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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. 09-FH-275
	)	
Claimant.	)	Division Case No. 
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

 (Claimant) was receiving Interim Assistance. (Ex. 2) On March 12, 2009, the Division of Public Assistance (Division) sent Claimant written notice requesting repayment of \$5,040.00 received as an overpayment in Interim Assistance benefits. (Ex. 3) The Claimant requested a fair hearing on April 21, 2008. (Ex. 5) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was scheduled for June 9, 2009. Claimant requested a continuance, and the hearing was rescheduled and held on July 22, 2009. Claimant attended telephonically, represented herself, and testified on her own behalf. , Public Assistance Analyst with the Division, attended in person. She represented the Division and testified on its behalf.

## ISSUE

Was the Division correct to require/request repayment of Interim Assistance benefits, paid between October of 2007 through March of 2009, because the Social Security Administration denied Claimant's Social Security benefits on August 24, 2007?

## FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant was receiving Interim Assistance and Food Stamp benefits. (Ex. 2). Her Interim Assistance benefits were \$280.00 per month. (Ex. 2) On January 22, 2009, the Division personnel discovered Claimant's Social Security benefits application was denied at the Appeals Council Level on August 24, 2007. (Ex. 2.1) Claimant failed to report this denial to the Division. (Testimony at hearing)
2. The Division paid the Claimant Interim Assistance benefits from October 2007 through March 2009. (Ex. 2.5)
3. The Division sent Claimant notice on March 12, 2009, informing her she was overpaid Interim Assistance from October 2007 through March 2009, in the amount of \$5,040.00. (Ex. 3).
4. The Claimant testified to the following at hearing:
  - a. Claimant was aware of her duty to inform the Division of a denial from the Social Security Administration.
  - b. Claimant remembered receiving a letter from the Social Security Administration around the time of the denial. She was confused about the letter because it said she was found not to be blind.
  - c. Claimant later wrote a letter to the Social Security Administration stating she wanted to add an additional disability to her claim. The Social Security Administration phoned her at the end of last year regarding this letter and told her she was no longer in the system because her claim had been denied. She did not report the result of this phone call to the Division. However, she reapplied for Social Security benefits earlier this year, based on that phone call.

## PRINCIPLES OF LAW

“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). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*,

711 P.2d 1170, 1183 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493 (Alaska 2003).

An applicant for Social Security benefits who is receiving Interim Assistance benefits will continue receiving those benefits until that applicant receives an adverse SSI decision and fails to appeal to the next appeal level or receives a notice of dismissal or an adverse decision from the Social Security Appeals Council. 7 AAC 40.190(a).

7 AAC 40.480 states:

(a) The division may pursue repayment under this section from a current or former recipient of assistance under this chapter who received an overpayment.

(b) For purposes of this section, an applicant who received interim assistance under 7 AAC [40.375](#) but was denied SSI eligibility by the Social Security Administration solely on the basis that the applicant was not disabled or blind or that the applicant's income exceeds SSI income standards is not considered to have received assistance to which the applicant was not entitled.

(c) If an overpayment occurred solely as the result of an administrative error or oversight by the division, the division may request repayment.

(d) If an overpayment occurred because the recipient, or representative acting on the recipient's behalf, failed to comply with the requirements of AS 47.25.430 - 47.25.615 **and this chapter**, the division may require repayment.

(Emphasis added)

7 AAC 40.440(a), a regulation in the same chapter as 7 AAC 40.480 states: “From the date of application until an applicant is determined to be ineligible for assistance, the applicant or the person acting on his behalf under 7 AAC [40.040](#) must report any change in circumstances which may affect his eligibility or assistance payment within 10 days of the change.”

The Division must give written notice to the client at least 10 days before the date the division intends to take action terminating assistance. 7 AAC 49.060.

## DISCUSSION

The issue in this case is whether the Division was correct to require/request repayment of Interim Assistance benefits paid between October of 2007 through March of 2009, after the Social Security Administration denied Claimant's application for SSI benefits on August 24, 2007. Because the Division is trying to change the status quo by requesting reimbursement of benefits, it has the burden of proof by a preponderance of the evidence.

Pursuant to 7 AAC 40.190(a), Claimant was to receive Interim Assistance benefits until she received an adverse action from the Social Security Appeals Council. She received that adverse action on August 24, 2007. (Ex. 2.1). After that time, Claimant was no longer eligible for Interim Assistance benefits. Despite this adverse action, she continued receiving Interim Assistance benefits until March of 2009.

7 AAC 40.440(a) states a Claimant must report a change in circumstances which may affect eligibility within 10 days of that change. The Social Security Appeals Council issued an adverse action against Claimant on August 24, 2007. Claimant did admit she received a notice from the Social Security Administration around that time, but she was uncertain of its meaning. The Division would not have received any notice regarding this change. Only the Claimant received the notice, and therefore, had the duty to learn what that notice stated. After learning that the document she received was an adverse decision from the Social Security Appeals Council, she would have had the duty to report this action to the Division. She failed to do so. Because of this failure, she was overpaid benefits.

7 AAC 40.480(c) states the Division may request repayment if an overpayment was a result of Division administrative error or oversight. 7 AAC 40.480(d) also states the Division may require repayment if the overpayment occurred because the Claimant failed to comply with the requirements of the chapter of regulations or statutes on Interim Assistance. Therefore, it must be determined whether subsection (c) or (d) applies in this case.

The Division is requesting overpayment starting in October of 2007. The Social Security Appeals Council issued its decision on August 24, 2007. The Claimant had to have received the notice shortly after that time. Claimant had 10 days to report the Appeals Council's action to the Division. 7 AAC 40.440(a) The Division must give written notice at least 10 days before the date of termination. 7 AAC 49.060. The earliest the Division could have cancelled Claimant's Interim Assistance benefits was on October of 2009. Because the overpayment starting in October of 2007 occurred because the Claimant failed to comply with 7 AAC 40.440(a), the Division may require repayment of benefits made from that time forward.

The Division is requesting overpayment until March of 2009. However, the Division learned on January 22, 2009, that Claimant received an adverse action from the Appeals Council Level. (Ex. 2.1) The Division would have been required to give Claimant 10 days notice before the termination of benefits. 7 AAC 49.060 Therefore, if the Division

acted on the January 22, 2009 information in a timely manner, Claimant would have still received benefits for February of 2009 but not for the month of March 2009. Therefore, Claimant is required to repay benefits made up to that time. 7 AAC 40.480(d)

The Division did not act on the January 22, 2009 information in a timely manner. It was only because of Division oversight that Claimant received benefits for the additional month of March. Therefore, pursuant to 7 AAC 40.480(c), the Division may only request repayment for the month of March 2009. "Request" as opposed to "requires" indicates that the repayment is voluntary.

### **CONCLUSIONS OF LAW**

1. The Division has met its burden of proof by a preponderance of evidence and was correct to require repayment of Interim Assistance benefits, paid between October of 2007 through February of 2009, after the Social Security Administration denied Claimant's application for Social Security benefits on August 24, 2007.
2. The Division has met its burden of proof by a preponderance of evidence and was correct to request repayment of Interim Assistance benefits, paid in March of 2009, after the Social Security Administration denied Claimant's application for Social Security benefits on August 24, 2007.

### **DECISION**

1. The Claimant is required to repay the Interim Assistance benefits she was overpaid from October 2007 through February 2009.
2. The Claimant may repay the Interim Assistance benefits she was overpaid in March of 2009.

### **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.

