

██████ 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)
)
████████████████████)
)
)
)
) OHA Case No. 09-FH-521
Claimant.) Division Case No. ██████████
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. ██████████, (Claimant), was and is a recipient of the Temporary Assistance program. (Ex. 1) On August 26, 2009, the Division of Public Assistance (Division) sent Claimant notice he had received an overpayment in benefits and the Division will be recouping the overpayment from his future benefits. (Ex. 3)

On September 17, 2009, Claimant requested a Fair Hearing asserting that he should not have to repay the overpaid benefits. (Ex. 4.1 – 4.2) This Office has jurisdiction under authority of 7 AAC 49.010.

Pursuant to Claimant’s request, a Fair Hearing commenced on November 25, 2009.¹ Claimant appeared telephonically representing and testifying on his own behalf. ██████████, the Division’s Fair Hearing Representative, appeared in person representing and testifying for the Division. ██████████, another Division Fair Hearing Representative, was present but did not participate.

ISSUE

Was the Division correct to seek reimbursement from Claimant of Temporary Assistance benefits overpaid from October of 2008 through August of 2009?

¹ After the hearing, the Claimant called this office and wanted to submit additional information. However, as of this date, this office has not received any new documentation from Claimant.

The Division argues Claimant must reimburse the Division for the overpayment regardless of fault.

Claimant argues the overpayment was not his fault, and therefore he should not have to reimburse the Division. Furthermore, his caseworker told him he would not be required to make the reimbursement.

FINDINGS OF FACT

1. On July 30, 2009, Claimant submitted an Eligibility Review Form to the Division on behalf of his grandson. (Ex. 2.15) The Form was submitted, in part, for the purpose of maintaining Temporary Assistance benefits. (Ex. 2.15)

2. The Division reviewed Claimant's July 30, 2009 Eligibility Review Form and discovered it had erred in the benefit amount paid to Claimant from October 2008 through August 2009. The Division had failed to include Claimant's grandson's Social Security income when determining eligibility. Therefore, the Division had overpaid benefits in the amount of \$103.00 per month for three months and \$104.00 per month for eight months. The total amount of overpayment was \$1,141.00. Claimant does not dispute the fact there was an overpayment or the amount of the overpayment. (Testimony of Claimant at hearing)

3. Claimant had declared his grandson's Social Security income in all applications and Eligibility Review Forms. (Exs. 2.15-2.29) The Division admits the overpayment was its own error. (Argument and Testimony of Gagne)

PRINCIPLES OF LAW

I. Burden of Proof

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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

"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).

III. Temporary Assistance

7 AAC 45.570, the regulation regarding overpayment of Temporary Assistance benefits, states in relevant part:

(a) Except as provided in (k) of this section, the department **will pursue collection from a current recipient of ATAP benefits or a former recipient of ATAP or AFDC benefits who received an overpayment, regardless of the amount or cause of the overpayment**, unless the overpayment was caused by the department, in which case the department will pursue collection only if the overpayment exceeds \$100.²

(e) A current recipient of ATAP benefits must, within 30 days after the date printed on the overpayment notice, repay the total amount of the overpayment to the department, or the department will reduce that assistance unit's future ATAP payments by withholding 10 percent of the maximum amount payable to an assistance unit of the same size with no countable income for the number of months necessary to recover the overpayment. If a current recipient receives both an underpayment and an overpayment, the department will adjust the underpayment amount to compensate for the overpayment amount. A current recipient, whose assistance is terminated before the full amount of an overpayment has been recovered, will remain liable for the balance and will be considered a "former recipient" under (g) of this section.

(Emphasis added)

ANALYSIS

I. Issue

Was the Division correct to seek repayment from Claimant of overpaid Temporary Assistance benefits issued from October 2008 through August 2009?

II. Burden of Proof and Standard of Proof

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 Division

² The rest of this section pertains to PASS I child care assistance and is not relevant to this decision. It states in relevant part:

The provisions of this section also apply to an overpayment of PASS I child care assistance. The family is responsible for repayment unless the overpayment occurred because of an intentional program violation by a provider under 7 AAC 41, in which case the provider is responsible for repayment. For purposes of collection of an overpayment from a provider, the provisions of 7 AAC 41.420 are applicable. . . .

seeks to change the status quo by requiring Claimant to reimburse the Division for the Temporary Assistance benefits overpaid from October 2008 through August 2009. Accordingly, the Division has the burden of proof.

To prevail, the Division must prove it is entitled to collect the benefits overpaid to Claimant's household from October 2008 through August 2009 by supplying the preponderance of relevant evidence. That is, the Division must prove its right to reimbursement by evidence that is more convincing or of greater weight than Claimant's evidence.

III. Repayment of overpaid Temporary Assistance benefits

In this case, all the relevant facts are undisputed. The Division determined Claimant received an overpayment of Temporary Assistance benefits from October 2008 to August 2009 in the amount of \$1,141.00. (Finding of Fact #2) Claimant does not dispute these facts.

The dispute in this case is whether Claimant is required to repay the \$1,141.00 of overpaid Temporary Assistance benefits. Claimant asserts he should not have to repay because he did nothing wrong, he did report his grandson's income to the Division, and the Division made a mistake in sending him benefits to which he was not entitled. (Claimant's testimony; Ex. 4.2)

The Division agrees Claimant reported his income and cannot explain why it failed to calculate the proper benefit amount. (Testimony of Gagne)

State regulations regarding overpaid Temporary Assistance benefits are clear and inflexible. See 7 AAC 45.570. Once overpayment is found to have occurred, regardless of whether overpayment occurred due to Claimant's error or the Division's error,³ repayment must be made. 7 AAC 45.570(a) In addition, regulation 7 AAC 45.570(e) explicitly allows the Division to recoup overpayments from future benefits (not to exceed 10% of benefits.)

Therefore, the Division is required by state regulation to seek repayment of overpaid benefits. In this case, the Division is correct to seek repayment from Claimant of \$1,141.00 of Temporary Assistance overpaid for the period from October 2008 through August 2009.

CONCLUSION OF LAW

The Division has met its burden of proof by a preponderance of the evidence and the Division may recoup from Claimant Temporary Assistance benefits overpaid to him from October 2008 through August 2009.

³ If the overpayment is made because of the Division's error, repayment is required if the overpayment amount exceeds \$100. 7 AAC 45.570(a)

DECISION

The Division was correct to seek repayment of the Temporary Assistance Program benefits it overpaid to Claimant from October 2008 through August 2009.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, 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 3rd day of December, 2009.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of December, 2009, true and correct copies of the foregoing were sent by U.S.P.S., by Certified Mail, Return Receipt Requested to:

Claimant

and to other listed persons by e-mail:

, Director
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II

[REDACTED], Eligibility Technician I
[REDACTED], Fair Hearing Representative

Al Levitre
Law Office Assistant I