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

In the Matter of)
)
 [REDACTED],)
)
 Claimant.) OHA Case No. 10-FH-419
) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) was a recipient of the Alaska Temporary Assistance Program (Program) (Ex. 1) On August 17, 2010, Claimant submitted a report of change to the Division notifying it of her employment. (Ex. 2-2.2) The Division did not process Claimant's reported change until September 14, 2010. (Ex. 3.0; Ex. 3.8) On September 28, 2010, Division of Public Assistance (Division) notified Claimant in writing that she had been overpaid Program benefits in September 2010 and it was seeking reimbursement of the \$668 allegedly overpaid. (Ex. 4)

On October 15, 2010, and again on December 13, 2010,¹ Claimant requested a Fair Hearing. (Ex. 7-7.1; Ex. F) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 AAC 49.010 *et. seq.*

Claimant's Fair Hearing was held on January 13, 2011. Claimant appeared in person, represented herself and testified on her own behalf. Ms. [REDACTED], the Division's Public Assistance Analyst, appeared in person, represented the Division and testified on behalf of the Division.

ISSUE

Was the Division correct to seek reimbursement from Claimant of Alaska Temporary Assistance benefits which allegedly were overpaid in September 2010?

¹ Claimant requested a fair hearing on October 15, 2010 but as of December 6, 2010, the Division did not respond: therefore, Claimant renewed her request on December 13, 2010. (Exs. 7.0; 7.1).

FINDINGS OF FACT

The following facts have been proved by a preponderance of the evidence:

1. Claimant received \$821 of Alaska Temporary Assistance Program (Program) benefits in July 2010 and August 2010. (Ex. 1, Ex. 3.7)
2. On August 17, 2010, Claimant reported a change in her employment circumstances to the Division, which the Division received on August 17, 2010. (Ex. 2.0-2.2) The report was made on the Division's Change Report Form and Employment Statement form. (Ex. 2.0-2.2) On these forms, Claimant reported she began working 30 hours per week as of August 12, 2010 at a wage of \$13.41. (Ex. 2.0; Ex. 2.2) Claimant's report of change was made 14 days before the Division issued her September 1, 2010 benefit.
3. On September 1, 2010, Claimant received Program benefits of \$821. (Ex. 3.7) Claimant's September 2, 2010 telephone call to confirm if the benefit amount was correct was returned by Eligibility Technician, "[REDACTED]," who told Claimant that receipt of her September 2010 benefits of \$821 was correct because Claimant had not yet received any wage income. (Ex. F; Claimant's testimony)
4. Claimant's first employment income was received on September 3, 2010. (Ex. E)
5. The Division delayed processing the change in Claimant's income until September 14, 2010. (Ex. 3.0; Ex. 3.8) After processing the change, the Division determined Claimant had been issued excess Program benefits for September 2010 in the amount of \$668 and that she should have received \$153. (Ex. 3.5-3.6; Ex. 3.8)
6. On September 15, 2010, the Division notified Claimant in writing that her Program benefits would change in October 2010 and would be reduced to \$153. (Ex. G) On September 17, 2010, Claimant talked with her Nine Star² caseworker about her September benefit amount and if it was correct that she received \$821. (Ex. G; Claimant's testimony) Claimant again called Eligibility Technician [REDACTED] on September 17, 2010 to discuss the same question – whether she had received the correct benefit amount. (Ex. G; Claimant's testimony)
7. On September 28, 2010, Claimant was notified in writing of the Division's determination she had received \$668 of excess Program benefits in September 2010, due to the Division's delay in processing her reported change, and that it was seeking repayment of the amount.³ (Ex. 4)
8. On October 15, 2010, Claimant requested a fair hearing by mailing her request. (Ex. F; Ex. 7.1) She wrote on it that she had been told she was "qualified for the \$821 in Sept" during a telephone call on

² Nine Star is a private organization with which the Division of Public Assistance (DPA) has contracted to assist public assistance recipients to become employed.

³ On October 12, 2010, Claimant faxed a second report of change to the Division, addressed to her caseworker, and requested her Program benefits case be closed. (Ex. B) Claimant stated that she had received, but not spent, the Program benefits paid to her for October 2010. (Ex. B) The Claimant submitted a completed employment statement form and copies of her past three wage statements with her report. (Exs. D, E; Claimant's testimony) Claimant also sent the same information and a separate letter to the Division via her Nine Star caseworker. (Exs. C, D, E)

September 2, 2010 with (Eligibility Technician) “[REDACTED].” (Ex. F; Ex. 7.1) There is no date stamp on the Division’s copy (Ex. 7.1) showing the date it received the fair hearing request. (Ex. 7.1)

9. On October 29, 2010, the Division sent a second written notice to Claimant asking her to repay the \$668 of excess September 2010 benefits and titled: “Second Notice – Agency Error – Closed Case.” (Ex. 5; Ex. A)

10. On December 6, 2010, the Division sent a “Third Notice – Agency Error – Closed Case” notice to Claimant, again requesting repayment of the \$668. (Ex. 7.0) Claimant became concerned that she had received no response to her request for a fair hearing and in response to the Third Notice, she re-requested the hearing and mailed it to the Division on December 13, 2010. (Ex. 7)

11. During the Fair Hearing, held January 13, 2011, Claimant proved she had given timely notice of her change of income to the Division and that she had inquired in September 2010 and October 2010 whether the amount of September benefit she was issued was correct. (Exs. 2.0-2.2; Exs. F, G; Claimant’s testimony) Claimant did everything required of her, therefore the Division’s error was not her fault in any way. (Claimant’s testimony) Claimant believes she should not be penalized for the Division’s error. (Claimant’s testimony)

12. The Division admitted Claimant was paid \$668 more than it determined Claimant should have been paid for the month of September 2010 because the Division delayed processing the reported change in income and delayed re-calculating Claimant’s Program benefits. (Ex. 3.8; Ex. 4; Hearing Representative’s testimony)

13. Claimant and the Division stipulated the Division’s calculation of Claimant’s income and benefit amount was accurate and that Claimant received \$668 more benefits in September 2010 than the calculations showed she was eligible to receive that month.

PRINCIPLES OF LAW

I. Burden of Proof

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcoholic 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 Corp. v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof in this case 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, 495 (Alaska 2003) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

III. Alaska Temporary Assistance Program (ATAP)

Regulation 7 AAC 45.270(a) addresses reporting changes required by the Alaska Temporary Assistance Program (ATAP) and provides in relevant part:

[E]ach recipient, shall, within 10 days after the applicant or recipient knows of a change described in (b) of this section, contact the department to report the change. ...

When changes are not reported within the 10 day reporting period, a recipient's benefit payment might not be adjusted (based on the reported change) and the Division later may find that an overpayment of benefits has resulted.

However, regulation 7 AAC 45.270(a) provides an exception when a change is not reported within the 10 day reporting period but the Division nonetheless has time to make the needed adjustment(s) to the benefit amount:

If a change is not reported within the 10-day period but is reported in time for the department to make the necessary adjustments in the ATAP payment, the department will find that no overpayment exists. 7 AAC 45.270(a)

If the Division determines an overpayment has been made, then regulation 7 AAC 45.570, which addresses the collection of an overpayment of Alaska Temporary Assistance Program benefits, applies. Regulation 7 AAC 45.570 states in relevant part:

(a) Except as provided in (k)⁴ 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. ... The family is responsible for repayment....

ANALYSIS

I. Issue

The issues are whether Claimant's receipt of \$668 more of Alaska Temporary Assistance benefits than she was eligible to receive in September 2010 was an "overpayment," and whether the Division is correct to seek repayment of the \$668.

Claimant argues she should not have to repay the Program benefits overpaid to her because it is the Division's fault it issued the excess benefits to her and she did everything she was required to do to receive the correct amount of benefit.⁵

⁴ Subsection (k) addresses the suspension of collection activities under certain circumstances not at issue in this case.

⁵ The Division of Public Assistance has a formal complaint process through which Claimant can seek to have addressed her concerns about the Division's practice of not having a single case worker assigned to each case.

The Division asserts the law requires it to recover excess benefits paid if it has overpaid benefits and the overpayment exceeds \$100, which it does in this case.

II. Burden of Proof and Standard of Proof

“[T]he party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The Division is seeking to change the status quo by requiring Claimant to repay the Division for the Alaska Temporary Assistance benefits it alleges it overpaid in September 2010. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits and it may seek reimbursement for them.

III. Overpayment of Alaska Temporary Assistance Program Benefits.

It is undisputed Claimant reported a change in her employment and income on August 17, 2010, five days after she started work. Claimant’s report of change was within the 10-day mandatory reporting period and was fourteen days before the Division was required to issue Claimant’s September 2010 benefit.

Regulation 7 AAC 45.270(a), that addresses reporting changes required by the Alaska Temporary Assistance Program (ATAP), provides in relevant part:

[E]ach recipient, shall, within 10 days after the applicant or recipient knows of a change described in (b) of this section, contact the department to report the change. ... If a change is not reported within the 10-day period but is reported in time for the department to make the necessary adjustments in the ATAP payment, the department will find that no overpayment exists.

The plain words of regulation 7 AAC 45.270(a) embody the concept that reporting within the 10-day mandatory reporting period provides the department sufficient time to make necessary adjustments to the recipient’s benefit payment. Otherwise stated, the function of having a 10-day reporting period is to enable the Division to make timely benefit adjustments in response to the reported change(s).

Therefore, the Division had time to make the necessary adjustment to Claimant’s September 2010 benefit amount before the benefits were due to be paid.

It also is undisputed the Division delayed until September 14, 2010 to make the necessary adjustment in Claimant’s September 2010 benefit amount and that the delay resulted in the Division’s issuance of an incorrect amount of ATAP benefits to Claimant in September 2010. The parties agree the Division properly calculated Claimant’s income and agree that Claimant was paid \$821 in September 2010 which was \$668 more than the \$153 for which she was determined eligible.

Regulation 7 AAC 45.570(a), concerning reimbursement of overpaid ATAP benefits, clearly requires the Division to recover overpaid benefits in excess of \$100, irrespective of the cause of overpayment. Here, the Division contends the \$668 was an overpayment greater than \$100, and therefore it must recover \$668.

However, the Division has not given effect to ATAP regulation 7 AAC 45.270(a). Regulation 7 AAC 45.270(a) provides an exception to the requirement to recover benefits paid in excess. The exception of regulation 7 AAC 45.270(a) is stated as:

If a change is not reported within the 10-day period but is reported in time for the department to make the necessary adjustments in the ATAP payment, the department will find that no overpayment exists.

This portion of regulation 7 AAC 45.270(a) clearly contemplates instances when a recipient might report a change after the 10-day reporting period, that is, be “late” in reporting a change, but even so the necessary adjustment(s) in the recipient’s benefit amount could be effectuated.

Thus, regulation 7 AAC 45.270(a) goes further than establishing a mandatory 10-day deadline for reporting changes, discussed above. The regulation also provides that if a recipient reports after the 10-day deadline but still in time for the Division to make the necessary adjustment to benefits, and nonetheless the adjustments are not made in time, the “department will find” the late reporting recipient has not received an “overpayment.”⁶

Consequently, if a recipient notifies the department of a change in time for it to make the necessary adjustment(s) to the recipient’s benefits, the regulation operates to prevent an “overpayment,” in the technical sense, from occurring.

In summary, regulation 7 AAC 45.270(a) provides that if a recipient reports a change within the 10 day mandatory reporting period, or within time for the department to make the necessary adjustment(s) to the benefit payment, the Division may not label any amount of benefit issued in error an “overpayment” subject to recovery under 7 AAC 45.570.

In such an instance, regulation 7 AAC 45.570, which requires overpaid benefits to be reimbursed to the Division and the Division to seek recovery of overpaid benefits, does not apply. It does not apply because regulation 7 AAC 45.570 operates only when there is a finding of an overpayment. Regulation 7 AAC 45.270(a) compels the Division to “find no overpayment exists” when a report is made in time for the Division to adjust the benefit amount.

⁶ If this portion of the regulation were interpreted to require the Division to actually make the adjustment(s), there would never be an overpayment (that is, making the adjustment(s) would preclude an overpayment). Also, such an interpretation would make the words “the department will find that no overpayment exists” superfluous or void. A regulation’s terms cannot be ignored when they apply to pertinent facts.

The Alaska Supreme Court has long adopted the well settled rule of construction that no clause, sentence or word “shall be construed as inoperative or superfluous, void, or insignificant” if an interpretation can be found which will give effect to and preserve all of the words of a regulation. *City of St. Mary’s v. St. Mary’s Native Corp.*, 9 P.3d 1002, 1008 (Alaska 2000)(“We construe a statute so that no part will be inoperative or superfluous, void or insignificant.” quoting at n. 23 *Alascom Inc., v. North Slope Borough, Bd. of Equalization*, 659 P.2d 1175, 1178 n.5 (Alaska 1983) and 2A C. Sands, *Statutes and Statutory Construction*, § 46.06 (4th ed.1973)) See also, 2A N. Singer, *Sutherland Statutory Construction and Statutory Interpretation*, § 46:6 at 244-47(6th Ed. 2002)

Here, the Division received Claimant's report of change in her employment and income on August 17, 2010, five (5) days after she started working August 12, 2010 and fourteen (14) days before her September 2010 benefit was due to be issued. The Division's receipt of Claimant's report of change on August 17, 2010 gave it sufficient time to make the necessary adjustments to her benefit amount. The presumption is the Division had the time to make the necessary adjustments in Claimant's benefits. Therefore, regulation 7 AAC 45.270(a) applies to preclude calling the excess payment to Claimant in September 2010 an "overpayment." The Division has not met its burden of proving that Claimant received overpaid benefits of \$668 in September 2010.

Because the benefits Claimant received in September 2010 are not "overpaid" benefits as provided by 7 AAC 45.270(a), then regulation 7 AAC 45.570(a) requiring the Division to recover overpaid benefits does not apply. Consequently, the Division is not authorized to seek recovery of the benefits it paid Claimant in September 2010.

The Division was not correct to seek reimbursement of \$668 of Alaska Temporary Assistance Program benefits paid Claimant in September 2010.

CONCLUSIONS OF LAW

The following facts have been proved by a preponderance of the evidence:

1. Because Claimant reported a change in her employment and income on August 17, 2010, five days after she started work, her report was timely and not late.
2. Claimant's report of change was within the 10-day mandatory reporting period and was fourteen days before the Division was required to issue Claimant's September 2010 benefit. Claimant made a report of change in time for the Division to make the necessary adjustment in her September 2010 benefit amount.
3. The Division had time to make the necessary adjustment to Claimant's September 2010 benefit amount before the benefits were due to be paid but its delay in processing the change resulted in Claimant's receipt of excess benefits in September 2010.

Regulation 7 AAC 45.270(a) prohibits the Division from finding an overpayment exists if a recipient makes a report of change in time for the Division to make the necessary adjustments in the recipient's benefit amount.

Therefore, the Division was not correct to seek reimbursement of \$668 of Alaska Temporary Assistance Program benefits paid to Claimant in September 2010.

DECISION

The Division was not correct to seek reimbursement of \$668 of Alaska Temporary Assistance Program benefits paid to Claimant in September 2010.

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 15th day of March 2011.

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 15th day of March 2011 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.
and to other listed persons (via e-mail), as follows:

██████████, Hearing Representative
██████████, Hearing Representative
██████████, Chief, Policy & Program Dev.
██████████, Administrative Assistant II
██████████, Eligibility Technician I
██████████, Staff Development & Training

/signed/
J. Albert Levitre, Jr., Law Office Assistant I