

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

In the Matter of

J. C.

)
)
) OAH No. 25-3503-SNA
)
_____)

NON-ADOPTION & FINAL DECISION

The undersigned, by delegation from the Commissioner of Health, in accordance with AS 44.64.060(e)(3) and (e)(5), for the reasons set forth below, rejects the interpretation that 7 CFR 273.18(e)(3)(iv)(A)–(P) requires “a valid termination notice” as a predicate to recoupment, revises the disposition, and adopts the proposed decision as modified.

The administrative law judge correctly determined that the Division’s initiation of a claim against Mr. C. was improper due to its failure to meet the notice requirements of 7 CFR 273.18. Specifically, the claim initiation notice did not explicitly provide Mr. C. with the opportunity to inspect and copy records related to the claim, as required by 7 CFR 273.18(e)(3)(iv)(H). Accordingly, the overpayment action is **REVERSED**.

At the hearing, the administrative law judge addressed concerns regarding the underlying recertification denial. The proposed decision found that “a valid termination notice is a predicate to a recoupment action” under 7 CFR 273.18(e)(3)(iv)(A)–(P) and *Allen v. State, Dep’t of Health & Soc. Services, Div. of Pub. Assistance*. However, the validity of the underlying basis for repayment is not explicitly required or encompassed within the notice requirements set forth in 7 CFR 273.18(e)(3)(iv)(A)–(P). Accordingly, that interpretation of 7 CFR 273.18(e)(3)(iv)(A)–(P) that “a valid termination notice is a predicate to a recoupment action” is rejected under AS 44.64.060(e)(5).

7 CFR 273.18(e)(3)(iv)(A)–(P) *does* require that the claim initiation notice provide “the opportunity for a fair hearing *on the decision related to the claim* (emphasis added).” Although Mr. C.’s hearing request did not *explicitly* request review of the recertification denial, Mr. C. retains that right. The hearing request in this case stated that Mr. C. sought a fair hearing because “this overpayment helped pay food for cost of living food expenses + it was not my fault for overpay.” The undersigned finds that this statement sufficiently expresses disagreement with *the decision related to the claim*, specifically the underlying recertification denial. Read in a flexible way, this counts as asking for a hearing on the recertification denial tied to the claim. This reading is consistent with the state agency’s responsibilities for handling hearing requests under 7 CFR 273.15(i).

The Division did not prove the validity of its recertification denial in this case. As indicated by Ms. Thirlwell on the record, the Division’s position was that the validity of the recertification denial fell outside the scope of the hearing and that Mr. C. did not explicitly request a hearing on that issue. That position is incorrect for the reasons explained above. The administrative law judge correctly found that the Division did not meet its burden to prove that Mr. C. willfully refused to comply with recertification requirements. Accordingly, the recertification denial is **REVERSED** pending reprocessing.

The Division is **ORDERED** to proceed immediately with delayed processing of Mr. C.'s recertification, including ensuring the Division provided the household with a Notice of Required Verification under 7 CFR 273.2(c)(5), completing all subsequent actions required by regulation to process the recertification through to a determination, and issuing any benefits for which the household is determined eligible on a retroactive basis.

Under 7 CFR 273.2(d)(1), the Division may not deny recertification absent a household's willful refusal to be interviewed. At the same time, the Department, including the Commissioner, cannot approve recertification unless interview requirements are satisfied or otherwise waived.

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 31st day of March 2026.

SIGNED

Daniel R. Phelps II
Process Improvement Manager
Office of the Commissioner
Alaska Department of Health

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

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DECISION

I. Introduction

In this case, the Division of Public Assistance (the “Division”) seeks to recover \$598.00 in Supplemental Nutrition Assistance Program (“SNAP”) benefits, which the Division disbursed to J. C. in November 2025.¹ The Division concluded that its disbursement had been made in error primarily because it was unable to reach Mr. C. for a telephonic recertification interview in October and November 2025.

On December 10, 2025, the Division notified Mr. C. that it had terminated his eligibility and simultaneously demanded repayment.² Mr. C. timely sought a hearing and review of the Division’s termination and recoupment actions.

This decision concludes that the Division failed to sustain its burden to establish Mr. C.’s willful refusal to participate in a recertification interview.³ Further, the Division’s termination notice in this case is deficient and does not comply with the federal regulations governing SNAP termination notices. Thus, the notice is inconsistent with the most recent Alaska Supreme Court opinion on this very point.⁴ Because the Division failed to establish Mr. C.’s willful refusal to be interviewed, and because the Division’s notice does not comply with the federal regulations governing recoupment actions such as this, the Division’s termination and overpayment determinations are reversed.

¹ Division Position Statement (January 7, 2026), at pg 1; Exhibit 8; Exhibit 13.

² Division Position Statement, *id.*; Exhibit 15.

³ See 7 C.F.R. §273.2(d)(1).

⁴ *Allen v. State, Dep’t of Health & Soc. Services, Div. of Pub. Assistance*, 203 P.3d 1155, 1168-69 (Alaska 2009) (technical non-compliance with notice requirements is fatal to the termination and collection action).

II. Facts

A hearing on the merits was held on January 21, 2026. Mr. C. was represented by his sister, N. G., whom he had previously designated as his hearing representative.⁵ The Division appeared through its fair hearing representative. Testimony at the hearing established the following points:

J. C. is 50 years old. He lives in Village A, Alaska.⁶ Village A, Alaska is a remote Arctic Alaskan village of roughly 000 residents. It is located in the Northwest Arctic Borough, on the Sea A, 100 miles north of the Arctic Circle, and roughly 200 miles north of City A. Village A is not connected to the mainland road system.⁷

Mr. C. lives alone in Village A. Other than the Alaska Permanent Fund Dividend and Native Corporation benefits, he has no cash income.⁸ Mr. C. is recovering from strokes he has experienced, most recently in July 2025.⁹

Mr. C. was previously approved as a SNAP beneficiary in November 2024.¹⁰ On September 11, 2025, the Division mailed a recertification notice and questionnaire to Mr. C.. Mr. C. completed the form and promptly returned it. The Division received it on September 30, 2025.¹¹

In most cases, interviews are required as part of the recertification process. In this case, the Division scheduled a telephonic interview for Mr. C. on October 20, 2025.¹² It mailed Mr. C. a notice that stated, “[W]e have scheduled an interview for you on Monday, [] OCTOBER 20, 2025 [] between 8:00 AM and 10:00 AM. You must call the Virtual Contact Center (VCC) at 800-478-7778 on the date and between the times listed above to complete the application process.”¹³

⁵ Exhibit 16.2.

⁶ Exhibit 3.

⁷ The community information in this section is drawn from State of Alaska, Division of Community and Regional Affairs on-line community database, of which official notice is taken. 2 AAC 64.300. Community data available at (link to community data) (last visited January 23, 2026). Village A has a U.S. Post Office, but reportedly, it has been intermittently closed for periods through 2025 due to the illness of the local postmistress. Telephonic cell service to Village A is sporadic, as well. N. G. hearing testimony.

⁸ Exhibit 3.1-3.3; Exhibit 7; Exhibit 16.2.

⁹ Exhibit 3.4; N. G. hearing testimony.

¹⁰ Exhibit 1.

¹¹ Exhibit 3.

¹² Exhibit 4; Exhibit 6.

¹³ Exhibit 6.

The record is silent regarding whether Mr. C. called the Division’s call center as directed. At the evidentiary hearing in this case, the Division’s hearing representative candidly testified that the Division has access to call center records which can show whether a call originated from a particular phone number on a particular date and time, but testified that she had not researched call center records. Notably, no record submitted by the Division established that Mr. C. defaulted by failing to call the Division on October 20, 2025, as directed.

The record in this case contains an internal case note, written nearly three weeks later – on November 9, 2025 – in which a Division eligibility technician wrote,

TRIED CALLING HH TWICE TO CONDUCT FOOD STAMP INTERVIEW NO
SUCCESS HH IS A RURAL II HH
RECERT TURNED IN BEFORE END OF CERTIFICATION PERIOD.
SHOULD HAVE BEEN SCHEDULED AS A DELAY RURAL INTERVIEW RECERT
INITIALLY
SCHEDULING IT NOW.
INCOME: NO INCOME FOUND PER IEVS, SOLQ, SAM/DOL, ACCESS
RESOURCES: REPORTED NO BANK ACCOUNTS AND RETAINING 2025 PFD AS
CASH.
PI HAS NO OTHER INCOME NOR RESOURCES AND WOULDN'T CREATE A HH
SITUATION.
ACTION 11/25
INTERVIEW DATE 11/28/25 SENT F118¹⁴

This note does not state when or why the technician called Mr. C.. Nor does the note explain why the calls were unsuccessful. The Division did not call the technician to testify. The file note does not explain whether the calls were met with an outgoing “inoperative line” message, a persistent busy signal, a working voice mail greeting, or if so, whether the technician left a voicemail message with instructions for Mr. C. to contact him. Nor does the note explain why the technician did not attempt to contact Mr. C.’s mother or sister – both of whom Mr. C. had listed along with their telephone numbers on his September 2025 recertification form in response to the questionnaire inquiry seeking information about “two people who know you well.”¹⁵

On November 10, 2025, the Division mailed an interview notice to Mr. C. informing him that it had re-scheduled his telephonic interview for “November 28, 2025, between 8:00 a.m.

¹⁴ Exhibit 7.

¹⁵ Exhibit 3.5 (Mr. C.’s September 2025 recertification questionnaire listing his mother and sister along with their telephone numbers).

and 10:00 a.m.”¹⁶ This notice again instructed Mr. C. to call the Division’s 1-800 call center line.¹⁷

Once again, this record is silent regarding whether Mr. C. called the 1-800 call center line on November 28 as directed. No testimony on this point was offered at the evidentiary hearing. On December 10, 2025, the Division mailed Mr. C. a notice informing him that it had denied his September 2025 recertification application. The notice stated that Mr. C., “did not attend the interview we scheduled for you.”¹⁸ This was the Division’s only reason for the denial. On that same day, the Division mailed Mr. C. an overpayment notice, stating that the Division had erroneously issued November 2025 SNAP benefits to him and demanding repayment.¹⁹

On December 18, 2025, Mr. C. timely sought a fair hearing.²⁰ Mr. C. designated his sister, N. G. as his authorized hearing representative.²¹

III. Discussion

In this case, Mr. C. appeals the Division’s termination of his SNAP benefits as well as the Division’s resulting collection action. Both facets of this case place the burden of proof upon the Division. The Division’s burden is a preponderance.²²

The Division failed to establish Mr. C. ’s willful refusal to be interviewed

In cases of this sort, where a SNAP termination is based upon a defect in the recertification interview process, the Division must establish the beneficiary’s **willful refusal** to be interviewed.²³

¹⁶ Exhibit 8.

¹⁷ *Id.*

¹⁸ Exhibit 10.

¹⁹ Exhibit 15.

²⁰ Exhibit 16-16.5.

²¹ Exhibits 16.2 & 16.4.

²² The agency must actually establish an overpayment claim before it is authorized to commence recoupment. 7 C.F.R. §278.18(a)(2). *See also Allen v. State, Dep’t of Health & Soc. Services, Div. of Pub. Assistance*, 203 P.3d 1155, 1168-69 (Alaska 2009) (“More importantly, giving notice that complies with the regulations is a prerequisite to bringing a recoupment action.”) *citing* 7 C.F.R. §273.18(e)(3)(i); *In re K.O.H.*, 2021 WL 5066229 *2-3 (Alaska Commissioner of Health & Social Services 2021) (in a SNAP recoupment case, reversing Division where the alleged overpayment was not established at the evidentiary hearing).

See also 7 AAC 49.135 (in benefit termination cases, the Division bears the burden of proof). In overpayment collection actions, the Division bears the same burden. *See In re F.E.*, OAH No. 23-0278-CMB, at p.3 (Alaska Commissioner of Health 2023) (in an overpayment collection case, placing burden upon Division) (decision available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=6988>).

²³ Where the alleged overpayment is based upon termination, which in turn is founded upon a missed recertification interview, the Division must establish the beneficiary’s **willful refusal to cooperate**, not merely missed interview phone calls. *See* 7 C.F.R. §273.2(d)(1) (“For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed

Interview failures amounting to nothing more than a communication difficulty are insufficient to support termination.²⁴ Further, in cases where there is “any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied.”²⁵ Thus, establishing Mr. C.’s refusal to be interviewed is an essential element of the Division’s case – an element upon which the Division – not Mr. C. — bears the burden.

The record of this case establishes that the Division instructed Mr. C. to call in for an interview in October and again in November. The record does not establish that Mr. C. failed to abide by the Division’s instructions. This record contains no evidence regarding whether Mr. C. called in as directed and then patiently waited for a Division employee to pick up on the call — or not.

While it is apparent that no telephonic interview with Mr. C. actually occurred, evidence presented at the hearing did not establish that Mr. C. failed to place a call to the call center line in October or November as directed. The Division hearing representative candidly conceded that she made no effort to research call center records for calls made and placed on hold – even though the Division unquestionably has that ability.²⁶

A failure of proof weighs against the party bearing the burden, not the other way around.²⁷ The Division did not provide evidence to establish that Mr. C. failed to call the Division’s 1-

not merely failing to appear for the interview.”); *See In re M.X.*, OAH No. 13-0417-SNA (Commissioner of Health and Social Services 2013), at pgs. 4-6 (reversing Division and finding invalid termination where agency merely left a message with a family member, received no response and terminated benefits based upon default; “For the Division to deny Mr. X benefits based on his refusal to cooperate, federal law requires that Mr. X ‘clearly demonstrate’ willful refusal to cooperate; further that the law instructs the Division that “[i]f there is any question as to whether the household has merely failed to cooperate, as opposed to refuse to cooperate, the household shall not be denied, and the agency shall provide assistance.”; *citing* 7 C.F.R. §273.2(d)(1)”) (decision available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=6044>).

²⁴ *Id.*

²⁵ 7 C.F.R. §273.2(d)(1)

²⁶ The Division’s 1-800 call center system logs and tracks incoming calls, and assigns call-specific tracking numbers to each call event to facilitate research in cases such as this one. The Division has relied upon that research ability in recent fair hearing cases, and official notice of that capability is taken. *See e.g., In re P.M.*, OAH No. 25-3383-SNA (Alaska Commissioner of Health 2026), at pg. 3 (documenting Division ability to research incoming calls to the call center). For a discussion of wait times and processing defects associated with the Division’s call center, *see* Complaint, *Kamkoff v. Hedberg*, 3AN-23-04259 CI (Anchorage Superior Court January 20, 2023), at pgs. 18-19, (“Many applicants wait in the queue for their interview for several hours or more, regardless of their assigned timeslot. Some applicants are never connected to a DOH worker.”); document available at: <https://nclej.org/wp-content/uploads/2023/01/Plaintiffs-Class-Action-Complaint-Conformed-Copy-2.pdf>.

²⁷ Where a litigant bearing the burden of proof argues that “the record is silent” or “the record does not prove” a particular fact, that silence is allocated against that party, the argument boomerangs, and the litigant has “argue[d] himself out of court.” *Merrill v. State*, 457 P.2d 231, 235 (Alaska 1969) (so stating).

800 call center as directed.²⁸ At the evidentiary hearing, the Division representative candidly acknowledged that citizens often experience prolonged call center wait times.²⁹ Hearing testimony also established that the Division is able to research its call center records – even for calls which go unanswered for hours and then are ultimately dropped.³⁰ Perhaps misperceiving its burden here, the Division left the point completely unaddressed at the merits hearing.

The preponderance of the evidence here weighs against a finding of a “refusal” to be interviewed. Mr. C. resides alone in a remote Arctic village where communication is a challenge. He is recovering from a stroke. It is true that the Division offered a file note from its eligibility technician stating, “Tried calling hh [household] twice to conduct food stamp interview no success...”³¹ But as noted above, even if accepted at face value, this statement falls far short of establishing that Mr. C. willfully refused to be interviewed. The technician did not state whether this note relates to the October 20 interview, or whether it memorializes calls placed on November 9 – the date of the note. If the calls were placed on November 9, the Division did not establish that Mr. C. disregarded prior notice of the technician’s calls. Certainly, no advance notice of a November 9 interview appears in this record. Nor, as noted above, does the technician’s note establish whether the calls were met by an outgoing “not in service” message, a persistent busy signal, or whether he left a message for Mr. C. to call back. On these points, the record is silent. As a result, the Division failed to sustain its burden of proof.

It is also noteworthy that the Division made no attempt to contact Mr. C.’s mother who lives in Village A, or his sister who lives in Town A. Mr. C. provided both his mother’s and his sister’s names, telephone numbers and communities of residence in the appropriate section of his September 30, 2025 recertification questionnaire.³²

It is true that no provision of law affirmatively *requires* the Division to attempt contact through an intermediary. However, the Division must establish Mr. C.’s “willful refusal” to be interviewed.³³ Here, the Division was confronted with difficulties contacting an elder recovering

²⁸ ALJ: You can’t tell me that Mr. C. didn’t – or somebody on his behalf - didn’t call between 8:00 a.m. and 10:00 a.m. on October 20... [] right?

Division representative: “Correct...”

January 21, 2026 hearing testimony, at 1:08:40.

²⁹ Division hearing representative testimony.

³⁰ “That is definitely researchable...” Division hearing representative testimony, at 1:12:30.

³¹ Exhibit 7 (explanatory parenthetical added).

³² Exhibit 3.5, (questionnaire requests “information about two people who know you well.”)

³³ See fn. 23, *supra*.

from a stroke,³⁴ who was residing in a remote, Arctic village. The fact that the eligibility technician did not take an extra minute to attempt contact through a close relative prior to terminating nutrition benefits – especially when he had family members’ names and telephone numbers directly before him, reinforces the conclusion that the Division failed to establish Mr. C.’s willful refusal to be interviewed.

Further, an Alaska-specific federal regulation provides that the Division must, “interview applicant households in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence. In instances in which an interview cannot be conducted, the State agency may postpone the interview until after the household is certified.”³⁵

In this case, the Division never advised Mr. C. of his right to request a recertification interview by correspondence or availed itself of this potential solution. The Division simply terminated Mr. C.’s eligibility and demanded immediate recoupment. The Division’s failure to avail itself of this potentially useful interview method likewise weighs heavily against a finding that Mr. C. willfully refused to be interviewed.

The Division’s recoupment notice is procedurally defective

Federal law provides that a recoupment notice must contain sixteen specific advisements as a predicate to recoupment.³⁶ Our state Supreme Court has specifically held that a deficient notice is fatal to a collection action.³⁷ In this case, the Division included its recoupment notice in the record of this case.³⁸ Comparison of the Division’s notice with the federal regulation reveals a significant deficiency: the notice fails to ***expressly advise*** Mr. C. of his right to “copy” documents related to the Division’s claim.³⁹ This defect is not cured by the fact that Mr. C. would have this right available to him through the fair hearing process.⁴⁰

³⁴ Mr. C.’s September 2025 recertification application informed the Division that he had experienced a stroke in July 2025. Exhibit 3.4.

³⁵ 7 C.F.R. §272.7(d)(6).

³⁶ See 7 C.F.R. § 273.18(e)(3)(iv)(A)-(P); *Allen, supra* (valid termination notice is a predicate to a recoupment action).

³⁷ *Allen, supra*, at 1169-70.

³⁸ Exhibits 15-15.1.

³⁹ *Allen, supra*, at 1168 (“The language of 7 C.F.R. §273.18(e)(3)(iv)(H) is quite clear in requiring that a recoupment notice “must” state that the recipient will have the “opportunity to inspect and copy records related to the claim” (emphasis added). The Agency’s notice did not mention the right to copy records. Therefore, the Agency’s notice did not comply with the regulation.”)

⁴⁰ *Allen, id.*

At first blush, this might seem like a technical micro-issue – *but for* the fact that our state’s Supreme Court faulted the Division on this very point in a precedential opinion issued sixteen years ago. The 2009 *Allen* court specifically held that the Division’s failure to expressly advise beneficiaries of their right to “inspect and copy records” – irrespective of the fair hearing process – invalidates the benefit termination and is fatal to the collection action.⁴¹ This case presents precisely the same defect.

Nowhere in the Division’s December 2025 notice did the Division expressly advise Mr. C. of his right to “inspect and copy records related to the claim.”⁴² As *Allen* specifically requires this language, the Division’s notice is defective. The defect is fatal to this recoupment action.⁴³

IV. Conclusion

The record of this case establishes nothing more than a communication delay commonly-encountered in this state when agency staff – often located in this state’s urban centers – experience challenges when communicating with remote, rural Alaskan villagers. Faced with a routine communication delay, the Division terminated the recipient’s nutrition benefits and demanded repayment of \$598.00.

Yet, the evidence in this case fails to establish that Mr. C. “willfully refused” to be interviewed – and that is the Division’s burden.⁴⁴ Moreover, the Division’s notice is procedurally non-compliant with mandatory federal requirements.⁴⁵ Thus, *Allen* is dispositive of this case. For both reasons, the law compels a decision in Mr. C.’s favor.⁴⁶

The Division’s termination of Mr. C.’s SNAP benefits is REVERSED.

Dated: February 12, 2026

SIGNED

James Fayette
Administrative Law Judge

⁴¹ *Allen, supra*, at 1168-69.

⁴² *See* Exhibit 15.

⁴³ *Allen, id.*

⁴⁴ *See* fn. 23, *supra*.

⁴⁵ *See* fn. 39, *supra*.

⁴⁶ The *Allen* court’s closing comments apply here: “... if the Agency wishes to pursue its recoupment claims against [the beneficiaries] it must issue them notices that comply with the federal regulation requirements. The Agency should then consider exercising its discretion to compromise its claims against [them] if reduction of their monthly food stamp allotments would pose a hardship to them.” *Allen, supra*, at 1169-70.