

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

In the Matter of)
)
X T) OAH No. 20-0036-SNA
) Agency No.
_____)

DECISION

I. Introduction

X T and his wife were Food Stamp¹ recipients in 2018 and 2019. The Division of Public Assistance (Division) notified them that they should not have been approved for Food Stamp benefits, because their countable assets (resources) exceeded the Food Stamp program’s resource limits. As a result, the Division notified them that they would have to repay the Food Stamp benefits they received, which came to a total of \$5,097.

The evidence in this case shows that the Division erroneously approved the Ts for Food Stamp benefits, because they had countable resources that exceeded the \$2,250 resource limit for the Ts. As a result, the Ts received \$5,097 in Food Stamp benefits for which they were not eligible. Even though the overpayment was caused by the Division’s error, and was not the Ts’ fault, they are required to reimburse the Division in the amount of \$5,097 for the improperly provided Food Stamp benefits.

II. Course of Proceedings

After receipt of the Division’s notice that it was requiring them to repay the Food Stamp benefits, the Ts requested a hearing to challenge that requirement. The hearing was originally scheduled for January 31, 2020. A short proceeding was held on January 31, 2020 during which the hearing was rescheduled for February 19, 2020. The February 19, 2020 hearing proceeded as scheduled in front of Administrative Law Judge (ALJ) Carmen Clark. Mr. T represented himself and his wife and testified on their behalf. Jeff Miller, the Division’s Fair Hearing representative, represented the Division and testified on its behalf. The record was left open after the hearing until March 27, 2020.

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.

This case was then reassigned to ALJ Lawrence Pederson for all purposes on September 29, 2020, who reviewed the entire record in this case including listening to the recordings of the proceedings held on January 31 and February 19, 2020.

A supplemental hearing was held in front of ALJ Pederson on October 28, 2020 to address possible procedural due process notice deficiencies. Mr. T and Mr. Miller again participated. During that hearing, Mr. T waived any notice deficiencies, and the case became ripe for decision.

III. Facts²

A. The Ts' Resources

At all relevant times for this case, the Ts were the owners of two pieces of real property. The first is a rural property located near City A, which is their primary residence. The second is located on the Kenai Peninsula. It consists of a dwelling located on 2.13 acres, and had a property tax valuation of \$109,200 (Land \$21,900, Improvements \$87,300) in 2018 and \$102,400 (Land \$22,200, Improvements \$80,200) in 2019.³ It is owned free and clear of any debt. The Ts valued the Kenai Peninsula property at \$87,000 on their 2018 application and \$59,200 on their 2019 application.⁴

The Ts trap from their home in City A. The trapping provides some income that fluctuates depending upon both the trapping season and the varying market conditions.

The Ts are part of a family owned commercial set net fishing operation located on the Kenai Peninsula. They, and no other family members, own the Kenai Peninsula property, which is comprised not only of the raw land, but also contains a 28 ft. by 40 ft. house, with electricity, well, and a septic system. The Ts live on the Kenai Peninsula property while the seasonal set net operation is ongoing. In addition to residing on the property during the commercial season, they use the property to store their fishing equipment on it.

There are two Food Stamp applications which are relevant to this case. On the Ts' August 6, 2018 Food Stamp application, the Ts listed the following property, in addition to the City A and Kenai Peninsula real property: two skiffs with motors, valued respectively at \$6,000 and \$2,000, a 1975 Dodge valued at \$1,000, a 1978 Dodge valued at \$500, a 1994 Toyota valued

² Unless otherwise specifically noted, the facts findings are based upon the testimonies of Mr. T and Mr. Miller. The factual findings are established by a preponderance of the evidence.

³ Exs. 23 – 23.1.

⁴ Exs. 2.19, 5.1.

at \$2,500, a 1998 Ford Escort valued at \$1,200, a 2008 and 2014 four wheeler, valued respectively at \$2,000 and \$5,000, and a fish permit valued at \$15,000. That same application lists them as having a checking account with a balance of \$1,000. It further says that their yearly income consisted of \$11,000 from the set net operation and \$396.60 from trapping.⁵

The Ts' February 4, 2019 application to renew their Food Stamp benefits stated they had \$2,100 in a bank account and \$6,000 in cash. The 2019 application also changed the valuations for the trucks, car, ATVs, and skiffs. The application stated that they owned four older model snow machines worth \$1,000 apiece.⁶ Mr. T's testimony regarding the snow machines value was similar. The skiffs were listed on the application at \$7,000 total. The two older trucks were valued at \$2,000 total. The two ATVs were valued at \$5,000.00 total. The application listed the newer truck and the car respectively at \$4,000 and \$1,500.⁷

Mr. T testified that the snow machines were used in conjunction with the trapping business, which is operated out of the City A property. The applications and testimony provided that the trucks, the ATVs, and the skiffs, were needed for the operation of the set net site.

According to Mr. T, the \$6,000 in cash that he and his wife had at the time of the February 2019 application came from a combination of the 2018 PFDs and trapping income.

B. The Applications

The Ts' August 2018 application was approved with the benefits to start in September 2018, in the monthly amount of \$422.⁸ The February 2019 renewal application was initially denied on February 7, 2019, based upon the Ts being over the resource limit, specifically the Kenai Peninsula property, the \$6,000 cash, and a bank account containing \$2,100.⁹ On March 6, 2019, Ms. T had an in-person interview with a Division Eligibility Technician, and the application was approved.¹⁰ The Division's interview case note states that City A property is the primary home and that the Kenai Peninsula property was "fishing only exempt" and that the "cash on hand pays the gas, groceries."¹¹

⁵ Exs.2.12, 215, and 2.19.

⁶ Ex. 5.1.

⁷ Ex. 5.1.

⁸ Ex. 4.

⁹ Ex. 7.

¹⁰ Exs. 8, 9.

¹¹ Ex. 8.

C. Benefits Received

The Division issued a total of \$5,097 in Food Stamp benefits to the Ts in the period from September 2018 through August 2019.¹² There was a credit remaining on the Electronic Benefits debit card as of the hearing held on February 19, 2020.

D. Division Recoupment Action

The Division conducted a review of the Ts' Food Stamp case and determined that their resources exceeded the Food Stamp program's countable resource limit at all times and that both of their applications should have been denied.¹³ The Division's specific findings, contained in its September 23, 2019 *Quality Assessment Report*, were that the Kenai Peninsula property, the two four wheelers, the \$6,000 cash on hand during the February 2019 renewal application period, were all countable resources, which placed the Ts over the applicable resource limit.¹⁴ The Division subsequently instituted this collection action by sending the Ts notice on November 20, 2020 that it had determined they were not financially eligible for Food Stamps during September 2018 through August 2019, and that they were required to reimburse the Division for the \$5,097 in Food Stamp benefits they had received during that period.¹⁵ The Division issued a supplemental notice on January 22, 2020, which identified the Kenai Peninsula property, the four wheelers, the snow machines, cash and bank accounts, all as being countable resources which placed the Ts over the Food Stamp program's resource limit.¹⁶

IV. Discussion

The Food Stamp program is a federal program which is administered by the State of Alaska.¹⁷ The Code of Federal Regulations contains the rules governing Food Stamp benefits. The relevant issues that must be determined for this case are (A) what were the Ts' countable resources; (B) did those countable resources exceed the applicable resource limit; (C) if so, were the Ts overpaid benefits and in what amount; and (D) if so, are the Ts required to reimburse the Division for those overpaid benefits.

¹² Ex. 12.
¹³ Exs. 10 – 10.1.
¹⁴ Ex. 10.2.
¹⁵ Exs. 11 – 11.20.
¹⁶ Exs. 21 – 21.33.
¹⁷ 7 C.F.R. § 271.4(a).

A. *What Were the Ts' Countable Resources?*

This discussion will only address the resources identified as countable in the Division's January 22, 2020 notice: the Kenai Peninsula property, the two four wheelers, the snow machines, and the \$6,000 in cash.

The two four wheelers, per Mr. T's testimony, were used for the set net business. As a result, because their use is for generating self-employment income, they are exempt from being counted as an asset.¹⁸

The snow machines are all older machines. There was no evidence to controvert Mr. T's testimony. Accordingly, his testimony regarding both the valuation of \$1,000 apiece and the use for trapping is accepted. The snow machines are therefore exempt from being counted as a resource for two separate reasons. First, because they are used for generating self-employment income.¹⁹ Second, because their individual value is less than \$1,500.²⁰

The \$6,000 in cash was derived from the Ts' 2018 PFD, which was received in October 2018, and trapping income. The 2018 PFD was \$1,600 apiece,²¹ which would come to \$3,200 total. This \$3,200 is exempted from being counted as income for the month in which it is received and the three following months if it would make a household financially ineligible for benefits.²² Consequently, since the PFD was received in October 2018, it would not be counted as income or a resource in October, November, and December of 2018, and January 2019. The entire amount of \$6,000 is a countable resource beginning in February 2019. It, however, was not a countable resource prior to February 2019.²³

The \$2,100 in the bank account in February of 2019 was not exempt. Funds contained in bank accounts are not listed among the available exemptions provided for in the federal Food Stamp regulations.²⁴

The Kenai Peninsula property is more problematic. It is not the Ts' primary residence, so it is countable unless it falls under one of the other exemption categories. The Ts argue that it is

¹⁸ 7 C.F.R. § 273.8(e)(3)(i)(A).

¹⁹ 7 C.F.R. § 273.8(e)(3)(i)(A).

²⁰ 7 C.F.R. § 273.8(e)(3)(i)(G).

²¹ See <https://pfd.alaska.gov/Division-Info/Summary-of-Applications-and-Payments> (date accessed November 13, 2020).

²² *Alaska Food Stamp Manual* § 605-7.

²³ The record is not clear as to when the non-PFD portion of the \$6,000 cash accrued. As a result, this decision does not address, nor is it necessary to address, whether the non-PFD portion of the cash made was a countable resource prior to February 2019.

²⁴ See 7 C.F.R. § 273.8(e).

exempt because it is used for their set net operation. They live on the property during the fishing season and store the set net related equipment there (the two trucks, the two four wheelers, and the skiffs). However, it is not directly used for fishing, but for seasonal lodging and equipment storage. The property itself is comprised of 2.13 acres and a small dwelling. While the dwelling itself is convenient, it is not integral to the operation of the fishing business. The storage of the seasonally used equipment is integral to the operation of the fishing business. However, the entire 2.13 acres and the dwelling are not needed for the operation of the fishing business.

The applicable federal Food Stamp regulation reads that “[P]roperty, such as farm land or work related equipment ... which is essential to the employment or self-employment of a household member” is exempt from being counted as a resource.²⁵ Under this regulation, the Kenai Peninsula property would not be exempt from being counted as a resource, because it is not essential to the fishing business. In contrast, if the Kenai Peninsula property were the actual fishing site, it would be exempt. However, there is a separate regulation that exempts property from being counted as a resource if it is “directly related to the maintenance or use of a vehicle excluded” because it is used for self-employment purposes or long distance traveling for work.²⁶ This would apply to the storage of the trucks, four wheelers, and skiffs. However, that same regulation explicitly notes that a “household may own a 100-acre field and use a quarter-acre of the field to park and/or service [a covered vehicle]. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.”²⁷ Because of the express limitation contained in this regulation, only the portion of the Kenai Peninsula property used for the storage/maintenance of the trucks, four wheelers, and skiffs would be exempt, not the dwelling or the entire 2.13 acres upon which it sits.

The Kenai Peninsula property has a 2018 tax assessed value of \$109,200. Mr. T, however, on his 2019 application valued it at \$59,200. Mr. T’s low valuation is not credible, given the large disparity between it and the tax valuation. Given the small amount of space required to store two skiffs, their motors, and two trucks, the business only requires use of much less than a quarter of the property. As such, even using Mr. T’s low valuation of \$59,200 and attributing a generous 25% allocation for the storage, would still result in approximately \$45,000

²⁵ 7 C.F.R. § 283.8(e)(5).

²⁶ 7 C.F.R. § 273.8(e)(16).

²⁷ 7 C.F.R. § 273.8(e)(16).

valuation on the property not allocated for the business. Alternatively, if the tax valuation of the property at \$21,900 for the land alone is used, not counting the dwelling, and attributing a quarter of the land for the business, that would provide \$16,425 for valuation for the portion of the property not utilized for storage or the dwelling.

B. Did the Ts' Countable Resources Exceed the Resource Limit?

The countable resource limit for the Ts' household was \$2,250.²⁸ As discussed above, the portion of the Kenai Peninsula property which was not exempt was worth well in excess of \$2,250 – this was true in August of 2018 when they applied and was also true in February 2019 when they renewed their benefits. In addition, they had cash of \$6,000 and a bank account balance of \$2,100 in February 2019. This came to \$8,100 total which was not exempt.

As a result, the Ts were over the Food Stamp program's resource limits in August 2018 when they applied and in February 2019 when they applied to renew their benefits.

C. Did the Ts Receive Food Stamp Benefits That They Should Not Have Received?

To be eligible to receive Food Stamp benefits, applicants/recipients must have less than \$2,250 in countable resources. Because the Ts had more than \$2,250 in countable resources at all relevant times, they should not have had either their August 2018 application or their February 2019 renewal application approved. Consequently, they were issued \$5,097 in Food Stamp benefits that they should not have been issued.

D. Are the Ts Required to Reimburse the Division

The critical fact here is that the Division erroneously approved the Ts' Food Stamp applications. But for the Division's error, the Ts would not have received \$5,097 in Food Stamp benefits. However, even though the error was the Division's and not the Ts, the Ts are required to reimburse the Division for funds they received as a result of that error. 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."²⁹ 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 stamps recipients to repay benefits that were overissued to them through no

²⁸ Ex. 11.6.

²⁹ 7 C.F.R. §273.18 (b) (3).

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.³⁰

The federal regulations and the *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.³¹ The Division had the burden of proof in this case. The Division has met its burden and established that the Ts were overpaid benefits. They must reimburse the Division. The amount of benefits is \$5,097. At hearing, however, it was clear that the Ts had not spent all of the \$5,097 that they were issued. Any unexpended funds must be deducted from the balance due and owing.

V. Conclusion

The facts of this case demonstrate that the Division erroneously approved both the Ts’ August 2018 Food Stamp application and their February 2019 renewal application. As a result, the Ts are required, by federal law, to reimburse the Division for all the benefits received due to the approval of their applications, which is \$5,097 less a credit for any unexpended benefits.

Dated: November 19, 2020

Signed _____
Lawrence A. Pederson
Administrative Law Judge

³⁰ 203 P.3d 1155 (Alaska 2009).

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

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 3rd day of December, 2020.

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.]