

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. 10-FH-362
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) has been receiving Temporary Assistance benefits continuously since 2006. (Ex. 5.23) He reapplied for Temporary Assistance benefits on October 4, 2010. (Exs. 2.0 – 2.3) On or about October 20, 2010, the Claimant was notified by the Division of Public Assistance (Division) that his monthly Temporary Assistance benefit amount would be reduced from \$452 per month to \$97 per month beginning with the month of October 2010.¹ The Claimant requested a Fair Hearing on October 25, 2010.² (Exs. 4.0 – 4.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was scheduled for November 23, 2010. On November 18, 2010, the Division sent the Claimant a notice he had received \$4,260 more in Temporary Assistance benefits than he was entitled to receive during the months of October 2009 through September 2010, and that the Division was requiring him to repay that amount. (Ex. 6)

¹ The Division's Position Statement does not contain a copy of the Temporary Assistance benefit reduction notice sent to the Claimant. This synopsis is derived from the Division's October 20, 2010 casenote (Ex. 3.0) and Ms. [REDACTED]'s hearing testimony. It should also be noted that the Claimant only received an \$88 Temporary Assistance benefit for the month of October 2010 because his renewal application was not received until October 4, 2010 and as a result he did not receive a full month's worth of benefits for October 2010. (Exs. 3.0 - 3.1)

²The Division initially maintained that this case was with regard to the Food Stamp program. (Ex. 7.3) The Claimant during the November 23, 2010 hearing stated it was with regard to the Adult Public Assistance program. It was subsequently clarified, during hearing, that this case only involved the Temporary Assistance program.

With the Claimant's agreement, this case went to hearing to consider both the issue of his Temporary Assistance benefit reduction and the issue of whether he was required to repay the Division \$4,260 in Temporary Assistance benefits.

The Claimant's hearing began on November 23, 2010, which the Claimant attended telephonically. The Claimant initially verbally withdrew his hearing request. He then changed his mind and requested that his hearing proceed. The hearing was then rescheduled to December 14, 2010.

The Claimant appeared at the December 14, 2010 hearing in person. The hearing was then rescheduled until January 11, 2011, again at the Claimant's request. The Claimant attended the January 11, 2011 hearing telephonically. He represented himself at all times and testified on his own behalf.

The Division was represented by [REDACTED], Public Assistance Analyst with the Division of Public Assistance, who testified on behalf of the Division. She attended the November 23, 2010 hearing telephonically. She attended the December 14, 2010 and January 11, 2011 hearings in person.

ISSUES

1. Was the Division correct to reduce the Claimant's monthly Temporary Assistance benefit amount from \$452 to \$97 beginning with the month of October³ 2010?
2. Was the Division correct when it, on November 18, 2010, required the Claimant to repay \$4,260 in Temporary Assistance benefits which he received during the months of October 2009 through September 2010?

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The Claimant's household consists of two persons, the Claimant and his minor daughter. (Ex. 2.0)
2. The Claimant receives federal Supplemental Security Income benefits and Alaska Adult Public Assistance benefits. (Exs. 4.2 – 4.3)
3. The Claimant's minor daughter has been receiving federal Social Security survivor benefits since December 2006. (Ex. 5.1) The monthly amount she receives of those benefits has been \$560 since December 2008. *Id.*
4. In September 2010, the Claimant was receiving Temporary Assistance benefits in the amount of \$452 monthly for his household, which was classified for Temporary Assistance

³ As explained in fn. 1 above, the Claimant actually only received \$88 in October Temporary Assistance benefits.

purposes as a one person, adult not included (“ANI”) household. (Ex. 5.13) That benefit amount was based on the household having no countable income. *Id.*

5. The Claimant filed a renewal application for Temporary Assistance benefits on October 4, 2010. (Exs. 2.0 – 2.3)

6. On October 20, 2010, during the Claimant’s eligibility interview, the Claimant informed the Division Eligibility Technician his minor daughter was receiving monthly federal Social Security survivor benefits in the amount of \$560. (██████ testimony; Ex. 3.0) The Division had not previously taken the minor daughter’s Social Security income into account when it had calculated the Claimant’s monthly Temporary Assistance benefits. (██████ testimony; Ex. 4.1)

7. The Division then approved the Claimant’s Temporary Assistance benefits for a one person household (assistance unit) consisting only of the minor daughter (adult not included). (Ex. 3.0) It calculated the Claimant’s monthly Temporary Assistance benefits based solely on the minor child’s \$560 per month Social Security income. (Ex. 3.0) As a result, the Claimant’s monthly Temporary Assistance benefit amount was reduced from \$452 per month to \$97 per month beginning with the month of October 2010.⁴

8. On November 4, 2010, the Division reviewed the amounts of Temporary Assistance benefits the Claimant had received in the past, because it had not counted the minor daughter’s Social Security income, and determined the Claimant had been overpaid a total of \$4,970 during the time period from October 2009 through September 2010. (Exs. 5.0; 5.2 – 5.3)

9. On November 18, 2010, the Division sent the Claimant a one page notice that informed him he had “received \$4260 too much from the Alaska Temporary Assistance Program for the month(s) of October 2009 thru September 2010. The reason(s) you were overpaid is: the Agency did not count your Social Security.” (Ex. 6) The notice further informed the Claimant that “[s]tarting with the month of January 2011, your Temporary Assistance benefit will be reduced by \$45 to pay back this overpayment.” *Id.* The Division’s November 18, 2010 notice did not contain any further explanation of how the overpayment occurred, nor did it contain any information or calculations that showed how the Division arrived at the repayment figure of \$4,260. *Id.*

PRINCIPLES OF LAW

Burden of Proof and Standard of Proof

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (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, 495 (Alaska 2003) (quoting from *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

⁴ As explained in *fn.* 1 above, the record does not contain a copy of the Division’s benefit reduction notice.

Alaska Temporary Assistance Program Benefit Calculations Process

Temporary Assistance is a program that provides “cash assistance . . . to needy children and their families.” AS 47.27.005(1). The regulations that control how Temporary Assistance eligibility and benefit amounts are determined are contained at 7 AAC 45.149 – 45.990.

The Temporary Assistance program uses the term “assistance unit” for “those individuals whose needs are considered in determining eligibility for assistance and the amount of the ATAP payments.” 7 AAC 45.335(a). In order for an assistance unit to be eligible for Temporary Assistance, the assistance unit must have a dependent child in the home, and the assistance unit must meet financial eligibility requirements. AS 47.27.010; 7 AAC 45.210(a)(4) and (b); 7 AAC 45.225(a). A parent (or parents) and the dependent children who reside with them are mandatory members of the assistance unit. 7 AAC 45.195(a).

Temporary Assistance financial eligibility and monthly benefits levels are based upon the gross monthly income received by members of the assistance unit. 7 AAC 45.470. The income of parents, who reside with their dependent child or children, is normally considered to be part of the assistance unit’s income for eligibility and benefit determination purposes. 7 AAC 45.325(b)(1). In addition, if a dependent child who is part of the assistance unit has income, that child’s income is included in the assistance unit’s income. 7 AAC 45.325(b)(3).

An individual “who is receiving [Supplemental Security Income] or [Adult Public Assistance] benefits” is “not eligible for [Alaska Temporary Assistance Program] benefits and will not be included in the assistance unit.” 7 AAC 45.335(e) and (e)(1). That individual’s income is not considered as part of the assistance unit’s income, and that individual is not allowed to receive Temporary Assistance benefits. 7 AAC 45.390.

The assistance unit’s monthly Temporary Assistance benefit payment is determined by first calculating the total non-exempt gross monthly assistance unit income, and then subtracting deductions as specified in the Temporary Assistance regulations. 7 AAC 45.470. However, a review of the Temporary Assistance regulations shows there are no income deductions available for an assistance unit composed only of a dependent child, whose only income was Social Security survivor benefit income. *See* 7 AAC 45.475 – 485.

The resulting net monthly assistance unit income figure (gross monthly income less deductions) is then subtracted from the applicable Temporary Assistance need standard. 7 AAC 45.470(c); 7 AAC 45.525(b). The need standard for a one person assistance unit, consisting only of the dependent child, is \$715. *Alaska Temporary Assistance Manual* Addendum 2. That result is then multiplied by 63.22 percent to arrive at the monthly benefit amount. 7 AAC 45.525(c); *Alaska Temporary Assistance Manual* Section 780-1G. The benefit amount is rounded down to the nearest dollar, “[f]or example, if the payment is calculated as \$25.99 the payment amount would be \$25.” 7 AAC 45.525(d).

Alaska Temporary Assistance Repayment Requirements

The Division “will pursue collection from a current recipient of ATAP benefits or a former recipient of ATAP . . . benefits who received an overpayment.” 7 AAC 45.570(a). If an overpayment is caused by the Division’s mistake, it is still required to “pursue collection . . . if the overpayment exceeds \$100.” *Id.*

Procedural Due Process Notice Requirements

The government is required to comply with procedural due process requirements before it seeks to either terminate or reduce public assistance benefits. *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008) In order to comply with those requirements, “an agency contemplating a termination or reduction of public assistance benefits must provide the recipient ‘timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend.’” *Baker* at 1009 (quoting from *Goldberg v. Kelly*, 397 U.S. 254, 267 – 68 (1970)).

The Alaska Supreme Court has issued four recent decisions regarding the procedural due process adequacy of benefit reduction/termination/repayment notices issued by the Alaska Department of Health and Social Services, as follows:

1. In *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008), the Court held a PCA (Personal Care Attendant) services reduction notice was defective because it failed to provide the recipients with adequate notice: “we agree with Baker that due process demands that recipients facing a reduction of their public assistance benefits be provided a meaningful opportunity to understand, review, and where appropriate, challenge the department’s action.” *Id.* at 1011. In *Baker*, the Department was required to include the assessment form (PCAT) with its benefit reduction notices. *Id.* at 1012.
2. In *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1168 – 1170 (Alaska 2009), the Court held that before the Department could require repayment of allegedly overpaid Food Stamp benefits from a recipient, the Department was required to send the recipient notice containing its detailed calculations and the reasons for the repayment.
3. In *Heitz v. State, Dept. of Health & Social Services*, 215 P.3d 302, 308 (Alaska 2009), the Court extended the holding in *Allen* to a repayment action instituted by the Alaska Dept. of Health & Social Services in a foster care payment case, finding the repayment notice was inadequate and that in order to satisfy procedural due process notice requirements, the Department was required to send the foster parents “notice [that includes] specific factual reasons and legal authority for the recoupment.”
4. In *Smart v. State, Dept. of Health & Social Services*, 237 P.3d 1010, 1016 (Alaska 2010), the Court held that a repayment notice sent to a Medicaid provider was inadequate because the Department “failed to communicate to Smart in a timely manner the amount it sought to recoup and whether this determination was based on statistically valid sampling methodologies.” “[A]dequate notice should allow its recipient ‘to assess

whether or not the agency's calculations are accurate' and to 'detect and challenge mistakes.'" *Smart*, note 23 at 1016 (quoting from *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1167 – 1168 (Alaska 2009)).

The lack of an adequate notice does not permanently bar the Department from pursuing repayment claims. However, if it wishes to proceed with its repayment claim, it must first issue due process compliant repayment notices. *Allen* at 1169.

ANALYSIS

There are two issues in this case, each of which will be addressed below:

1. Was the Division correct to reduce the Claimant's Temporary Assistance benefit amount from \$452 monthly to \$97 monthly beginning with the month of October 2011?
2. Was the Division correct when it, on November 18, 2010, required the Claimant to repay \$4,260 in Temporary Assistance benefits which he received during the months of October 2009 through September 2010?

1. **Benefit Reduction.**

The Division has the burden of proof on this issue, because it is seeking to reduce the Claimant's Temporary Assistance benefit amount. Resolution of this issue requires the application of the relevant Temporary Assistance regulation to undisputed facts. Those undisputed facts are (a) the Claimant receives Supplemental Security Income and Adult Public Assistance benefits; (b) his household consists of himself and his minor daughter, who receives \$560 per month in Social Security survivor's benefits.

Before the Division reduced the monthly benefit amount to \$97, the Claimant was receiving \$452 per month in Temporary Assistance benefits. This amount was paid to him for his one person (adult not included) assistance unit, that was composed solely of his minor daughter. It was based upon the assistance unit having no income whatsoever.

As a purely legal matter, because the Claimant receives Supplemental Security Income and Adult Public Assistance benefits, he cannot be considered part of the Temporary Assistance assistance unit. 7 AAC 45.335(e)(1). 7 AAC 45.390. Nor can his income be counted as part of the assistance unit income. 7 AAC 45.390. However, the Claimant's minor daughter receives Social Security survivor's income in the amount of \$560 per month. This income had not been counted before in calculating the Temporary Assistance benefit amount. This was an error, because the income of a dependent child, who is part of the assistance unit, is counted as part of the assistance unit's income. 7 AAC 45.325(b)(3). Consequently, the assistance unit's monthly gross income was \$560, the Claimant's minor daughter's Social Security survivor's income.

As explained in the Principles of Law section above, in order to determine the monthly benefit amount, the minor daughter's income of \$560 is then subtracted from the one person assistance need standard of \$715. 7 AAC 45.525(b). The result is \$155, which is then multiplied by .6322

to arrive at the monthly benefit amount. 7 AAC 45.525(c); *Alaska Temporary Assistance Manual* Section 780-1G The result is \$97.99, which is rounded down to \$97, as required by 7 AAC 45.525(d).

The Division reduced the Claimant's monthly Temporary Assistance benefit amount to \$97 beginning with the month of October 2010 based upon the daughter's monthly Social Security survivor's benefit income in the amount of \$560. As demonstrated above, this was required by the applicable regulation, 7 AAC 45.325(b)(3), and the Division correctly calculated the monthly Temporary Assistance benefit amount. The Division was therefore correct when it reduced the Claimant's Temporary Assistance benefit amount from \$452 monthly to \$97 monthly beginning with the month of October 2011.

2. Benefit Repayment

The Division's November 18, 2010 repayment notice sent to the Claimant consisted of one page that informed the Claimant he had "received \$4260 too much from the Alaska Temporary Assistance Program for the month(s) of October 2009 thru September 2010." The reason(s) you were overpaid is: the Agency did not count your Social Security." (Ex. 6) The notice further informed the Claimant that "[s]tarting with the month of January 2011, your Temporary Assistance benefit will be reduced by \$45 to pay back this overpayment." *Id.* The Division's November 18, 2010 notice did not contain any further explanation of how the overpayment occurred, nor did it contain any information or calculations that showed how the Division arrived at the repayment figure of \$4,260. *Id.*

A review of the Division's above described November 18, 2010 repayment notice reveals that it fails to meet the minimum procedural due process standards articulated by the Alaska Supreme Court, which apply to all instances where the government seeks to reduce/terminate/recover public assistance benefits. *See Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008) (Medicaid Personal Care Assistance services reduction); *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1168 – 1170 (Alaska 2009) (Food Stamp payment recovery); *Heitz v. State, Dept. of Health & Social Services*, 215 P.3d 302,308 (Alaska 2009) (Foster Care payment recovery) ; *Smart v. State, Dept. of Health & Social Services*, 237 P.3d 1010, 1016 (Alaska 2010) (Medicaid provider payment recovery).

In order to comply with minimal procedural due process standards established by the Alaska Supreme Court, the Division's repayment notice was required to contain its calculations and provide information that was "adequate [to] allow its recipient 'to assess whether or not the agency's calculations are accurate' and to 'detect and challenge mistakes.'" *Smart* at 1016 (quoting from *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1167 – 1168 (Alaska 2009)). The Division's repayment notice only contained a total figure of \$4,260 with no explanation or calculations explaining how the Division arrived at that figure. In addition, its reference that "the Agency did not count your Social Security" was confusing at best, because as shown by the facts of this case, the error was not that it failed to count the Claimant's Social Security income, but rather that it failed to count his daughter's Social Security survivor's benefits income.

Because the Division's November 18, 2010 repayment notice did not contain information that was "adequate [to] allow its recipient 'to assess whether or not the agency's calculations are accurate' and to 'detect and challenge mistakes,'" the notice failed to meet minimum procedural due process standards and was inadequate as a matter of law. The Division was therefore not correct when it, on November 18, 2010, required the Claimant to repay \$4,260 in Temporary Assistance benefits which he received during the months of October 2009 through September 2010.

It is important to note that this Decision does not resolve the factual issue of whether the Claimant was overpaid \$4,260 in Temporary Assistance benefits. This is a purely legal ruling that holds the notice was legally inadequate. The Division is not permanently barred from proceeding with its overpayment claim. However, before it can proceed on the claim, it must first send the Claimant legally adequate notice. *Allen* at 1169.

CONCLUSIONS OF LAW

1. The Division met its burden of proof by a preponderance of the evidence and was correct, as a matter of law, to reduce the Claimant's monthly Temporary Assistance benefit from \$452 to \$97 beginning with the month of October 2010.
2. The Division was not correct when it requested, on November 18, 2010, that the Claimant repay it \$4,260 in allegedly overpaid Temporary Assistance benefits. This conclusion is reached because the Division's November 18, 2010 repayment notice was legally defective because it does not comply with the minimum procedural due process standards established by the Alaska Supreme Court. *See Allen* at 1167 – 68; *Smart* at 1016. The Division is not permanently barred from proceeding with its overpayment claim. However, before it can proceed on the claim, it must first send the Claimant legally adequate notice.

DECISION

1. The Division was correct to reduce the Claimant's Temporary Assistance benefit amount from \$452 monthly to \$97 monthly beginning with the month of October 2011.
2. The Division was not correct when it, on November 18, 2010, required the Claimant to repay \$4,260 in Temporary Assistance benefits which he received during the months of October 2009 through September 2010, because that notice was legally defective.

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 11th day of March 2011.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 11th day of March 2011, true and correct copies of the foregoing were sent to:
Claimant by Certified Mail, Return Receipt Requested
and to other listed persons by e-mail:

██████████, Public Assistance Analyst
██████████, Public Assistance Analyst
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Administrative Assistant II
██████████, Eligibility Technician I

J. Albert Levitre, Jr.
Law Office Assistant I