

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 05-04-2010
PHILIP G. URRY, CLERK
BY: GH

JACKIE HOWARD,) 1 CA-UB 09-0024
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 28, Arizona Rules of
SECURITY, an Agency,) Civil Appellate Procedure)
)
)
Appellee.)
_____)

Appeal from the Appeals Board of the Department of Economic
Security of the State of Arizona

A.D.E.S. Appeals Board Nos. P-1076043 and P-1076114

Administrative Law Judge S.M. Donohue

AFFIRMED

Jackie Howard, Appellant Avondale
In Propria Persona

Terry Goddard, Attorney General Phoenix
by Lauren J. Lowe, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

P O R T L E Y, Judge

¶1 Jackie Howard ("Appellant") appeals from the Arizona
Department of Economic Security ("the Department") Appeals
Board's ("the Board") determination that she was overpaid in

cash assistance and food stamp benefits and was liable for restitution. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Appellant applied for cash assistance and food stamp benefits from the Department on October 22, 2007. She listed Steve Loussaert ("Loussaert") as her representative, which authorized him to act on her behalf with respect to her application for benefits. Appellant was a member of a four person household, which included her, Loussaert, and two children. During the eligibility interview, the Department was notified of Appellant's employment. A Department employee incorrectly budgeted Appellant as working an eight-hour week, when she was working eight hours a day, forty hours a week.

¶3 Based on this miscalculation, Appellant was overpaid in the amount of \$2224 in food stamp benefits, and \$1512 in cash assistance benefits between November 2007, and May 2008. The Department was alerted to possible overpayments in April 2008, and after confirmation by a subsequent investigation, it sent notices regarding the overpayments to Appellant. The notices informed Appellant of the overpayment amounts, that it was the result of budgeting errors by the agency, and that all adult members who received payments during overpayment months would be liable for restitution.

¶14 Loussaert filed a request for a fair hearing as Appellant's representative. After the hearing, the hearing officer affirmed the determination that Appellant's household had been overpaid in cash assistance and food stamp benefits, and that the household was liable for repayment. Appellant appealed the hearing officer's decision to the Board, which affirmed the hearing officer's decision. Loussaert, on behalf of Appellant, requested that the Board review its decision, which the Board affirmed. Appellant appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 41-1993(B) (Supp. 2009).

DISCUSSION

¶15 Appellant does not dispute the figures calculated by the Department, or that an overpayment occurred. Appellant argues that, because the overpayment was the result of an agency error, and not misconduct on her part, she should not be responsible for repayment.¹ She also notes that repayment would cause "hardship and extreme financial strain on the household."

¶16 We review administrative orders for an abuse of discretion. *See Thompson v. Ariz. Dep't of Econ. Sec.*, 127

¹ Appellant also requested "to be present when the case is reviewed." While Appellant did not file a request for oral argument, we interpret this statement to be a motion for oral argument. We deny the motion because oral argument is not necessary for disposition of this case.

Ariz. 293, 294, 619 P.2d 1070, 1071 (App. 1980). If substantial evidence exists to support the decision, we will affirm. *Rice v. Ariz. Dep't of Econ. Sec.*, 183 Ariz. 199, 201, 901 P.2d 1242, 1244 (App. 1995). We interpret statutory law, however, de novo. See *id.* We first consider the statutory language, which provides "the best and most reliable index of a statute's meaning." *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991).

¶17 With respect to the overpayment of cash assistance, A.R.S. § 46-213(B) (2005) provides that "[i]f a recipient is overpaid for whatever reason, the recipient is liable for the amount of the overpayment."² Moreover, the corresponding administrative regulations instruct the Department to "pursue collection of all overpayments."³ Ariz. Admin. Code R6-12-1101. Because the cause of the overpayment is immaterial, and the Department is instructed to pursue collection, the Board was correct in finding Appellant liable for the overpayment of cash assistance.

² We note the statute permits the Department to waive repayment "[i]f there are insufficient assets or resources to justify collection . . . or if the overpayment was due to an error on the part of the department of economic security." A.R.S. § 46-213(B). Waiver, however, is within the Department's discretion, and Appellant did not request a waiver.

³ An exception is listed in subsection (E), but the subsection is inapplicable here because it applies to overpayments that are under thirty-five dollars. See A.A.C. R6-12-1101(E).

¶18 The food stamp program is a state-administered federal benefit program, and federal law mandates that “[e]ach adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.” 7 U.S.C. § 2022(a)(4) (2006) (emphasis added). “Any” means “without restriction.” See Webster’s Ninth New Collegiate Dictionary 93 (1988) (“used to indicate one selected without restriction”). Accordingly, the fact that the overissuance was a result of agency error does not exempt Appellant from liability.

¶19 Moreover, “[s]tate agencies must begin collection actions on all claims [for overpaid benefits] unless the conditions under paragraph (g)(2) of this section apply.” 7 C.F.R. § 273.18(a)(1), (e)(1) (2010).⁴ Provision (g)(2) requires states to allow recipients to pay claims using their electronic benefits card. 7 C.F.R. § 273.18(g)(2) (2010). Subsection (g)(2) does not exempt Appellant from repayment. See *id.* Finally, because our supreme court has stated that justice does not “require that a welfare recipient keep a windfall otherwise obtained through a governmental error,” *Castregon v. Huerta*, 119 Ariz. 343, 345, 580 P.2d 1197, 1199 (1978), we find the Board did not abuse its discretion.

⁴ We cite the current version of 7 C.F.R. §§ 273.18 and 273.1 because the regulations have not been amended in any way that substantially changes the relevant provisions.

¶10 Appellant also argues that Loussaert should not be liable for the overpayment because he did not apply for the benefits. The Department regulations provide that cash assistance overpayments are collected from "[t]he assistance unit which was overpaid." A.A.C. R6-12-1102(A)(1). The regulations define an "[a]ssistance unit" as "a group of persons whose needs, income, resources, and other circumstances are considered as a whole for the purpose of determining eligibility and benefit amount." A.A.C. R6-12-101(8). Moreover, under the food stamp program, "[e]ach adult member of a household shall be jointly and severally liable." 7 U.S.C. § 2022(a)(4). A "household" is "[a] group of individuals who live together and customarily purchase food and prepare meals together for home consumption." 7 C.F.R. § 273.1(a)(3) (2010).

¶11 Here, Appellant listed herself and Loussaert at the same physical address on her application for benefits. During the hearing, Loussaert referred to "our house payment" and discussed their expenses "as a family." Loussaert also stated, "[T]he money that she was making went, she gave me her check when she gets it. I pay these bills, I pay those bills. I've done all the shopping." Appellant, moreover, does not claim that Loussaert was not a member of her household or assistance unit. Because there was substantial evidence that Loussaert and

Appellant were a family unit, whose needs and income were considered as a whole, the Board did not abuse its discretion in finding Loussaert jointly liable for the overpayments.

CONCLUSION

¶12 Based on the foregoing, we affirm the Board's determination.

/s/_____
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

MARGARET H. DOWNIE, Judge