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

In the Matter of	)	
	)	
S. X.	)	OAH No. 24-0280-SNA
	)	

DECISION

I. Introduction

The Division of Public Assistance administers Alaska's Supplemental Nutrition Assistance Program ("SNAP") benefits program. Because SNAP is a federal program, states are bound by its program requirements and restrictions as set out in federal laws. One such restriction is a federal limit on replacement of stolen SNAP benefits: States may not replace more than two months of stolen benefits, even if a greater amount was stolen.

S. X. was the victim of electronic SNAP benefits theft in March 2024. She requested a hearing because the Division's processing of her stolen benefits claim replaced less than the amount stolen. The Division was correct to cap the reimbursement at an amount below the full amount of the theft, but calculated the cap incorrectly. Accordingly, the Division's decision is MODIFIED to authorize a larger reimbursement.

II. Facts

In 2023 and early 2024, S. X. was a current SNAP recipient living in Anchorage. Her benefit amounts were as follow:[1]

Month	Benefit	Disbursed
September 2023	1670	12/22/23
October 2023	1778	12/22/23
November 2023	1778	12/22/23
December 2023	1778	12/22/23
January 2024	1778	1/1/24
February 2024	1778	2/1/24
March 2024	799	3/6/24
April 2024	799	4/1/24

1 Ex. 2.1.

As the table reflects, a backlog in benefit recertifications caused four months of her benefits (totaling $7,004) to be disbursed in a lump sum in late December.[2] This was quickly followed by a timely January payment of $1,778 on the first day of the new year, and a month later by a February benefit of the same size.[3] Unsurprisingly, Ms. X. had not spent all of this by the end of February. On February 29, 2024 she had a balance of $7,130.37.[4]

At 6:38 a.m. on March 2 her account was fraudulently accessed in the City A. area. Nine minutes later, her balance was two cents.[5]

Ms. X. learned of the loss on March 2 and formally reported it using a Division claim form on March 6, 2024.[6] The Division determined that Ms. X.'s EBT card had been skimmed.[7] It verified that her stolen benefits claim was valid and that she was eligible for stolen benefit replacement.[8]

On March 21, 2024, the Division determined the benefit replacement amount by identifying the lesser of: (1) the total amount stolen, or (2) two months of Ms. X.'s current monthly benefit amount. The theft amount was $7,130.35. The current benefit amount during the month of theft—although the benefit had not been paid yet—was $799. Twice that amount was $1,598. As the total amount stolen was greater than twice Ms. X.'s monthly benefit, the Division determined that she was eligible for replacement of $1,598, the lesser of those two amounts.[9] A refund of $1,598 was therefore deposited into her account on March 24, 2024.[10]

Ms. X. requested a fair hearing to seek a larger reimbursement.[11] After delays requested by Ms. X. to accommodate a family tragedy, the hearing was held June 25, 2024, with advocate E. M. M. participating on Ms. X.'s behalf as her formally authorized representative.

---

[2] *See* Ex. 2 (Dec. 22, 2023 decision on August 7, 2023 recertification request).

[3] *See id.*

[4] Ex. 6.3.

[5] Ex. 6.2-6.3. In contrast to most bank cards, the SNAP EBT card system apparently has no stop-loss feature to prevent 20 large transactions in disparate locations over the course of less than ten minutes.

[6] Ex. 5, 5.1, 6.2.

[7] Ex. 6.1. A skimming device pulls data from a card when a person uses the card, typically at a point-of-sale terminal. This enables a criminal to duplicate the card.

[8] Ex. 5.1, 6, 6.1.

[9] Ex. 7.1.

[10] Ex. 2.1.

[11] Ex. 8.

III. Discussion

A. Law Authorizing Reimbursement of Stolen Benefits

SNAP is a federal program administered by individual states, with the state agency responsible for adhering to the federal program requirements.[12] Accordingly, the Division's reimbursement of stolen benefits and the decision in Ms. X.'s case are governed by the federal SNAP requirements.

As part of a larger effort to detect, prevent, and mitigate the impact of theft of benefits, particularly relating to electronic benefits fraud, a 2022 federal statute requires states to develop and implement a plan for the replacement of benefits "stolen through card skimming, card cloning, or similar fraudulent methods."[13] It is through this statute that the Division is able to replace any stolen SNAP benefits.

However, the replacement of stolen benefits statute places a limit on the amount of benefits that may be replaced. No matter the amount of benefits stolen, the statute expressly limits the replacement to the lesser of the amount stolen or "the amount equal to 2 months of the monthly allotment of the household immediately prior to the date on which the benefits were stolen."[14]

B. Resolution of Ambiguity in the Statute

The limitation clause can be read several ways. Usually, the different readings would make no difference to a reimbursement amount. Thus, a person receiving a stable monthly allotment over a six-month period, who has the misfortune to have four months' worth stolen, can receive a reimbursement but the reimbursement is limited to two months of benefits. It's a simple limitation, and one that the Department has applied in the past.[15] But in situations where the allotment has fluctuated, there can be different ways to parse the limitation. This case falls in an area where the nuances of the different readings do matter.

One reading of the limitation—perhaps the simplest one—would simply limit reimbursement to the two months of actual monthly allotment falling immediately prior to the theft. Thus, if a theft occurred in March after the March benefit was paid, the person could recover the March benefit and the February benefit. If a theft occurred in March before the

---

12 7 C.F.R. § 271.4(a).

13 7 USC § 2016a ("EBT benefit fraud prevention").

14 7 USC § 2016a(b)(2)(A).

15 *E.g., In re B.M.,* OAH Case No. 24-0185-SNA (Dep't of Health May 24, 2024).

March benefit was paid, the two allotments "immediately prior" would be January and February, and the person could recover those.

A variant on this approach would be to identify the single monthly allotment paid "immediately prior" to the theft, and limit reimbursement to two "months"—or two times—that amount. Thus, the person suffering a theft in March before the March benefit was paid could recover up to two times the amount of the February benefit. One would not inquire about the amount of the January allotment.

A third variant is to read the limitation to emphasize accrual, rather than actual payment. In this variant, a person who suffered a theft in March before the March benefit would have their recovery limitation keyed solely to the (accrued but unpaid) March allotment. The person could recover two times that amount, regardless of what the February and January allotments had been. "Immediately prior" would not focus on actual allotments paid, but rather on theoretical allotment levels that apply to the moment before the theft.

The third reading is the one the Division has applied in this case. It decided that the allotment "immediately prior" to the theft was the March allotment, even though the March allotment had not yet been paid. Then it multiplied that number by two, and imposed the result as the cap on reimbursement. The Division has no particular argument as to why the calculation should be done in this manner.

There are two reasons not to resolve the ambiguity the way the Division has chosen. First, the Division's reading is the one least consistent with the overall purpose of the provision. The purpose of this provision is "replacement" of stolen benefits. To "replace" a benefit, you provide the benefit again. To be sure, the statute limits the number of monthly benefits that can be replaced, but it is still a benefit "replacement" statute.

Second, the Division's approach to this statute is inconsistent with how it is being applied elsewhere. Let us look, for example, at Washington State's SNAP program. Examples of how to calculate the reimbursement cap on that state's website show unequivocally that the focus is on the amount of the last monthly allotment that "took place," not on some theoretical number that might be in the process of accruing for the current month. So if a household suffers a theft of $600 on March 1, and the last allotment was paid on February 10, the program looks to the February 10 benefit to calculate the cap, not the benefit that is coming in March. On the other hand, if a theft occurs on June 20 and the last allotment was paid on June 15, the June allotment controls because it is the last one that "took place" prior to the theft.[16] The two examples used by the Washington program are drawn from a USDA guidance memo (found in the record at Ex. 3.1), which likewise focuses on the most recent allotment that "took place."

This decision decides that the replacement cap should be read in keeping with the "replacement" purpose of the statute and in general conformity with the way this federal law is being applied in other parts of the country. Thus, we should look back to the February allotment (the most recent prior one that *took place* before the theft) or the January and February allotments (the most recent two prior allotments) to calculate the maximum. In either case, the result is $1,778 plus $1,778, yielding a reimbursement cap of $3,556.

C. Ms. X.'s Proposal for an Even Higher Reimbursement Cannot Be Granted

At the hearing, Ms. X.'s advocate suggested that it would be unfair to enforce the two-month limitation at all. She wondered if the President was aware, when he signed the legislation, that Alaska was developing a backlog in payment of SNAP benefits. She pointed out that when a person receives a large deposit consisting of several backlogged months of benefits, it creates an oversized balance and exposes the person to an extra, uncontrollable risk of losing more than two months of benefits through theft.

These are valid concerns, but they do not play a role in the interpretation of a statute. Many laws are partial or imperfect fixes for the problems they address, or are enacted with incomplete knowledge of their unintended consequences. Nonetheless, tribunals applying those laws have to give effect to their plain language.[17] Nothing could be plainer in the language of the 2022 statute than the limitation of *two* its reference to "2 months." One can explore variations as to *which* "2 months" the language may be referring to (as we have in Part B above), but the language simply does not allow consideration of reimbursements of more than two months. The federal statute provides no authority for states to deviate from this restriction, notwithstanding the harsh impact on recipients like Ms. X. who have lost out on more than two months of backlogged benefit amounts.

---

[16] Washington Economic Services Administration, Eligibility A-Z Manual, Benefit Issuances and Use of Benefits, "Replacement" Examples 5 & shaded box and 6 [6 is mis-numbered 1, but appears below 5): https://www.dshs.wa.gov/esa/benefit-issuances-and-use-benefits/replacement .

[17] A good example, close to home, is found in. *State, Dep't of Commerce, Community & Econ. Dev. V. Alyeska Pipeline Service Co*, 262 P.3d 593 (Alaska 2011) (https://aws.state.ak.us/OAH/Decision/Display?rec=2086), where a statute was misdrafted to do exactly the opposite of what its author was hoping to accomplish. The unambiguous language of the law had to be applied, and the only remedy for the error was to go back to get the law amended.

IV. Conclusion

The Division followed the binding federal law that governs the replacement of stolen SNAP benefits, but did not correctly calculate the replacement amount under that law. The Division's determination that Ms. X. was entitled to replacement of $1,598 in stolen SNAP benefits is MODIFIED. The replacement amount shall be $3,556. Ms. X.'s account shall be credited in that amount, less the amount of March 24, 2024 replacement credit.

Dated: July 8, 2024

SIGNED
Christopher Kennedy
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 24th day of July, 2024.

By: SIGNED
Name: Daniel R. Phelps II
Title: Process Improvement Manager

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