

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

In the Matter of)
)
 T M)
_____)

OAH No. 13-0943-GRE
Agency No.

DECISION

I. Introduction

The Division of Public Assistance denied T M’s application for senior benefits because the combination of Ms. M’s 2013 social security income and her 2013 Native corporation dividends put her income over the limit for eligibility for a senior benefit. Because the division did not make any mistakes in calculating Ms. M’s income, and because she is over the income limit set in statute for a senior benefit, the division’s decision is affirmed.

II. Facts

Ms. M is a 65-year-old resident of No Name. Although she worked for many years as social worker, she is now disabled, and receives disability benefits from Social Security. She also receives dividends from the three Native corporations in which she is a shareholder: Sealaska Corporation, Shee Atika Corporation, and Goldbelt Corporation. Two of these corporations also provide an Elder’s payment, which Ms. M received this year.¹

On June 5, 2013, Ms. M applied for senior benefits. The Senior Benefits Payment program will pay a small cash allowance to low-income residents who are over 65.² The maximum income that a senior can have and still be eligible for a senior benefit is set in statute at 175 percent of the federal poverty line for Alaska.³ In 2013, the cut off was **\$25,113.00**.⁴

Relying in part on the two-year average for dividends paid by Ms. M’s Native corporations, the Division determined that Ms. M would receive the following annual income in 2013:

- Social Security: \$20,724.00
- Goldbelt dividend \$250.00

¹ Division Exhibit 5; M testimony.

² AS 47.45.302.

³ *Id.*

⁴ Division Exhibit 6. The Division Position Statement states that the federal poverty line is \$27,113. Based on independent recalculation, that appears to be a typographical error. The correct number is \$25,113.

• Goldbelt Elder payment	\$1,000.00
• Shee Atika dividend	\$1,296.00
• Sealaska dividend	\$1,919.61
• Sealaska one-time Elder payment	\$2,000.00
• Sealaska Elder dividend	<u>\$232.50</u>
Total:	\$27,422.11⁵

Because Ms. M was over the 175 percent federal poverty line of \$25, 113.00, her application for senior benefits was denied.

Ms. M appealed her denial, and a hearing was held on July 25, 2013. Ms. M represented herself and Jeff Miller represented the division. At the hearing, Ms. M was asked if she had any objection to the division’s calculation of her Native corporation dividend using a two-year average payout per share. She said that she had no objection to this methodology, and she confirmed that the amount of her dividends calculated by the division seemed correct.⁶ She expressed concern that the division used a number for her social security income that was higher than her actual payment, but withdrew that objection when Mr. Miller explained that the division based its calculation on her gross social security income, even though her actual net payments may have been smaller.

Ms. M also explained that the Social Security Agency had recently notified her that she was subject to a repayment action because her social security benefits had been overpaid.⁷ This testimony raised a factual issue regarding how much her actual social security income for 2013 would be. Ms. M was given an opportunity to supplement the record with information regarding the action taken by Social Security, and the division was given an opportunity to respond. On July 31, 2013, Ms. M filed documents from social security. In these documents, the Social Security Administration was alleging that in past years she had received \$3,434.00 more in social security than she was due.⁸ The document stated that if Ms. M did not pay the debt, the Social Security Agency would withhold the full amount from her current social security benefit. The documents also included a notice that Ms. M could appeal the determination or request a waiver

⁵ Division Position Statement at 2. The Division at first did not include the Sealaska one-time Elder payment of \$2,000, and calculated Ms. M’s annual income at \$25,422.11. Division Exhibit 6. Even under this calculation, Ms. M was not eligible.

⁶ M testimony.

⁷ M testimony.

⁸ M exhibit. The division has argued that an applicant may not introduce new evidence later than 30 days after the date of the division’s initial determination. Division’s Supplemental filing (August 5, 2013). Because Ms. M has the right to submit evidence under 7 AAC 49.120, however, Ms. M’s exhibits will be admitted into the record.

of the collection of the overpayment.⁹ Ms. M testified at the hearing that she had appealed the social security determination.

Ms. M also provided documents to show that her expenses were higher than her income. She stated that she had worked for over fifty years, that she was seeking employment, and that her expenses were not frivolous.

III. Discussion

The income limits for senior benefits are set in statute, which means that even when a person has high expenses and living costs, if the person's income is above \$25, 113.00, the person is not eligible for senior benefits. Ms. M does not dispute that the division has correctly calculated her annual income at \$27,422.11. This record does raise two questions, however. First, has the Social Security Agency reduced her 2013 income for purposes of calculating Ms. M's eligibility for the 2013 senior benefit? Second, is Ms. M entitled to exclude \$2,000 of her Native corporation dividend income? These two questions are addressed below.

A. Has the Social Security Agency taken action to reduce Ms. M's 2013 income?

If the Social Security Agency were to take action to reduce Ms. M's current benefit in order to recoup the alleged overpayment, it could be viewed as a reduction in Ms. M's 2013 income. Here, however, no final action has been taken by Social Security. The alleged overpayment is under appeal, and the repayment action may be reversed or waived. Therefore, at this time, whether Ms. M's 2013 social security payments will be affected is speculative and uncertain. On this record, the division has correctly calculated Ms. M's social security income at \$20,724.00.

B. Are Ms. M's Native corporation dividends subject to the \$2,000 ANCSA exclusion?

Under the Alaska Native Claims Settlement Act, up to \$2,000 per year of dividends or other cash received from a Native corporation is excluded from determining the eligibility of a Native Alaskan to "receive financial assistance or benefits, based on need, under any [] Federal program or federally-assisted program."¹⁰ The division included all of Ms. M's dividends from Native corporations in her income. Under this statute, if the Senior Benefits Payment program is federally-assisted, the division would be required to deduct \$2,000 from the dividend income before determining if Ms. M is eligible. The Senior Benefits Payment program, however, is a

⁹ *Id.*

¹⁰ 43 U.S.C. § 1626(c)(3).

state program, apparently operated solely with state funding.¹¹ Therefore, the division is not required to deduct \$2,000 from Ms. M's dividend income.

IV. Conclusion

The Division correctly calculated Ms. M's annual income for 2013 at \$27,422.11. This is over the \$25, 113.00 limit for the Senior Benefits Payment program. Therefore, Ms. M is not eligible for a senior benefit in 2013, and the division's decision is affirmed.

DATED this 16th of August, 2013.

By: Signed _____
Stephen C. Slotnick
Administrative Law Judge

Adoption

By delegation from the Commissioner of Health and Social Services, I adopt 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 10th day of September, 2013.

By: Signed _____
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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

¹¹ See http://omb.alaska.gov/ombfiles/14_budget/HSS/Proposed/comp2897.pd.