

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-195
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was an Interim Assistance recipient. (Ex. 1.0) On February 12, 2008, the Division of Public Assistance (Division) sent the Claimant notice that she had received \$1,960 in payments to which she was not entitled, and informing her that she would be required to reimburse the State of Alaska for those payments. (Ex. 3) The Claimant requested a fair hearing on March 3, 2008. (Ex. 4.4) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on April 29, 2008. The Claimant appeared telephonically. [REDACTED] with the Fairbanks office of the Disability Law Center of Alaska appeared telephonically and represented the Claimant. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

STATEMENT OF ISSUES

Was the Division correct to require the Claimant to reimburse the State of Alaska \$1,960 in Interim Assistance benefit payments she received for the months of August 2007 through February 2008?

FINDINGS OF FACT

1. The Claimant was a recipient of Interim Assistance benefits. (Ex. 1)
2. On September 6, 2005, the Claimant signed an agreement with the State of Alaska, entitled "Authorization for Reimbursement of Interim Assistance from Initial Retroactive SSI Payment." That

agreement stated it was effective for “one calendar year.” (Ex. A, p. 2) The agreement also stated on the same page that it was effective until the applicant received her first Supplemental Security Income (SSI) payment. *Id.* The agreement further stated the State was entitled, as a condition of the Claimant receiving Interim Assistance benefits from the State, for reimbursement of those benefits from any Supplemental Security Income benefits ultimately approved for the Claimant. (Ex. A, pp. 2 – 3) That agreement is silent on the issue of whether or not the Claimant is required to reimburse the State of Alaska for any Interim Assistance payments received by the Claimant to which she was not entitled. *Id.*

3. On March 7, 2007, the Division terminated the Claimant’s Interim Assistance benefits, effective the end of March 2007 because the Claimant’s application for Supplemental Security Income had been denied by the Social Security Administration. (Ex. B, p. 14)

4. On March 30, 2007, the Division sent the Claimant written notice her Interim Assistance benefits would be reinstated effective April 1, 2007 because the Claimant had appealed the denial of her Supplemental Security Income application by the Social Security Administration. (Ex. B, p. 15) That same notice informed the Claimant “[y]ou must tell us within ten days when you get a decision on your appeal from Social Security.” *Id.*

5. A Social Security Administrative Law Judge upheld the denial of the Claimant’s Supplemental Security Income application on February 14, 2007. (Ex. B, pp. 24 – 34)

6. The Claimant then requested the Social Security Appeals Council review the February 14, 2007 Social Security Administrative Law Judge decision. The Social Security Appeals Council upheld the Social Security Administrative Law Judge’s February 14, 2007 decision on June 18, 2007. (Ex. B, pp. 2 – 6). The Social Security Appeals Council denial was sent to the Claimant on June 18, 2007. *Id.*

7. The Claimant filed a complaint in the Federal District Court for the District of Alaska on November 9, 2007, challenging the denial of her Supplemental Security Income application. (Ex. B, p. 10)

8. The Claimant did not notify the Division, at any time, that her Supplemental Security Income application had been denied at the Social Security Appeals Council level on June 18, 2007.

9. The Claimant continued to receive Interim Assistance benefits from the State of Alaska in the amount of \$280 per month after the June 18, 2007 Social Security Appeals Council denial.

10. The Division did not become aware that the Claimant’s Supplemental Security Income application had been denied at the Social Security Appeals Council level until January 30, 2008. (Ex. 2.0) The Division then terminated the Claimant’s Interim Assistance benefits effective the end of February 2008. (Ex. 2.0)

11. On February 12, 2008, the Division required the Claimant to reimburse the State of Alaska for \$1,960 in Interim Assistance benefits it claimed the Claimant should not have received for the months of August 2007 through February 2008. (Ex. 3)

12. The Claimant then requested a Fair Hearing challenging the reimbursement requirement. She did not challenge the termination of her Interim Assistance benefits.

13. The Claimant testified that she was not aware that she was required to report the fact that her Supplemental Security Income appeal had been lost to the Division. She stated that she did not receive the Division's March 30, 2007 notice informing her of her obligation to report her Social Security appeal denial to the Division. (Ex. B, p. 15) That document was addressed to the Claimant at her correct mailing address.

14. Ms. ██████ testified about the source of the documents entered into evidence as Exhibit B. Ms. ██████ stated that Exhibit B consisted of documents supplied to the Division by the Claimant on March 13, 2008. The March 30, 2007 notice is page 15 of Exhibit B.

15. The Claimant stated she had other Supplemental Security Income applications in the past and that based on her past experience with the Social Security Administration, the Division was informed directly by the Social Security Administration of the status of her Supplemental Security Income cases.

PRINCIPLES OF LAW

This case involves the Division requiring an Interim Assistance recipient to reimburse the State of Alaska for Interim Assistance benefits that she received. The Division has the burden of proof¹ by a preponderance of the evidence.²

A person who has applied for Adult Public Assistance is required³ to apply for Social Security Supplemental Security Income benefits. 7 AAC 40.060. Once an applicant is approved for Social Security Supplemental Security Income benefits, they are then also approved for Adult Public Assistance. 7 AAC 40.170(a). The Social Security Supplemental Security Income approval process can take several years. Interim Assistance benefits are a limited form of Adult Public Assistance provided by the state to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve the Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.455. Interim Assistance benefits are \$280 per month. 7 AAC 40.375(b); AS 47.25.455(a).

¹ "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

³ There are some exceptions to this rule, which are not applicable to this case. *See* 7 AAC 40.060(a); 7 AAC 40.410.

Interim Assistance benefits end when an Interim Assistance applicant's Social Security Supplemental Security Income application is denied, and the applicant has either not pursued an appeal, withdrawn an appeal, or has "receive[d] a notice of dismissal or an adverse decision from the Social Security Appeals Council." 7 AAC 40.190(a).

An applicant for Adult Public Assistance benefits "must report any change in circumstances which may affect his eligibility or assistance payment within 10 days of the change." 7 AAC 40.440(a).

If an applicant receives an overpayment of benefits, and the overpayment is caused because the applicant has not complied with regulatory requirements, the Division may require the applicant to repay the overpaid benefits. 7 AAC 40.480(d).

ANALYSIS

The issue in this case is whether or not the Claimant is required to reimburse the State of Alaska \$1,960 in Interim Assistance benefit payments she received for the months of August 2007 through February 2008? The Claimant does not dispute the fact that she received a total of \$1,960 in Interim Assistance benefits for those months.

The following facts in this case are also not disputed. The Claimant had applied for Adult Public Assistance. As is generally required for Adult Public Assistance applicants, she had a Supplemental Security Income application pending with the Social Security Administration. That application was denied by the Social Security Administration. She appealed it to the Administrative Judge level, where it was again denied. She appealed the denial to the Appeals Council level, where it was again denied. The Claimant was sent notice on June 18, 2007 that the Appeals Council had upheld the denial of her Social Security Supplemental Security Income application. The Claimant then filed a federal court action contesting the denial on November 9, 2007.

The Adult Public Assistance regulations, which govern Interim Assistance, require that Interim Assistance benefits be terminated if Social Security Supplemental Income benefits are denied and the appeal of that denial is upheld at the Appeals Council level. 7 AAC 40.190(a). The clear language of the regulation required that the Claimant's Interim Assistance benefits be terminated as a result of the Appeals Council denial.

The Division did not terminate the Claimant's Interim Assistance benefits immediately after the Appeals Council decision. It is undisputed the Claimant did not, at any time, inform the Division that her Social Security Supplemental Income application had been denied at the Appeals Council level. The Claimant therefore breached her regulatory obligation to "report any change in circumstances which may affect [her] eligibility or assistance payment within 10 days of the change." 7 AAC 40.440(a). If the Claimant had notified the Division of the June 18, 2007 Social Security Supplemental

Income application denial within ten days of her notification, the Division could have terminated the Claimant's Interim Assistance benefits as early as the end of July 2007.⁴

The Claimant makes two arguments that she was not required to comply with her regulatory obligation to report the denial of her Social Security Supplemental Security Income appeal. Both of these arguments fail, for the reasons provided below.

Claimant's first argument is that she was not aware she was required to inform the Division within ten days if her Social Security Supplemental Security Income application had been denied. However, the Division notified the Claimant, in writing on March 30, 2007, that she "must tell us within ten days when [she] get[s] a decision on [her] appeal from Social Security." (Ex. B, p. 15, emphasis supplied) Although, the Claimant denies ever having seen the notice, it was mailed to her at her correct mailing address. Her testimony on this point is not wholly credible. She may not remember having received it or she may not have read it in its entirety, but it was properly mailed to her, and she is considered to have received it. Additionally, the March 30, 2007 notice was contained in Exhibit B, which, per Ms. ██████ testimony, is a packet of documents that the Claimant supplied to the Division on March 13, 2008; i.e. the Claimant had it in her possession. That notice was issued less than three months before the Social Security Administration Appeals Council issued its June 18, 2007 decision. The Claimant therefore had recent actual notice of her obligation to timely notify the Division that her Social Security Supplemental Income application appeal had been denied.

The Claimant also argued she thought, based on her past experience, that the Division would be informed by the Social Security Administration of the status of her Social Security Supplemental Security Income case. The mere fact that the Division might learn of the Claimant's Social Security Supplemental Security Income appeal denial from a source other than the Claimant does not excuse the Claimant's lack of compliance with the regulation requiring the Claimant to notify the Division herself. Claimant should also have noticed the Division did not know about the final Social Security appeal denial when she continued to receive Interim Assistance benefits for seven months after the denial.

The Claimant also pointed to the fact she had filed a federal district court action challenging the Social Security Administration's denial of her Supplemental Security Income application. Interim Assistance is a State of Alaska program. It is governed by Alaska regulations. The applicable regulation specifically provides that Interim Assistance is required to be terminated if the Social Security Appeals Council upholds the denial of an appeal. 7 AAC 40.190(a). That regulation does not provide for any exception to the termination requirement in the event of a federal district court action.

The Claimant raised one further argument. She argued she could not be required to reimburse the State of Alaska for overpayments because the "Authorization for Reimbursement of Interim Assistance from Initial Retroactive SSI Payment" agreement was only good for one year from the date of its execution,

⁴ The Division is required to provide a public benefits recipient a minimum of ten days notice before it takes an adverse action terminating or modifying benefits. 7 AAC 49.060. Given that the Appeals Council decision was not issued until June 18, 2007, the adverse action notice could not have been issued before the first part of July 2007, and the earliest the Claimant's benefits could have been terminated would have been the end of July 2007.

i.e. until September 6, 2006. *See* Ex. A, p. 2. This argument also fails. The agreement does not discuss overpayment of Interim Assistance at all. All it does is set out the agreement that if an Interim Assistance benefit recipient is approved for Supplemental Security Income benefits, the State of Alaska is allowed to be reimbursed for its Interim Assistance payments from the Supplemental Security Income benefits.

The Alaska Adult Public Assistance regulation required the Claimant to report the fact her Social Security Supplemental Income application appeal had been denied at the Social Security Appeals Council level on June 18, 2007, within ten days of the date she found out about the denial. If she had reported the denial, her Interim Assistance benefits would have been terminated. Because she did not, she received, due to her own inaction, Interim Assistance benefits to which she was not entitled. Because this overpayment was due to the Claimant's action (or in this case, failure to notify), the Claimant is required to reimburse the State of Alaska for the overpaid benefits. 7 AAC 40.480(d).

The Division calculated the overpaid benefit amount at \$1,960, which was \$280 per month for the seven months of August 2007 through February 2008. The Claimant did not make any argument that these calculations were not correct. The Division's figures are therefore accepted.

CONCLUSIONS OF LAW

1. The Claimant's Social Security Supplemental Security Income application was denied by the Social Security Administration. The Claimant appealed the denial to the Social Security Administrative Law Judge level where the denial was upheld. She then appealed the Social Security Administrative Law Judge decision to the Social Security Appeals Council, where the denial was again upheld on June 18, 2007. The Claimant had actual notice of her obligation to notify the Division of the denial within ten days of her notice of the denial, as required by the Alaska Public Assistance regulations.

2. Because the Claimant did not timely notify the Division of the fact she lost her Social Security Supplemental Security Income appeal at the Social Security Appeals Council level, she received Interim Assistance benefits from the State of Alaska to which she was not entitled. Those benefits amount to \$1,960: August 2007 through February 2008 at \$280 per month.

3. The Claimant is required to reimburse the State of Alaska for \$1,960, the amount of the Interim Assistance benefits she received, to which she was not entitled.

4. The Division was therefore correct when it required the Claimant to reimburse the State of Alaska \$1,960.

DECISION

The Division was correct when it required the Claimant to reimburse the State of Alaska a total of \$1,960, for Interim Assistance benefits the Claimant received for the months August 2007 through February 2008.

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. To do this, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

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.

DATED this 27th day of June, 2008.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 27th day of June 2008, true and correct copies of the foregoing were sent to:

██████████, DLC –Certified Mail, Return Receipt Requested.

Claimant – Certified Mail, Return Receipt Requested

██████████, Director

██████████ Policy & Program Development

██████████ Staff Development & Training

██████████, Fair Hearing Representative

Al Levitre, Law Office Assistant I