benefits. The notice informed her that the interview was scheduled for December 3, 2018 at 3:00 p.m.⁴

A Division Eligibility Technician telephoned Ms. C at the scheduled interview time. Ms. C did not answer her telephone. Several attempts and voicemail messages were left.⁵ The Division then sent Ms. C a follow-up notice, on December 6, 2019, that she had to have her interview, or that her Food Stamp application would be denied: “[i]f you do not attend an interview, you will be denied food stamps on the 30th day from the date you asked for help.”⁶ It is undisputed that Ms. C did not attend an interview.

The Division, however, did not cancel Ms. C’s Food Stamp benefits. Instead, she received Food Stamp benefits during January through April 2019 in the total amount of \$3,492.⁷ The Division discovered that it had not cancelled Ms. C’s Food Stamp benefits, when she applied to renew them on May 1, 2019.⁸ Ms. C’s May 1, 2019 application was approved.⁹

The Division, after it discovered that it had not cancelled Ms. C’s Food Stamp benefits, then sent Ms. C notice that she should not have received Food stamp benefits during January through April 2019, and that she was therefore required to pay the Division back the \$3,492 in benefits that she received for those months.¹⁰

Ms. C did not dispute the fact that she received the Food Stamp benefits. She, however, testified that she did not receive either the November 21st or the December 6th interview notices. She also testified that she did not receive any phone calls from the Division on December 3rd.

³ Ex. 3.
⁴ Ex. 4.
⁵ Ex. 5.
⁶ Ex. 6.
⁷ Exs. 7, 10.1.
⁸ Exs. 10 – 10.1.
⁹ Ex. 9.
¹⁰ Exs. 11 – 11.14.

She verified that the notices were sent to the correct address and that the Division had the correct phone number.¹¹

III. Discussion

The issue in this case is whether the Division was correct to require Ms. C to repay the \$3,492 in Food Stamp benefits that she received for the entire time of January through April of 2019. In resolving this issue, because Food Stamps is a federal program, those 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 must 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.” The Alaska Supreme Court has ruled that these federal requirements apply to Alaska Food Stamp recipients.¹²

In this case, the underlying question is whether Ms. C’s Food Stamp application should have been denied and her benefits stopped because she did not attend a Food Stamp eligibility interview. The answer to this is contained in the federal regulations that the applicant must cooperate with the Division with verification of the application information, which includes participating in an eligibility interview. If an applicant “refuses” to cooperate with the process, as compared to “failing” to cooperate, the application is denied.¹³ The requirement to verify also applies to expedited applications, such as this one where the application is provisionally approved subject to completing the verification process.¹⁴

While it is undisputed that Ms. C did not participate in the required eligibility interview, the Division must establish that Ms. C “refused” to participate and did not merely “fail” to participate. On one hand, the Division showed that it sent Ms. C two notices and left a voicemail, all to the proper address and phone number, regarding her need to interview. On the

¹¹ Ms. C’s testimony.

¹² *Allen v. State*, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

¹³ 7 C.F.R § 273.18(d)(1).

¹⁴ 7 C.F.R § 273.2(i)(4)((iii).

other hand, Ms. C testified that she did not get either notice or a voicemail. However, her testimony is not wholly credible, given the fact that the two notices were sent to the correct address and a voicemail message was sent to the correct phone number. It is more likely than not true that she would have received these notices and the voicemail. Accordingly, it is more likely true than not true that Ms. C chose not to respond to the Division's voicemail and notices. This is a refusal to participate, not a mere failure to participate. Accordingly, the Division was justified in its denial of her Food Stamp application. Because the Division had provisionally approved the issue of benefits on an expedited basis, this means that the Division had to terminate her benefits. Although Ms. C argued that, because of her economic situation, that she would have been approved for benefits, if she had participated in the interview, this does not excuse her refusal to participate in the interview.

The Division, however, failed to terminate her benefits. This resulted in Ms. C receiving benefits for four months, January through April 2018, when she should not have. This was the Division's error, not Ms. C's. Regardless, the federal regulations are clear that the Division "must establish and collect any claim" for overpaid Food Stamp benefits issued.¹⁵ This is true even when the overpayment is caused by the Division's error. Adult members of the Food Stamp recipient's household are the persons responsible for repaying overpaid Food Stamp benefits.¹⁶ As a matter of law, Ms. C was overpaid \$3,492 in Food Stamp benefits and is required to repay those benefits to the Division, regardless of the fact the overpayment occurred due to the Division's error, which was its failure to terminate her benefits because she did not satisfy the interview requirement.

IV. Conclusion

Ms. C is required to repay the Division \$3,492 for the overpaid Food Stamp benefits.

Dated: September 25, 2019

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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

¹⁶ 7 C.F.R. § 273.18(a)(4)(i).

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 1st day of October, 2019.

By: Signed _____
Name: Lawrence A. Pederson
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.]