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

In the Matter of \_\_\_\_\_ )  
 )  
 ) OHA Case No. 08-FH-778  
 )  
Claimant. \_\_\_\_\_ ) Division Case No. \_\_\_\_\_  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

\_\_\_\_\_ (Claimant) was receiving Adult Public Assistance. (Ex. 1) On July 11, 2008, the Division of Public Assistance (Division) informed the Claimant he was overpaid \$260.00 in Adult Public Assistance benefits during the period June 2007 through October 2007, which needed to be repaid. (Ex. 3.). The Claimant requested a hearing by August 10, 2008.<sup>1</sup> This office has jurisdiction pursuant to 7 AAC 49.010.

The Division submitted Claimant's request to this office on November 3, 2008, with a notice stating Claimant's hearing request was made on October 28, 2008.<sup>2</sup> Therefore, a hearing was not held until November 26, 2008. The Claimant attended the hearing in person. \_\_\_\_\_, Public Assistance Analyst with the Division, attended in person and represented the Division.

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<sup>1</sup> The exact date of the hearing request is unknown. The Division submitted a Petition to Deny Fair Hearing Request, which was argued at hearing. The Division contended the Claimant did not submit a hearing request until September 11, 2008, which was over the thirty day limit to request a fair hearing. The Division argued, therefore, the Claimant's hearing request should be denied. The Claimant argued he had submitted a hearing request earlier, and the September 11, 2008 hearing request was his second request. The Claimant further asserted he wrote on the September 11, 2008 request that it was his second request.

At the hearing, \_\_\_\_\_, a Benefit Issuance & Recovery Specialist testified Claimant called her prior to September 11, 2008 inquiring about the status of his hearing request. The Division did not have a copy of the Claimant's September 11, 2008 hearing request. Based upon the evidence, the Hearing Authority found Claimant had made a timely request and proceeded with the hearing. A timely request needed to be made by August 10, 2008.

<sup>2</sup> October 28, 2008 is the date \_\_\_\_\_, the Division's fair hearing representative, first was informed of the Claimant's September 11, 2008 request. (Ex. 4).

## ISSUE

Was the Division correct to pursue repayment of Adult Public Assistance benefits paid in error from June 2007 through October 2007?

## FINDINGS OF FACT

1. The Claimant was receiving Adult Public Assistance. (Ex. 1) He qualified for these benefits because he was receiving the federal Social Security Administration for Social Security Supplemental Security Income (SSI) benefits from the federal Social Security Administration. (Ex. 2.1)
2. In May of 2007, Claimant's SSI benefits were terminated. The SSI computer interface which stated his SSI benefits were terminated because he was no longer disabled.<sup>3</sup> (Ex. 2.1). The Claimant did not report the change to the Division. (Testimony of Claimant and [REDACTED]).
3. In October of 2007, the Division reviewed Claimant's case, which included an interview with Claimant. The Division performed computer interfaces with other benefit agencies. Division notes indicate "Client is currently in pay status with SS DS." Claimant never informed the Division that his SSI benefits had been terminated. (Ex. 2.5).
4. The Division paid APA benefits to the Claimant until February 2008. The Division argues Claimant was ineligible for APA benefits from June 2007 through February 2008. The Division determined it failed in not terminating benefits in October of 2007, when it reviewed Claimant's case. Therefore, it is only seeking reimbursement of \$260.00 for benefits paid from June 2007 through October 2007.
5. On September 11, 2008, the Claimant paid \$130.00 to the Division.

## PRINCIPLES OF LAW

This case involves reimbursement of benefits. The Division has the burden of proof by a preponderance of the evidence.<sup>4</sup>

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<sup>3</sup> This finding of termination of SSI benefits is contrary to Claimant's testimony. He stated he did not believe he was terminated because he signed a form from the Social Security Administrations stating he wished to continue with SSI benefits pending the outcome of the appeal regarding the decision that his disability had ceased. (Ex. A). Claimant also testified he has not been receiving SSI benefits, despite his submission of the signed statement.

<sup>4</sup>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 (5<sup>th</sup> Ed. 1979)

If a recipient of both Adult Public Assistance benefits and Supplemental Security Income benefits has his Supplemental Security Income benefits terminated by the Social Security Administration, the State of Alaska is required to terminate his Adult Public Assistance benefits. The Alaska regulation reads:

(c) If an applicant is receiving SSI benefits and is determined by the Social Security Administration to be ineligible, except as provided in (d) and (e) of this section, the division will terminate assistance in accordance with 7 AAC 49.060, regardless of whether the applicant files an appeal with the Social Security Administration.

7 AAC 40.060(c).<sup>5</sup>

Alaska regulation 7 AAC 40.480(a) states: “The division may pursue repayment under this section from a current or former recipient of assistance under this chapter who received an overpayment.”

### **ANALYSIS**

The issue in this case was whether the Division was correct to pursue repayment of Adult Public Assistance benefits paid in error from June 2007 through October 2007. The Division has the burden of proof by a preponderance of the evidence.

The Claimant’s SSI benefits were terminated in May of 2007. The Alaska regulation pertaining to the domino effect of a Supplemental Security Income benefit termination, 7 AAC 40.060(c), is clear. Termination of Supplemental Security Income benefits requires that State Adult Public Assistance benefits be terminated. Even if the Social Security Administration’s decision to terminate Supplemental Security Income benefits is wrong or under appeal with the Social Security Administration, the Division does not have discretion to ignore the regulatory required termination.

The only exceptions to the termination requirement are if the Supplemental Security Income termination was due to the Claimant’s income or his disposal of resources. 7 AAC 40.060(c), (d), and (e).<sup>6</sup> Neither of these exceptions are applicable to this case because the Claimant’s SSI benefits were terminated because it was determined he was no longer disabled. However, once the Social Security Administration terminated the Claimant’s Supplemental Security Income benefits because it determined he was not disabled, the Division, by regulation 7 AAC 40.060(c), was required to terminate his State Adult Public Assistance in June 2007.

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<sup>5</sup> The exceptions to the termination rule contained in 7 AAC 40.060(c) refer to Supplemental Security Income termination due to either excess income or a disposal of resources for less than fair market value. 7 AAC 40.060(d) and (e). Neither of these exceptions are applicable to this case.

<sup>6</sup> If the Social Security Administration had terminated the Claimant’s Supplemental Security Income benefits because of his income, then the Division could have reviewed the Claimant’s case to see if he was eligible for Adult Public Assistance and/or Medicaid under the State Only disability or Working Disabled categories. See AS 47.07.020(b)(4); 7 AAC 100.002(d)(1); 7 AAC 100.410(b).

The Division failed to terminate the Claimant's Adult Public Assistance benefits in June 2007. Because the Division was required to terminate the Claimants Adult Public Assistance benefits in June of 2007, but failed to do so, the Division made an overpayment to the Claimant from June 2007, until it stopped payment in February 2008. The Division is only requesting repayment of the overpayment from June 2007 through October 2007, in the amount of \$230.00. Pursuant to 7 AAC 40.480, the Division may pursue this overpayment from the Claimant.

The parties agree the Claimant has already paid half of the requested overpayment. Therefore, the Claimant is required to repay the Division \$130.00.

### **CONCLUSIONS OF LAW**

1. The Division was required by the explicit terms of its regulation, 7 AAC 40.060(c), to terminate the Claimant's Adult Public Assistance benefits when the Social Security Administration terminated his Supplemental Security Income benefits.
2. Because the Division failed to terminate Claimant's Adult Public Assistance benefits when his Supplemental Security Income benefits were terminated, the Division acted properly in pursuing repayment of Adult Public Assistant benefits paid from June 2007 through October 2007.

### **DECISION**

The Division was correct to pursue repayment of Adult Public Assistance benefits paid in error from June 2007 through October 2007

### **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

An appeal request must be filed within 15 calendar days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

DATED this \_\_\_\_\_ day of December, 2008.

Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_ day of December 2008, true and correct copies of the foregoing were sent to:

Claimant– Certified Mail, Return Receipt Requested.

[REDACTED], Director  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Fair Hearing Representative

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Al Levitre, Law Office Assistant I