

**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. 13-1717-SNA  
 ) DPA Case No.  
 \_\_\_\_\_ )

**DECISION**

**I. Introduction**

This case involves a claim by the Division of Public Assistance (DPA or Division) to attempt to collect \$720.00 out of a total of \$1,362.00 in Food Stamp benefits which the Division asserts were overpaid to D U's household during the months of July, August, and September 2013.<sup>1</sup> The parties agree that the only disputed factual issue is the amount of Ms. U's household's income during the period in question. In addition to this factual issue, there are two legal issues. These are: (1) whether federal Food Stamp regulations require that the Division seek to recover overpaid benefits, even where (as here) the overpayment was not the fault of the recipient; and (2) whether the Division was within its discretion, under federal Food Stamp regulations, to compromise (reduce or write-down) its overpayment claim against Ms. U by \$642.00, rather than reduce its claim by a greater amount.

This decision concludes that the preponderance of the evidence indicates that the amount of Ms. U's household's income during the period in question was as calculated by the Division. This decision further concludes that, pursuant to applicable federal regulations, the Division must seek reimbursement from Ms. U for the overpaid Food Stamp benefits, even though the overpayment was not Ms. U's fault. Finally, this decision concludes that the Division has broad discretion under applicable federal regulations in determining whether to compromise a claim for overpaid Food Stamp benefits, and that the Division was within its discretion, under 7 CFR § 273.18(e)(7), to compromise its overpayment claim in this case by \$642.00 rather than by a greater amount. Accordingly, the Division's decisions (1) establishing a claim against Ms. U for \$1,362.00 in overpaid Food Stamp benefits, and (2) reducing that claim to \$720.00, are affirmed.

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<sup>1</sup> Exs. 4.0, 6. The Division originally asserted that Ms. U had received \$1,362.00 in overpaid Food Stamps. However, the Division later granted Ms. U's request to reduce this amount based on hardship, and reduced the amount owed to \$720.00.

## **II. Facts**

### ***A. Facts Relevant to the Overpayment / Repayment and Compromise Issues***

Ms. U has a three-person household consisting of herself, her boyfriend D M, and her five-year-old daughter.<sup>2</sup> In April 2013 Mr. M lost his construction job in Anchorage due to lack of available work, and the household was forced to apply for Food Stamp benefits.<sup>3</sup> The household began receiving Food Stamp benefits in April 2013.<sup>4</sup>

Ms. U's parents own a lodge in No Name which includes a hotel / motel, restaurant, and bar.<sup>5</sup> On May 1, 2013 Ms. U' household moved to No Name so she and Mr. M could work for Ms. U's parents at their lodge.<sup>6</sup> On May 22, 2013 Ms. U's mother, G U, advised the Division that she expected the lodge to reopen by May 31, 2013, that Ms. U would be employed as a waitress, and that Mr. M would be employed as a bartender.<sup>7</sup> G U stated that she expected her daughter and Mr. M to begin working on May 31, 2013, to be paid \$10.00 per hour, to work 40 hours per week, and to be paid every two weeks.<sup>8</sup> Finally, she told the Division that her daughter and Mr. M would be paying \$550.00 per month in rent beginning July 1, 2013.<sup>9</sup> Based on this information, the Division estimated that Ms. U and Mr. M would each earn \$880.00 in June 2013 and \$1,720.00 in July 2013,<sup>10</sup> and approved issuance of Food Stamps to the household.<sup>11</sup>

On September 30, 2013 the Division reviewed Ms. U's Food Stamp case.<sup>12</sup> Based on estimated household income of \$3,440.00 for July, August, and September 2013, the Division found that the household had exceeded the applicable Food Stamp program income limit of \$2,586.00 in each of those months, and had received overpayments of \$454.00 per month during this three-month period.<sup>13</sup>

The Alaska Department of Labor and Workforce Development's records indicate that Ms. U's actual earnings were \$1,600.00 (gross) in June 2013, and about \$1,593.40 per month (gross) in July, August, and September 2013, and that Mr. M's actual earnings were about \$1,842.00 per

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<sup>2</sup> Ex 1.  
<sup>3</sup> Ex. 2; D U's hearing testimony.  
<sup>4</sup> Ex. 1.  
<sup>5</sup> Ex. 2; D U's hearing testimony.  
<sup>6</sup> Ex. 2; D U's hearing testimony.  
<sup>7</sup> Ex. 2, D U's hearing testimony.  
<sup>8</sup> Ex. 2.  
<sup>9</sup> Ex. 2,  
<sup>10</sup> Ex. 2,  
<sup>11</sup> Ex. 2.1.  
<sup>12</sup> Ex. 3.  
<sup>13</sup> Exs. 3, 4.11.

month (gross) in July, August, and September 2013.<sup>14</sup> This means that the household as a whole earned \$3,435.40 (gross) during each of the months of July, August, and September 2013.

**B. Relevant Procedural History**

On October 31, 2013 the Division mailed a notice to Ms. U stating that, during the months of July, August, and September 2013, her household had been paid \$1,362.00 more in Food Stamp benefits than it should have received due to an error by the agency, and that the Division was requiring repayment of that amount.<sup>15</sup> On November 26, 2013 Ms. U requested a hearing on this issue.<sup>16</sup> On the same date she requested that the Division write-off or write-down the amount of its claim based on hardship.<sup>17</sup> Ms. U wrote that she was not working because she was about to have a baby, and that Mr. M was not working as many hours as the Division believed.<sup>18</sup> Ms. U also stated that the Division was not counting her rent (\$900.00 per month) or electric bill (\$100.00 per month) in calculating her household's income.<sup>19</sup>

On November 26, 2013 the Division mailed a notice to Ms. U stating that it had considered her request to compromise the overpayment claim based on hardship, and that it was reducing its overpayment claim by \$642.00, leaving a balance of \$720.00 owed.<sup>20</sup> The reduction of the claim was based on the Division's determination that it was likely that Ms. U's household would be able to repay \$720.00 within three years.<sup>21</sup>

Ms. U's hearing was held on December 18, 2013. Ms. U participated in the hearing by phone, represented her household, and testified on its behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf. The record closed at the end of the hearing on December 18, 2013.

**III. Discussion**

The Food Stamp program is a federal program administered by the states. Its statutes are codified primarily at 7 U.S.C. §§ 2011 – 2029, and its regulations are codified primarily at 7 C.F.R. §§ 271-274. The Alaska Department of Health and Social Services administers the Food Stamp

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<sup>14</sup> Exs. 7, 8. The official records list wage totals on a quarterly basis rather than a monthly basis. However, given G U's statements to the Division regarding the even number of hours she expected her daughter and Mr. M would be working each week, it is more likely than not that Ms. U's and Mr. M's wages during the third quarter of 2013 did not vary significantly between the three individual months which make up that quarter.

<sup>15</sup> Exs. 4.0 – 4.10.

<sup>16</sup> Ex. 5.

<sup>17</sup> Ex. 7.1.

<sup>18</sup> Ex. 5.1.

<sup>19</sup> Ex. 5.1.

<sup>20</sup> Ex. 6.

<sup>21</sup> Ex. 6.

program in Alaska and has promulgated its own regulations at 7 AAC 46.010 - 7 AAC 46.990. Eligibility for the Food Stamp program, and the amount of Food Stamp benefits awarded, depends primarily on household size, household income, and applicable income exclusions and deductions.<sup>22</sup>

The parties agree that the only disputed factual issue in this case is the amount of Ms. U's household's income during the three months in question. The only legal issues in this case are (1) whether the Division is correct to seek recovery of the overpaid Food Stamp benefits, even though the overpayments were not Ms. U's fault; and if so, (2) whether the Division is required to compromise (write-off or forgive) a greater portion of the overpaid benefits. These issues will be addressed below in the order stated.

**A. Are the Division's Gross Income Calculations Correct?**

A household, which (as here) does not contain an elderly or disabled member, is required to satisfy both a gross income eligibility standard and a net income eligibility standard in order to qualify for Food Stamp benefits.<sup>23</sup> These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. § 9902(2) and are adjusted periodically for inflation.<sup>24</sup> The current income limits are published in the Division's Food Stamp Program Manual at Addendum 4.<sup>25</sup> For the period from October 2012 through September 2013, the monthly income limits for a three-person household are \$2,586.00 (gross) and \$1,990.00 (net).<sup>26</sup>

The process for determining a household's gross income, as specified by federal Food Stamp regulations, has two steps.<sup>27</sup> The Division first determines gross monthly income by adding together the household's non-exempt income from all sources, both earned and unearned. Here, Ms. U's household had gross monthly earned income from employment of \$3,435.40 during each of the months of July, August, and September 2013.

Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household's size, which are set forth in the Division's Food Stamp Manual at Addendum 4. The gross monthly income limit for a household of three during the period at issue was \$2,586.00.<sup>28</sup> Ms. U's household's monthly gross income of \$3,435.40 during the

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<sup>22</sup> See 7 U.S.C. § 2012(o); 7 U.S.C. § 2017(a); 7 C.F.R. § 273.10(e)(2)(ii)(A), Alaska Food Stamp Manual, Addendum 4, *Ruhe v. Block*, 507 F.Supp. 1290 (D.C.Va. 1981); and *Murray v. Lyng*, 854 F.2d 303, 304 (8th Cir. 1988).

<sup>23</sup> 7 C.F.R. § 273.9(a).

<sup>24</sup> 7 C.F.R. § 273.9(a).

<sup>25</sup> Ex. 9.

<sup>26</sup> *Id.*

<sup>27</sup> See 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska's Food Stamp Manual at § 603-2.

<sup>28</sup> Ex. 9.

months in question was \$849.40 greater than the applicable gross income limit of \$2,586.00. Ms. U's household thus failed the Food Stamp program's gross income test during the months in question, and was therefore not eligible for benefits during those months.

One of Ms. U's primary complaints concerning the Division's determination is that it does not seem fair to her to utilize a *gross income test* for Food Stamp eligibility, thereby excluding consideration of her rent and utilities, given that *only net income* is actually available to a household to live on. However, deductions for rent and utilities are not applied *unless the household first passes the gross income test*.<sup>29</sup> In this case, Ms. U's household failed the gross income test. Accordingly, the eligibility determination in this case did not proceed to the stage at which the deductions at issue could be applied.

***B. Do Food Stamp Regulations Require That the Division Seek to Recover Overpaid Benefits Even Where (as Here) the Overpayment was not the Recipient's Fault?***

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits states the “state agency *shall* collect any over issuance of benefits issued to a household . . .” (emphasis added).<sup>30</sup> The federal regulation implementing this statute says “the State agency *must* establish and collect any claim . . .” (emphasis added).<sup>31</sup> Pursuant to subsection (b)(3), collection action is required even where the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, it is clear that federal regulation 7 C.F.R. § 273.18 requires that the Division initially<sup>32</sup> attempt to recover overpaid Food Stamp benefits, even when the overpayment is not the recipient's fault or is the result of the Division's error. The dollar threshold at which the federal Food Stamp regulations require that states attempt to collect overpayments is \$125 (collection efforts are required when the amount of the overpayment exceeds \$125).<sup>33</sup>

Following the 1996 amendment of the Food Stamp statutes, virtually all courts have held that the applicable federal statute and regulations require recoupment of overpaid Food Stamp

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<sup>29</sup> 7 C.F.R. § 273.9(d); 7 C.F.R. § 273.19(e); Alaska Food Stamp Manual Section 603-2.

<sup>30</sup> 7 U.S.C. §2022(b)(1) (emphasis added).

<sup>31</sup> The federal implementing regulation pertaining to the recoupment of SNAP benefits is 7 C.F.R. § 273.18. Subsection (a)(2) of that regulation provides in relevant part that “the State agency *must* establish and collect any claim . . .”. Subsection (e)(1) of that regulation also provides in relevant part that “state agencies *must* begin collection action on all claims unless [inapplicable].” Finally, pursuant to subsection (b)(3), collection action is required even where the “overpayment [is] caused by an action or failure to take action by the State agency.”

<sup>32</sup> 7 C.F.R. § 273.18(e)(6-7) contemplates that the amount of overpayment, if disputed by the recipient, will be determined at hearing, and only then will the issue of compromise be ripe for consideration by the agency. See *Waters-Haskins v. New Mexico Human Services Department, Income Support Division*, 210 P.3d 817, 822 (N.M. 2009) (7 C.F.R. § 273.18 “requires that a state agency first establish a valid claim in the full amount of the overpayment, either by the notification letter or by a fair hearing, before the agency can decide whether to compromise the claim”).

<sup>33</sup> 7 C.F.R. § 273.18(e).

benefits regardless of fault.<sup>34</sup> The Alaska Supreme Court adopted this view in *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009). The federal statutes and regulations, and the *Allen* decision, are binding on the Department of Health and Social Services and on the Office of Administrative Hearings. Accordingly, in this case the Division is required to seek reimbursement from Ms. U for the overpaid Food Stamp benefits, even though the overpayment was not Ms. U's fault.

If the household that received the overpayment is still receiving benefits, and the household does not want to repay the overpayment immediately in full, the household may opt to repay the overpayment through a reduction of its current Food Stamp benefits in the amount of \$10.00 per month or 10% of the household's monthly benefit amount, whichever is greater.<sup>35</sup> If the household is no longer receiving benefits, the overpayment may be repaid through a lump-sum payment, installment payments, the performance of public service, or through involuntary collection efforts.<sup>36</sup>

**C. Was the Division Within its Discretion to Compromise its Overpayment Claim by \$642.00 in This Case?**

The same federal regulation which requires that state agencies *initiate* the collection of overpaid Food Stamp benefits also gives state agencies the ability to *compromise* overpayment claims. Federal Food Stamp regulation 7 C.F.R. § 273.18(e)(7) states as follows:<sup>37</sup>

(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.

The use of the word “may” in 7 C.F.R. § 273.18(e)(7)(i) indicates that the decision whether to compromise a Food Stamp overpayment claim is subject to the Division's discretion.<sup>38</sup> The few

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<sup>34</sup> See, for example, *Aktar v. Anderson*, 68 Cal.Rptr.2d 595 (Cal. App. 2nd Dist.1997) and *Vang v. Saenz*, 2002 WL 434733 (Cal. App. 3 Dist. 2002).

<sup>35</sup> 7 C.F.R. § 273.18(g)(1).

<sup>36</sup> 7 C.F.R. § 273.18(g).

<sup>37</sup> Review of the Division's own (state option) SNAP regulations demonstrates that the Division has not adopted an official interpretation of 7 C.F.R. § 273.18(e)(7) by regulation. See 7 AAC 46.021 and Alaska Food Stamp Manual Sections 607-3 and 607-4. The Division's state option regulation is based on the 1985 version of the federal regulations (see 7 AAC 46.990(c)). Because the federal SNAP regulations have been revised several times since 1985, many of the Division's "state option" provisions no longer reference the correct federal SNAP regulation. For example, in 1985 the substance of what is now 7 C.F.R. § 273.18(e)(7)(i) was contained in 7 C.F.R. § 273.18(g)(2)(i).

<sup>38</sup> The use of the word “may” rather than the directive “shall,” indicates a discretionary power. *Frontier Saloon, Inc. v. Alcoholic Beverage Control Board*, 524 P.2d 657, 660 (Alaska 1974); see also *Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74, 76 (Alaska 2000) (in contrast to the term “shall,” the term “may” generally denotes permissive or discretionary authority and not a mandatory duty).

appellate courts to address this issue to date have concluded that whether a state agency chooses to compromise a Food Stamp overpayment claim is discretionary.<sup>39</sup>

The federal Food Stamp regulation (7 C.F.R. § 273.18(e)(7)) allows an overpayment claim to be written-down, or completely written-off, *if it can reasonably be determined that the household's economic circumstances dictate that the claim will not be paid within three years.*<sup>40</sup> Applying the regulation to this case, the issue is whether Ms. U has proven by a preponderance of the evidence that her household's financial circumstances will not improve sufficiently to allow collection of the \$720.00 at issue within the next three years.

It is clear from the evidence received at hearing that Ms. U's household's current financial condition is not good. However, although Ms. U had to quit working for a period of time to have her baby, there is nothing in the record to indicate that she will not be able to return to work thereafter. Further, there is nothing in the record to indicate that Mr. M's earnings during the summer of 2014 will not meet or exceed last summer's earnings. Finally, as long as Ms. U, Mr. M, and their baby remain in Alaska, each will presumably be eligible for the annual Alaska Permanent Fund dividend distribution. Since 1982 these dividends have ranged from a low of \$331.29 to a high of \$2,069.00.<sup>41</sup> It is therefore likely that receipt of one or two dividend checks over the next three years would allow the Division to collect the \$720.00 at issue. Accordingly, the Division was within its discretion to decline to reduce its \$1,362.00 overpayment claim by more than \$642.00 at this time.<sup>42</sup>

***D. Though the Result in This Case May Seem Unfair, the Division Does not Have the Authority to Disregard the Applicable Federal Regulations***

It is not disputed that Ms. U's household has a significant need for Food Stamps. It is also not disputed that Ms. U's household's financial resources are limited. However, the Division is not at liberty to ignore the federal regulations governing the Food Stamp program.<sup>43</sup> Likewise, the

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<sup>39</sup> See *Hill v. Indiana Board of Public Welfare*, 633 N.E.2d 352, 357 (Ind.App. 4th Dist. 1994) (holding based on a prior version of 7 C.F.R. § 273.18); *Waters-Haskins v. New Mexico Human Services Department, Income Support Division*, 210 P.3d 817, 822 (N.M. 2009) (stated as dicta).

<sup>40</sup> 7 C.F.R. 273.18(e)(7).

<sup>41</sup> See Alaska Permanent Fund Division website at <http://pfd.alaska.gov/DivisionInfo/SummaryApplications> Payments (date accessed January 20, 2014).

<sup>42</sup> However, nothing in 7 C.F.R. § 273.18 limits a recipient or former recipient to a single compromise request. Accordingly, an individual in Ms. U's position may submit a new compromise request whenever her circumstances change or relevant new information becomes available.

<sup>43</sup> "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

Office of Administrative Hearings does not have the authority to create exceptions to those regulations.<sup>44</sup>

#### **IV. Conclusion**

The preponderance of the evidence indicates that the amount of Ms. U's household's income during the period in question was as calculated by the Division. This decision further concludes that, pursuant to applicable federal regulations, the Division must seek reimbursement from Ms. U for the overpaid Food Stamp benefits, even though the overpayment was not Ms. U's fault. Finally, this decision concludes that the Division has broad discretion under applicable federal regulations in determining whether to compromise a claim for overpaid Food Stamp benefits, and that the Division was within its discretion, under 7 C.F.R. § 273.18(e)(7), to compromise its overpayment claim in this case by \$642.00 rather than by a greater amount. Accordingly, the Division's decisions (1) establishing a claim against Ms. U for \$1,362.00 in overpaid Food Stamp benefits, and (2) reducing that claim to \$720.00, are affirmed.

Dated this 23rd day of January, 2014.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

#### **Adoption**

The undersigned, by delegation from of 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 3<sup>rd</sup> day of February, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Jay D. Durych \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

[This document has been modified to conform to the technical standards for publication.]

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<sup>44</sup> See 7 AAC 49.170 (limits of the hearing authority).