

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )  
 )  
Q C ) OAH No. 17-1335-APA  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

Q C requested an administrative hearing to contest the decision of the Division of Public Assistance (Division) to reduce her Adult Public Assistance (APA) benefits when her Social Security income increased. A hearing was held on January 22, 2018. Ms. C appeared in person, represented herself and testified on her own behalf. Division representative Jeff Miller participated in the hearing and testified by telephone. The record closed at the hearing's conclusion.

As discussed below, the evidence presented by the Division establishes that Ms. C's APA benefits were appropriately reduced when her Social Security income went up. Therefore, the Division's action in reducing her benefits is affirmed.

**II. Facts**

*A. The Division's motion to dismiss*

Prior to the hearing, the Division submitted a request for dismissal of Ms. C's appeal, arguing that: (1) she is appealing the effect of "state or federal law requiring automatic benefits adjustments affecting groups of recipients or all recipients, and the issue is not one of incorrect benefit computations;" and (2) Ms. C "already had a hearing on the same issue in 2013," and she received a final, adverse administrative decision in that case, OAH no. 13-0045-APA, thus entitling the Division to summary adjudication in this case.

Prior to taking any testimony, the parties and the undersigned Administrative Law Judge (ALJ) discussed the motion to dismiss. The motion was denied, primarily because it was filed only 10 days before the hearing, which meant that under the regulations governing hearings at the Office of Administrative Hearings (OAH), the motion was not yet ripe for decision on the date of the hearing. Under 2 AAC 64.270, a party has 15 days to oppose a motion filed by the other party in their case. Therefore, the motion was denied, and Ms. C's appeal hearing went forward.

*B. Ms. C's APA benefits*

Ms. C has a one-person household.<sup>1</sup> Her income consists of Social Security Administration (SSA) payments and APA payments. In December 2017, her monthly APA payment was \$296. Her monthly SSA payment, which had been \$821, was increased to \$838 beginning on December 20, 2017, due to a cost-of-living increase.<sup>2</sup> The Division recalculated her APA payment based upon her new \$838 SSA payment amount, provided her with a deduction of \$20, which reduced her countable income to \$818, and subtracted that amount from the APA payment standard of \$1,112.<sup>3</sup> The result was \$294.<sup>4</sup> The Division then reduced Ms. C's APA payment to \$294 beginning in January 2018.<sup>5</sup> This reduction in Ms. C's APA payment is the subject of this appeal.

**III. Discussion**

The APA program provides cash payments to financially eligible persons who are over 65, blind, or disabled.<sup>6</sup> The payment amount is calculated based upon a recipient's income.<sup>7</sup> The APA program counts SSA payments as unearned income, and a recipient is entitled to a deduction of \$20 from the SSA income amount when determining the recipient's countable income.<sup>8</sup> The applicable regulation, 7 AAC 40.320, does not allow deductions for items such as housing, transportation, or medical costs. A recipient's countable income is subtracted from the applicable APA payment standard to arrive at the recipient's monthly APA payment.<sup>9</sup>

In this case, the Division followed the calculation process correctly. It started with Ms. C's \$838 in SSA income, then deducted \$20 from it to arrive at her countable income of \$818. The 2018 APA payment standard for a person living on his or her own is \$1,112.<sup>10</sup> Subtracting Ms. C's countable income of \$818 from the \$1,112 APA payment standard resulted in an APA payment of \$294.

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 5.

<sup>3</sup> Exh. 6.

<sup>4</sup> Exh. 3. The decrease was actually done in two stages; a prior notice incorrectly informed Ms. C that her APA benefit would be reduced only to \$295 (*see* Exh. 2), but the Division corrected that notice by sending Exh. 3.

<sup>5</sup> Exh. 5.1.

<sup>6</sup> AS 47.25.430; 7 AAC 40.120.

<sup>7</sup> 7 AAC 40.370(b).

<sup>8</sup> 7 AAC 40.300(a)(3); 7 AAC 40.320(a)(23); 7 AAC 40.350.

<sup>9</sup> 7 AAC 40.370(b).

<sup>10</sup> 7 AAC 40.370(c)(1), (3); *see* Exh. 7.1.

Ms. C argued that extenuating circumstances are present in this case, because her SSA payments are artificially low due to her alleged history of being the victim of long-standing identity theft.<sup>11</sup> She argued that these extenuating circumstances require that an exception be made to the rules governing APA benefit levels, and her APA benefits should not be reduced. She also argued that her Social Security and APA benefits are not reflective of economic reality, and that the high cost of living in Anchorage means that she can barely subsist on her current benefits.

The Division, however, is required to follow its own regulations. Unfortunately, the regulations do not allow for the exercise of discretion or the consideration of extenuating circumstances. The regulations mandated the reduction of Ms. C's APA benefits by \$2 per month, based on the \$17 per month increase in her Social Security benefits.<sup>12</sup> Therefore, the Division correctly followed the law when it reduced Ms. C's APA benefits.

#### **IV. Conclusion**

The Division's reduction in Ms. C's monthly APA payment is hereby affirmed.

Dated this 8<sup>th</sup> day of March, 2018

*Signed* \_\_\_\_\_

Andrew M. Lebo

Administrative Law Judge

#### **Adoption**

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 19 day of March, 2018.

By: *Signed* \_\_\_\_\_

Name: Christopher Kennedy

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>11</sup> Ms. C also contended that the state and federal governments are somehow complicit in this identity theft.

<sup>12</sup> It is noted that overall, Ms. C's net income was increased by \$15 per month.