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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

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| In the Matter of |) | |
| |) | |
| ██████████, |) | OHA Case No. 12-FH-38 |
| |) | |
| Claimant. |) | Division Case No. ██████████ |
| _____ |) | |

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) is a Food Stamp¹ recipient. (Ex. 1) On January 26, 2012, the Division of Public Assistance (Division) sent the Claimant written notification that it was requesting repayment of \$510 in Food Stamp benefits that she had allegedly mistakenly received during the months of August 2011 through October 2011. (Exs. 6.0 – 6.12) The Claimant requested a fair hearing on February 6, 2012. (Exs. 7.0 – 7.1)

This Office has jurisdiction pursuant to 7 AAC 49.010 and 7 C.F.R. § 273.15.

The Claimant's hearing was held on March 6, 2012. The Claimant appeared in person, and testified on her own behalf. She was represented by her son, ██████████, who appeared in person. He testified on the Claimant's behalf and also translated for the Claimant. ██████████, a Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

The record was left open after the hearing for the Division to supplement the record and for the Claimant's written response. The Division's supplemental exhibits were received on March 6, 2012. The Claimant did not submit a response.

¹ Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). However, the common usage refers to the program as the Food Stamp program, which usage this decision also follows.

STATEMENT OF ISSUES

The issue in this case is whether the Division was correct to request that the Claimant repay it \$510 in Food Stamp benefit payments that were allegedly mistakenly overpaid to the Claimant during the months of August 2011 through October 2011.

FINDINGS OF FACT

The following facts are proven by a preponderance of the evidence:

1. The Claimant was receiving Food Stamp benefits in June 2011 for a five person household, which included an adult daughter and her minor child, the Claimant's grandchild. (Ex. 1; ██████ testimony)
2. On June 23, 2011, the Claimant informed the Division that her adult daughter and grandchild moved out of the household. (Exs. 4.1 - 4.2; ██████ testimony) While this reduced the Claimant's household size to three persons, the Division only removed the adult daughter from the Claimant's household and not the grandchild, which meant the Division treated the Claimant as having a four person household. (Ex. 4.1)
3. The Division provided the Claimant's household with Food Stamp benefits for a household of four persons, which included the grandchild, for the months of August, September, and October 2011. (Ex. 4.3) The Claimant received Food Stamp benefits in the amount of \$362 for each of the months of August and September 2011, and \$365 in Food Stamp benefits for the month of October 2011, a total of \$1,089 for those three months. (Exs. 4.3, 6.6) Those benefits were based upon the Claimant having monthly income of \$1,692 (Temporary Assistance: \$656; Social Security: \$674; Adult Public Assistance: \$362) and housing expenses of \$492 (\$350 space rent and a standard utility deduction of \$142) during each of these months. (Exs. 21.1, 21.3, 22.1, 22.3, 23.1, 23.3)
4. On October 11, 2011, the Claimant submitted a recertification application to renew her household's Food Stamp benefits. (Exs. 2.0 – 2.9) That recertification application stated that there were only three persons in the Claimant's household, i.e. that the grandchild was no longer residing with the Claimant. (Ex. 2.1)
5. The Division subsequently determined that Claimant had been overpaid Food Stamp benefits during the months of August 2011 through October 2011 because the Claimant had received Food Stamp benefits for a four person household (which included the absent grandchild), when there were actually only three persons in the household. (Ex. 4.1)
6. The Division recalculated the amount of Food Stamp benefits the Claimant should have received if there had only been three members in her household during the months of August 2011 through October 2011. The Division calculated that based upon the Claimant's income and expenses, for a household of three persons, the Claimant should have received Food Stamp benefits in the amount of \$192 per month during the months of August and September 2011, and \$195 during the month of October 2011. (Exs. 6.6 – 6.8) This comes to a total amount of \$579. (Exs. 6.0, 6.6)

7. The Division's calculation of the benefits the Claimant should have received for a three person household were based upon the Claimant having monthly income of \$1,692 (Temporary Assistance: \$656; Social Security: \$674; Adult Public Assistance: \$362) and housing expenses of \$492 (\$350 space rent and a standard utility deduction of \$142) during each of the months of August, September, and October 2011. (Exs. 21.1, 21.3, 22.1, 22.3, 23.1, 23.3)

8. As a result of the Division's calculations, the Division determined that the Claimant was overpaid a total of \$510 (\$1,089 minus \$579) in Food Stamp benefits. (Ex. 6.0) On January 26, 2012, the Division sent the Claimant written notice that she was required to repay the \$510 in allegedly overpaid benefits. (Exs. 6.0 – 6.12)

9. The Claimant did not disagree with the income figures used by the Division in its repayment calculations. The Claimant also did not disagree with the housing expenses of \$492 (\$350 space rent and a standard utility deduction of \$142) used by the Division in its repayment calculations. The Claimant does pay for utilities, including electric heat. (██████████ testimony)

10. The Claimant has yearly property taxes of \$450, which were not included by the Division in its repayment calculations. (Exs. 21.1, 21.3, 22.1, 22.3, 23.1, 23.3; ██████████ testimony) The yearly property tax expense was not listed on the Claimant's May 9, 2011 Food Stamp application. (Ex. 26.3) However, it was listed on her October 11, 2011 Food Stamp application. (Ex. 2.5)

11. On February 6, 2012, the Division received a request from the Claimant that it compromise its overpayment claim against her. (Ex. 7.1) The Claimant's request was made based upon the fact that she was disabled, with limited income, and that repayment would be a financial hardship. *Id.*

12. On February 7, 2012, the Division denied the Claimant's request for compromise. (Ex. 8)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

Food Stamps is a federal program administered by the State. 7 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R.) contains the rules for determining whether a Food Stamp household is eligible to receive Food Stamp benefits. Food Stamp benefit amounts are calculated based upon the gross amount of monthly income received by all household members, the number of people living in the household, and certain deductions including shelter costs (rent//mortgage/utilities/property taxes). 7 C.F.R. § 273.9(d)(6). 7 C.F.R. § 273.9(e); 7 C.F.R. § 273.10(e)(2)(ii)(a). In order for a household to be eligible for a shelter cost deduction, those

shelter costs must be more than one-half of the Claimant's adjusted income. 7 C.F.R. § 273.9(d)(6).

An agency "must establish and collect any claim" for overpaid Food Stamp benefits issued. 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2). *Also see Allen v. State, DHSS 203 P.3d 1155, 1164 - 1166 (Alaska, 2009)* (The Division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is due to the Division's error). Adult members of the Food Stamp recipient's household are the persons responsible for repaying overpaid Food Stamp benefits. 7 C.F.R. § 273.18(a)(4)(i).

The federal Food Stamp regulations provide the Division with the ability to compromise (reduce) Food Stamp repayment claims:

(7) *Compromising claims.* (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

7 C.F.R. § 273.18(e)(7) (emphasis in original). The term "may" used in the regulation means that the decision whether to compromise an overpayment claim is subject to the Division's discretion.

The normal collection process requires that if the Division elects to pursue an overpayment claim resulting from agency error, the Division may collect the claim by reducing ongoing benefit payments by "the greater of \$10 per month or 10 percent of the household's monthly allotment." 7 C.F.R. § 273.18(f)(1) and (g)(1)(iii).

ANALYSIS

The primary issue in this case is whether the Division was correct to request the Claimant to repay \$510 in Food Stamp benefits that she had allegedly mistakenly received during the months of August, September, and October 2011. There are three sub-issues, each of which is addressed separately below:

1. What amount of Food Stamp benefits, if any, were overpaid to the Claimant?
2. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were allegedly overpaid to the Claimant during August, September, and October 2011, even though the overpayment was caused by the Division's mistake?
3. Does the fact that the Claimant is disabled with a limited income entitle her to have the alleged overpayment compromised?

1. What amount of Food Stamp benefits, if any, were overpaid to the Claimant?

The Division has the burden of proof, by a preponderance of the evidence, on this factual issue because it is the party seeking to change the status quo by requesting repayment. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

On January 26, 2012, the Division sent the Claimant written notice that she was required to repay the \$510 in allegedly overpaid benefits. The Division's notice contained both the reason for the overpayment, the amount of the overpayment, and the Division's calculations.

The Claimant did not dispute that she received the Food Stamp benefits. Nor did she disagree with the income figures (\$1,692 per month) the Division used in its calculations of the Food Stamp benefit actually due. The Claimant, however, disagreed with the shelter costs (\$492) allowed by the Division because those shelter costs did not take into account the fact that the Claimant had property taxes of \$450 per year (\$37.50 per month).

A review of the Division's calculations for the Food Stamp benefits the Claimant should have received for the months of August, September, and October, 2011 shows that those calculations were correct based upon the income (\$1,692) and shelter costs (\$492).² Assuming, solely for the sake of argument, that the Division erred when it did not include the \$37.50 per month property tax amount as part of the Claimant's monthly shelter costs, including the \$37.50 per month property tax amount does not cause a change in the Claimant's Food Stamp benefit amount for the following reasons:

- a. Adding the monthly property tax amount of \$37.50 to the Claimant's other shelter costs, which are the space rent of \$350 and the standard utility deduction allowed by the Division of \$142, results in total shelter costs of \$529.50.³
- b. A Food Stamp recipient is only allowed an "excess shelter cost" deduction if her total shelter costs total more than 50 percent of "adjusted income." 7 C.F.R. § 273.9(d)(6)(ii). Given the Claimant's undisputed household income of \$1,692 per month, the Claimant would need to have more than \$720 per month in shelter costs in order to receive a deduction for those costs.⁴

² The Division's listing of the Claimant's income and shelter costs, and its calculations are contained in Exs. 21.0 – 23.4.

³ It is unclear how the Division came up with a standard utility deduction of \$142. The *Food Stamp Manual* Addendum 4 states the standard utility deduction, which is used when a Claimant pays for heat, is \$323. If this figure is used instead of \$142, the Claimant's shelter costs would come to a total of \$710.50 (\$350 space rent, \$37.50 monthly property taxes, and \$323 standard utility deduction).

⁴ The Claimant's only sources of income are SSI, Adult Public Assistance, and Alaska Temporary Assistance. These are all classified as unearned income. 7 C.F.R. § 273.9(b)(2). A household with only unearned income is entitled to a standard deduction (\$243 for August and September 2011, and \$252 for October 2011). 7 C.F.R. § 273.9(d)(1)(i). *Food Stamp Manual* Addendum 4. After that deduction is applied, the result is the Claimant's "adjusted income." Using this procedure, the Claimant's "adjusted income" for August and September would be \$1,449 (\$1,692 - \$243); the "adjusted income" for October would be \$1,440 (\$1,692 - \$252). 50 percent of the Claimant's "adjusted income" for August and September would be \$720, and for October the figure would be \$724.50.

- c. Because the Claimant's monthly shelter costs, including her property taxes, are only \$529.50, she is not entitled to an "excess shelter costs" deduction.⁵

The Division has met its burden of proof by a preponderance of the evidence. The Claimant received Food Stamp benefits during the months of August through October 2011, for a four person household, in the total amount of \$1,089. She should have received Food Stamp benefits during the months of August through October 2011, for a three person household, in the total amount of \$579. The Division established that the Claimant received an overpayment of \$510 (\$1,089 - \$579 = \$510) in Food Stamp benefits during the months of August through October 2011.

2. Was the Division correct to request the Claimant to repay Food Stamp benefit payments that were overpaid to the Claimant during August, September, and October 2011, even though the overpayment was caused by the Division's mistake?

The Division acknowledged that the Food Stamp benefit overpayments occurred due to its mistake, when it mistakenly provided the Claimant with Food Stamp benefits for a four person household when she should have received benefits for a three person household. The Claimant argued she should not be required to repay excess Food Stamp benefits she received due to the Division's mistake.

This argument raises a purely legal question. The federal Food Stamp regulations are clear that the Division is required to collect Food Stamp overpayments: an agency "must establish and collect any claim" for overpaid Food Stamp benefits issued. 7 C.F.R. § 273.18(a)(1)(i); 7 C.F.R. § 273.18(a)(2). The Alaska Supreme Court has also dealt with this issue and ruled that the Division is allowed to seek restitution of overpaid Food Stamp payments, even when the overpayment is caused by Division's error. *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

As a result, the Division was correct to require that the Claimant repay Food Stamp benefits that were overpaid to her, even though the overpayment was caused by the Division's mistake.

3. Does the fact that the Claimant is disabled with a limited income entitled her to have the Division's overpayment claim compromised?

The Claimant requested that the Division's overpayment claim for \$510 be compromised (reduced or forgiven) because she is disabled and has a limited income. This is an economic hardship argument. The Division denied the Claimant's compromise request.

The federal Food Stamp regulations clearly provide the Division with discretion to compromise a claim:

⁵ As noted in fn. 3 above, if the higher standard utility deduction of \$323 is used, the Claimant's shelter costs would be \$710.50. Because this amount is less than \$720, as explained in fn. 4 above, the Claimant is still not eligible for an "excess shelter cost" deduction.

As a State agency, you **may** compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

7 C.F.R. § 273.18(e)(7) (emphasis supplied).

The federal Food Stamp regulation, 7 C.F.R. § 273.18(e)(7), uses the term "may." The term "may" indicates discretion. The regulation further only requires the Division to **consider** compromise if "the claim will not be paid in three years." The normal collection process requires that if the Division elects to pursue an overpayment claim resulting from agency error, the Division may collect the claim by reducing ongoing benefit payments by "the greater of \$10 per month or 10 percent of the household's monthly allotment." 7 C.F.R. § 273.18(f)(1) and (g)(1)(iii).

In this case, the Claimant's correct monthly Food Stamp benefit amount was \$195 per month as of October 2011. When this is reduced by 10 percent per month to pay off the overpayment balance, as indicated in the Division's February 7, 2012 letter (Ex. 8), this would pay off the debt in slightly over 2 years.⁶ As a result, the Division was not required to consider compromising its overpayment claim.

CONCLUSIONS OF LAW

1. The Division met its burden of proof by a preponderance of the evidence and established that it was entitled to recover overpaid Food Stamp benefits from the Claimant in the total amount of \$510 for the months of August through September, 2011.
2. The Division, as a matter of law, is entitled to recover the August through September, 2011 Food Stamp overpayments, even though the overpayment was caused by the Division's mistake.
3. The Division was not required to consider compromising its Food Stamp overpayment claim against the Claimant.

DECISION

The Division was correct to require that the Claimant repay it \$510 in Food Stamp benefits that were mistakenly overpaid to the Claimant during the months of August through September 2011.

⁶ Although neither the Division nor the Claimant provided any information showing the amount of monthly Food Stamp benefits that the Claimant currently receives, the Claimant is currently receiving Food Stamp benefits for a three person household and her income has slightly decreased. (Exs. 1, 25.0 – 25.2) It can therefore be assumed that Claimant's Food Stamp monthly benefit amount has not decreased from the \$195 she should have been receiving in October 2011, and has most likely increased. 10 percent of \$195 is \$19 (rounded down). Reducing the Claimant's monthly Food Stamp benefit amount by \$19, and applying that \$19 to the Division's \$510 overpayment claim, will pay off the Division's \$510 claim in 27 months.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision. To appeal, send a written request directly to:


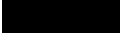
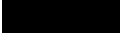
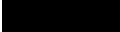
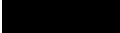

Director of the Division of Public Assistance
Department of Health and Social Services
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DATED this 10th day of April, 2012.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 10th day of April 2012, true and correct copies of the foregoing were sent to:
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested
and to the following by secure e-mail:

, Public Assistance Analyst
, Public Assistance Analyst
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Policy & Program Development

/signed/
J. Albert Levitre, Jr.
Law Office Assistant I