

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

In the Matter of)

D. U.)

) OAH No. 22-0059-SNA
)

DECISION

I. Introduction

D. U. is a Supplemental Nutrition Assistance Program (SNAP)¹ recipient who received SNAP benefits during December of 2020 through November of 2021. The Division of Public Assistance (Division) determined that she had erroneously received \$3,344 in benefits during those months and sent her notice that she was required to reimburse the Division for that amount.

Ms. U. requested a hearing to dispute the Division's repayment requirement. Her hearing was held on February 9, 2022. Ms. U. represented herself and testified on her own behalf. Jessica Hartley, a fair hearing representative with the Division, represented the Division and testified on its behalf.

The evidence at hearing established that Ms. U. refused to respond to the Division's valid requests for information necessary to determine her eligibility for SNAP benefits and the amount of benefits she would receive if found eligible. The Division should have terminated her benefits but failed to do so. As a result, Ms. U. received a total of \$3,344 in continued SNAP benefits, which she should not have. Although the overpayment was caused by the Division's error, the Division is legally required to recover those benefits from Ms. U.. Accordingly, the Division's requirement that Ms. U. repay it the \$3,344 in SNAP benefits that she erroneously received is **AFFIRMED**.

II. Facts

Ms. U. applied for SNAP benefits on August 24, 2020. Her handwritten application lacked a signature under the "Statement of Truth" portion which certified both the truthfulness of the information provided on the application as well as verifying that she had read or had read to her the information conveyed in the "Rights and Responsibilities" section of the application.²

¹ The Supplemental Nutrition Assistance Program is also known by its previous name of the Food Stamp Program. Congress changed the name of the program from the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP). The title SNAP will be used in this decision.

² Exs. 2 – 2.10.

Ms. U. spoke to a Division employee telephonically on August 24, 2020 and “verbally signed” the application.³ The Division approved Ms. U.’s application. It sent her notice on August 26, 2020 that her application was approved and that she would be issued benefits for the last part of August and for September 2020, but that if she wanted to continue receiving benefits after that time, she would need to provide it with the following information:

1. A statement that she intended to remain in Alaska; and
2. Proof from her two prior employers, Youth Educator A (Youth Educator A), and Store A (Store A) as to when she stopped working at those jobs, the date of her final paycheck from those jobs and the gross amount, and the amount of gross wages from each job that she received in August of 2020.

The notice gave Ms. U. a deadline of September 8, 2020 to respond.⁴

Ms. U. did not respond to the notice by its deadline of September 8, 2020. She did contact Youth Educator A, who she last worked for in August of 2020. Youth Educator A, however, never responded to her. Ms. U. finished working for Store A in Anchorage in April of 2020. She testified that she was not able to contact them for the necessary information.

The Division did not terminate Ms. U.’s SNAP benefits after September 2020. It reviewed her SNAP case at the very end of October 2021 and determined that it never received the requested information and that it erred when it did not terminate Ms. U.’s SNAP benefits.⁵ It then notified Ms. U. that her SNAP benefits would end after November 30, 2021.⁶

On December 30, 2021, the Division notified Ms. U. that she was required to reimburse the Division for \$3,344 of the SNAP benefits that she received during the time of December 2020 through November of 2021.⁷ The Division did not ask for repayment for benefits received during October or November 2020, nor did it ask for the entire amount of the benefits that Ms. U. received during December 2020 through November of 2021. Ms. Hartley explained that under the SNAP rules, it could only ask for benefits received during the prior 12 months, and that because some of the benefit amounts were increased due to the Covid-19 measures, repayment of those additional amounts attributable to the Covid-19 measures was not requested.⁸

³ Ex. 3.

⁴ Ex. 5.

⁵ Ex. 9.

⁶ Ex. 10.

⁷ Exs. 13 – 14.2

⁸ See Exs. 14 – 14.1.

Ms. U. did not dispute that she had received the benefits or the Division's calculations of the amount overpaid.

III. Discussion

The issue in this case is whether DPA was correct to require Ms. U. to repay \$3,344 of the SNAP benefits that she received in December of 2020 through November of 2021. In order to resolve this issue, it is first necessary to address two questions. The first question is whether the Division was justified in asking Ms. U. to submit a statement of her intent to remain in Alaska and for the information about her two prior employers. The second question is, assuming either of these requests were justified, whether Ms. U. refused to provide the information in a timely manner.

SNAP is a federal program which is administered by the State of Alaska.⁹ To administer the program in Alaska, the Alaska Department of Health and Social Services has adopted the federal regulations governing the program.¹⁰ Accordingly, the decision in this case is governed by the federal SNAP regulations.¹¹ The Division has the burden of proof in this case because it is seeking to recover paid SNAP benefits from Ms. U..¹²

Regarding the first issue, the Division is allowed to request information regarding an applicant's eligibility.¹³ The Division asked for information regarding Ms. U.'s intent to remain in Alaska. The specific regulation applicable to Ms. U. requires that she "shall live in the State in which [she] files an application."¹⁴ That regulation further provides that there is no duration requirement, nor is there a requirement that there be "an intent to reside permanently in the state or project area. Persons in a project area solely for vacation purposes shall not be considered residents."¹⁵ Reading this regulation as a whole, there is no requirement that a recipient be a legal resident or citizen of the State, merely that they be living there while receiving benefits, regardless of whether they intend to remain in the State. As such, the Division did not have a basis for requesting a statement from Ms. U. as to whether she intended to remain in Alaska. Consequently, the Division could not use the fact that she did not respond to this request as a basis for terminating her SNAP benefits.

⁹ 7 C.F.R. § 271.4(a).

¹⁰ 7 AAC 46.010.

¹¹ The applicable regulations are located at 7 C.F.R. § 273.1 *et. seq.*

¹² 7 AAC 49.135.

¹³ 7 C.F.R. § 273.2(f)(8); 7 C.F.R. § 273.14(b)(4).

¹⁴ 7 C.F.R. § 273.3(a).

¹⁵ 7 C.F.R. § 273.3(a).

The Division also requested that Ms. U. provide information from her two previous employers regarding her last date of work, the last date and gross amount of her final paycheck, and information about wages she received in August of 2020. SNAP eligibility and benefit amounts are based upon an applicant's income and expenses.¹⁶ Because Ms. U. applied in August of 2020 and based upon the information in her application that she had been recently employed, the Division was justified in requesting this information because it pertained to her income.

It is undisputed that Ms. U. did not submit any response to the Division's request. The next question to be answered is whether Ms. U. failed to comply with the information request or refused to comply. The SNAP program distinguishes between a failure to comply and a refusal to comply. A failure to comply is not grounds for a denial, whereas a refusal to comply is grounds for denial.¹⁷ Ms. U. testified that she contacted Youth Educator A but it did not get back to her. She testified that she did not know how to contact Store A to get the necessary information. Both of these businesses were recent employers. Based upon her testimony, the evidence shows that Ms. U. made very minimal efforts to obtain the requested information. Her testimony therefore shows that she did not merely fail to comply with the request for information but refused to comply. As such, her refusal to comply with the Division's requested information was a valid ground for terminating her benefits after the initial approval for August and September 2020. This means that she was not eligible for the benefits which she received after that date.

The question then arises as to whether Ms. U. must repay the \$3,344 that she received in SNAP benefits for which she was not eligible. The Division has not claimed fraud and the evidence shows Ms. U.'s receipt of ongoing benefits was due to the fact that the Division failed to review the case and terminate the benefits for slightly over a year after Ms. U. did not respond to its valid information request. This was the Division's error.

The federal statute that addresses Food Stamp overpayments, 7 U.S.C. § 2022(b)(1), provides that the "state agency *shall* collect any issuance of benefits issued to the household . . ." [emphasis added]. The specific federal 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

¹⁶ 7 C.F.R. §§ 273.9 and 273.10.

¹⁷ 7 C.F.R. § 273.2(d)(1).

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.¹⁸ Even though the overpayment was caused by the Division’s error when it failed to notice that Ms. U. did not respond to its valid information request, the Division is required to recover the overpaid benefits, which amount to \$3,344.

IV. Conclusion

The Division’s determination that Ms. U. was overpaid \$3,344 in Food Stamp benefits and is required to reimburse the Division in that amount is AFFIRMED.

Dated: February 17, 2022

SIGNED
Lawrence A. Pederson
Administrative Law Judge

¹⁸ *Allen v. State*, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

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 March, 2022.

By: SIGNED

Name: Lawrence A. Pederson

Title: Administrative Law Judge

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