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

In the Matter of	)	
	)	
M Z	)	OAH No. 13-0752-ATP
	)	Agency No.

DECISION

I. Introduction

In this case, the Division of Public Assistance (DPA) seeks recoupment of $2,960.60 in Alaska Temporary Assistance (ATAP) benefits paid to Ms. Z's household in 2010. The long lapse of time between the alleged overpayment and this proceeding is due to various issues, all of them now moot, regarding the adequacy of notice.[1] A hearing request covering the essence of DPA's allegation has been pending since January of 2011.[2]

By the time of the hearing, the parties had reached agreement on most factual questions. There is no dispute that an overpayment occurred, and no dispute that the department is entitled to recover the amount overpaid. The only two questions to be resolved relate to calculating the exact amount of the overpayment. These are:

1. Whether Ms. Z's earned income (which is undisputed) should be reduced by applying an earned income deduction found in 7 AAC 45.480(a)(1)(B); and
2. If so, whether that deduction applies to all four months at issue or whether the deduction is unavailable for some of the months because the income was not timely reported.

These two issues were argued by Goriune Dudukgian of the Northern Justice Project (representing Ms. Z) and Assistant Attorney General Alex Hildebrand (representing DPA) in a hearing held July 11, 2013.

This decision concludes that DPA correctly handled both issues. It affirms DPA's decision as set out in a corrected notice issued after this case had begun.

II. Background Facts

All of the following facts and circumstances are undisputed. M Z was the lead applicant in an application for services submitted to DPA in June of 2010. Her household consisted of three people: herself, her husband, and her newborn son. Her husband and son were qualified to

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[1] The most recent notice, whose validity is unchallenged, is found at Ex. 15.27.

[2] Ex. 17.0.

receive ATAP benefits, but because Ms. Z herself was in a status known as "disqualified alien," the household size for purposes of benefits would be two rather than three. However, Ms. Z's income and resources would be counted toward those of the household.

At the time of her application, Ms. Z held a part-time job at No Name, but she was in unpaid maternity leave with an uncertain return date.[3] The agency approved her application and she began receiving ATAP benefits, with a household benefit of $250 in June of 2010 and $575 per month thereafter,[4] which later increased to $821 per month for certain months.[5]

Ms. Z returned to work in late July, and earned several hundred dollars per week through the end of the year.[6] The parties agree that this reemployment and income was first reported to DPA on November 5, 2010.[7] The parties agree that, when the renewed No Name income is taken into account, the benefits paid between September and December of 2010, inclusive, were higher than they should have been.

III. Legal Issues

A. Program Overview

ATAP is an Alaska program to implement the federal Temporary Aid to Needy Families (TANF) program.[8] The program provides cash assistance and work services to low income families with minor children. The program's goal is to help these families with their basic needs while they work toward becoming self-sufficient.

From time to time, the department pays out ATAP benefits in excess of those to which the recipient is legally entitled under the program rules. An ATAP regulation commits the department, in nearly all circumstances, to pursue repayment of the excess benefits "regardless of the amount or cause of the overpayment."[9]

ATAP eligibility is determined by applying a gross income eligibility test (step one) and a net income eligibility test (step two). If both of those are met, there is a third step in which the benefit is calculated; this step again makes use of the net income used in step two.[10] In the present case, DPA takes the position that the Z household's net income exceeded the eligibility

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3 *See* Ex. 2.7, 3.
4 Ex. 5.0.
5 *E.g.*, Ex. 15.19.
6 *See* Ex. 8.1, 8.6, 10.
7 They stipulated at hearing that it was first reported on the eligibility review form at Ex. 8.
8 *See* AS 47.05.010(1); AS 47.27.005 – 990.
9 7 AAC 45.570(a).
10 *See* Ex. 15.9, which shows how the calculations are made.

threshold at step two for September, October, and December of 2010 (meaning no benefit should have been paid); it seeks to recoup $821, $821, and $575 for these three months, respectively. For November 2010, DPA believes the household was eligible, but that the benefit at step three should have been $77.40 rather than $821.

B. Applicability of the Earned Income Deduction in Calculating Net Income

The central question in this case is the right way to calculate the net income used in both steps two and three. In general, net income is determined by subtracting "all applicable deductions and disregards . . . under 7 AAC 45.475 – 7 AAC 45.500" from a household's gross income.[11] Within this span of regulations is 7 AAC 45.480, which describes three deductions. It will be helpful to quote part (a) of this regulation in full, emphasizing the key word "and" that links the three subparts:

> (a) Except as provided in 7 AAC 45.495 and 7 AAC 45.500, in calculating an assistance unit's countable income under 7 AAC 45.470(b), the department will
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> (1) deduct $90 from the total gross monthly earned income
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> (A) of a stepparent who is not a member of the assistance unit, a disqualified alien parent, or a parent of a minor parent whose income is considered to be available to the minor parent and dependent child under 7 AAC 45.467;
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> (B) of an individual if that individual has not received ATAP benefits in the state in any of the four months immediately preceding that individual's current eligibility for assistance under this chapter;
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> (2) deduct the amount specified in (b) of this section [*in this case, "$150 plus 33 percent of any remaining earned income"*] from the total gross monthly earned income of an individual if that individual has received ATAP benefits in the state in any of the four months immediately preceding that individual's current eligibility for assistance under this chapter; ***and***
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> (3) deduct child support payments made by an individual whose income is considered available to the assistance unit.

The parties agree that the word "and" indicates that one person's income can receive more than one of these three deductions at a time—that is, DPA must apply as many of these deductions as may apply to that person's situation. The question is whether (a)(2) applies to Ms. Z's situation.

[11] 7 AAC 45.470(b).

Before addressing this question, it will be useful to look at deductions that would be available to a member of the assistance unit who is eligible to receive ATAP benefits—someone like, for example, Ms. Z's husband. Such a person could receive a $90 deduction, under (1)(B), in the first month of eligibility after a period of four or more months without benefits. In succeeding months, the $90 deduction would fall away (because the person would now have "received ATAP benefits in" one of "the four months immediately preceding"), but the person could now receive the more generous deduction in (a)(2). In all months, a further deduction under (a)(3) could be available if child support were being paid. Thus, the income of a person such as Ms. Z's husband could benefit from any of the three deductions in the quoted regulation, but only two of the deductions would be applicable at any one time.

Ms. Z contends that the income of a disqualified alien such as herself can be eligible for all three of the deductions at once. The income of a disqualified alien always receives the $90 deduction under (a)(1), because disqualified aliens have been automatically written into that deduction via (a)(1)(A). Ms. Z argues that the (a)(2) deduction simultaneously applies to her income.

This argument is inconsistent with the structure of the regulation. Subpart (a)(1) addresses two categories: under (A), those who are in the categories counted in an assistance unit's income but ineligible to receive benefits themselves; and, under (B), other individuals—those who have "current eligibility." For the people under (B), there is effectively a first-month limitation of the (a)(1) deduction. In subpart (a)(2), the regulation comes back to those same individuals with "current eligibility," using the same phrasing, and provides them with a different deduction after the first month. Subpart (a)(2) would not refer to an "individual's current eligibility" if it were intended to refer to disqualified aliens or the other ineligible categories addressed in (a)(1)(A). Disqualified aliens "are not eligible for ATAP benefits,"[12] and hence they would not have "current eligibility."

Ms. Z's counsel was able to establish at the hearing that the Alaska Temporary Assistance Manual[13] does not do a particularly good job of describing the limitations on applicability of the (a)(2) deduction. For example, section 760-2-C-1 of the manual does not expressly mention disqualified alien parents in its bullet list of situations where the deduction is not applied, and the only bullet that arguably covers Ms. Z is the one that excludes applicants or

[12] 7 AAC 45.335(e).
[13] *See* Ex. A.

unit members who have "not received" ATAP benefits in the preceding four months. Counsel points out that in a sense Ms. Z has "received" benefits, in that she is the lead applicant and the benefits have been sent to her (although she has not "received" them in all senses of the word, since they have not been sent to her for her own benefit). But nothing in the manual squarely contradicts a plain reading of the regulation, and the manual is not the law.

7 AAC 45.480 does not afford a deduction from Ms. Z's income for any of the months in question apart from the basic $90 deduction in (a)(1).

C. Effect of Late Reporting

The above holding is fully dispositive of this case. However, because this case may be appealed, a second issue will be addressed that would come into play if the conclusion about 7 AAC 45.480 were different from the one above.

In late July of 2010, Ms. Z re-started her job and began earning several hundred dollars a week. She did not report the increase until November 5 of that year. Since 7 AAC 45.270(a) requires such a change in employment to be reported "within 10 days after the applicant or recipient knows" of it, the report was untimely.

A department regulation specifically precludes applying the deduction from 7 AAC 45.480(b)—that is, the $150-plus-33% deduction at issue in this case—"if a caretaker relative fails, without good cause, to make a timely report of earnings against which the deduction[] would otherwise be allowable."[14] The same regulation goes on to provide that this prohibition "is effective for any month in which the earnings would have been counted if they had been timely reported."[15]

In the context of a recoupment proceeding such as this, the "good cause" exception in the quoted regulation is an avoidance or affirmative defense, and hence the burden would be on Ms. Z to establish it. There was no attempt to make a showing of good cause at the hearing, and indeed Ms. Z apparently does not dispute that the deduction is unavailable for September and October of 2010. For its part, DPA concedes that untimeliness is not a bar to applying the deduction in December of 2010. The sole area of disagreement relates to November of 2010.

Ms. Z contends that the regulation that precludes applying the § 480(b) deduction to untimely-reported income does not apply to her November income because her resumed employment was reported to DPA five days after the beginning of that month. The reasoning is

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14 7 AAC 45.500(a).

15 *Id.*

that, with respect to November, the report was not untimely because it was within the ten-day reporting limit.

This is not the way the restriction works. The ten-day time limit for reporting says nothing about the first of the month; instead, the ten days are counted from when "the applicant or recipient knows" of the new employment. Once Ms. Z failed to report her reemployment within ten days of the date it occurred—in July—her reporting became untimely, and it did not become timely again simply because it occurred within ten days of the beginning of some subsequent month.

The preclusion on applying certain deductions to late-reported income does not last forever. It does, however, apply to months "in which the earnings would have been counted if they had been timely reported."[16] The anticipated November earnings would have been counted in calculating the November 1 benefit if the reemployment had been reported three months previously, as it should have been. The restriction on taking a § 480(b) deduction from those earnings is therefore applicable to that month's earnings, preventing the deduction.

IV. Conclusion

For September and October of 2010, DPA correctly determined that the Z household did not meet the net income threshold for ATAP benefits, correctly declining to apply the work incentive deduction in 7 AAC 45.480(a)(2) because it does not apply under its own terms and because of the untimely reporting restriction in 7 AAC 45.500(a).

For November of 2010, DPA correctly calculated the Z household's ATAP benefits, correctly declining to apply the work incentive deduction in 7 AAC 45.480(a)(2) because it does not apply under its own terms and because of the untimely reporting restriction in 7 AAC 45.500(a).

For December of 2010, DPA correctly determined that the Z household did not meet the net income threshold for ATAP benefits, correctly declining to apply the work incentive deduction in 7 AAC 45.480(a)(2) because it does not apply under its own terms.

[16] 7 AAC 45.500(a).

DPA's decision as set out in its amended notice letter of June 13, 2013 (Ex. 15.27) is affirmed.

DATED this 20th day of August, 2013.

Signed
Christopher Kennedy
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 30th day of August, 2013.

By: *Signed*
Name: Christopher M. Kennedy
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]