

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

In the Matter of )  
 )  
 K C ) OAH No. 13-1054-ATP  
 ) Division No.  
 \_\_\_\_\_ )

**DECISION**

**I. Introduction**

K C receives Alaska Temporary Assistance benefits. The Division of Public Assistance (Division) sent her notice that she had received \$306 more in Temporary Assistance benefits than she was entitled to receive, and that she was required to repay that amount. She requested a hearing.

Ms. C’s hearing was held on September 17, 2013. She represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division.

Because Ms. C received \$306 more in Temporary Assistance benefits than she should have, regardless of the fact that the overpayment was caused by the Division’s error, the Division’s decision requiring repayment is affirmed.

**II. Facts**

The following facts were established by a preponderance of the evidence.

Ms. C has a three person household, which consists of her and her two children. One of those children is an adult who is over 21 years old; the other is a minor.<sup>1</sup> Ms. C was receiving Temporary Assistance benefits and applied to renew those benefits on May 1, 2013. Her application disclosed that one of her children was over 21 years old.<sup>2</sup> No one in the household is working or receiving any income.<sup>3</sup> The Division approved the renewal application and issued her benefits in the amount of \$923 per month for each of the months of May, June, and July 2013. The benefit amount of \$923 was based upon there being a three person Temporary Assistance household (one adult and two dependent children), with no income whatsoever.<sup>4</sup>

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<sup>1</sup> Ex. 2.0.  
<sup>2</sup> Exs. 2.0 – 2.3.  
<sup>3</sup> C testimony; Ex. 2.1 – 2.2.  
<sup>4</sup> Exs. 2.5, 2.8, 2.13, 2.18.

On July 3, 2013, a Division eligibility technician reviewed Ms. C's case and determined that Ms. C should have only been issued benefits for a two person household because one of Ms. C's children is an adult and ineligible for Temporary Assistance benefits. This review resulted in a reduction in Ms. C's benefits to \$821 per month beginning in August 2013.<sup>5</sup>

The Division then sent Ms. C notice that she had been overpaid \$102 each month during the months of May through July 2013, because she was issued \$923 in benefits each month when she should have only received \$821 per month. The total repayment amount is \$306.<sup>6</sup>

Ms. C disagreed with the requirement that she repay the Temporary Assistance benefits, because the overpayment was caused by the Division's error. In addition, Ms. C testified that the Temporary Assistance benefits were the only source of income for her household and that having to repay them would be a significant hardship.

### **III. Discussion**

The issue in this case is whether Ms. C is required to pay back \$306 in Temporary Assistance benefits that were allegedly issued to her in error. The alleged overpayment was due to Division error.

The Temporary Assistance program provides cash assistance to needy families. The benefit amount is based upon the family size and the family income.<sup>7</sup> A Temporary Assistance household consists of the parent or parents and the dependent children who reside with them. A child who is over 19 years of age cannot be included in the household for benefit determination purposes.<sup>8</sup> The maximum Temporary Assistance benefit amount a two person Temporary Assistance household consisting of one parent and one dependent child can receive is \$821 per month.<sup>9</sup>

On its face, Ms. C was overpaid Temporary Assistance benefits. The maximum she was eligible to receive was \$821 per month, because she only had one dependent child in her home. Her other child, because he was over 19 years old, was not a dependent child by definition. However, Ms. C received \$923 per month during three months, May through July 2013. Because she was only eligible for \$821 per month in benefits, this was an overpayment of \$102 per month for the three months, a total overpayment of \$306.

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<sup>5</sup> Ex. 2.35.

<sup>6</sup> Exs. 2.22 – 2.29.

<sup>7</sup> 7 AAC 45.520(a).

<sup>8</sup> See 7 AAC 45.195, 7 AAC 45.225, 7 AAC 45.335, 7 AAC 45.990(a)(13); AS 47.27.900(9).

<sup>9</sup> 7 AAC 45.523(a)(1).

Ms. C argued that she should not have to pay back the \$306 in overpaid benefits because the overpayment was caused by the Division's error not hers. She also argued that repayment would be a hardship. With regard to Ms. C's first argument, the regulations are clear, that if there is an overpayment of more than \$100 caused by the Division's error, the Division is still required to pursue collection.<sup>10</sup> With regard to Ms. C's second argument, hardship is not an available defense to collection.<sup>11</sup>

As a matter of law, Ms. C was overpaid \$306 in Temporary Assistance benefits and is required to repay those benefits to the Division, regardless of the fact she was not at fault and the overpayment was caused by the Division's error.

#### **IV. Conclusion**

The Division's decision to seek recovery of the \$306 in Temporary Assistance benefits which were overpaid to Ms. C during May through July 2013 is affirmed.

DATED this 25<sup>th</sup> day of October, 2013.

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

Lawrence A. Pederson  
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 8<sup>th</sup> day of November, 2013.

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

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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

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<sup>10</sup> 7 AAC 45.570(a).

<sup>11</sup> The Division can suspend collection for up to three months if the responsible party is a current Temporary Assistance recipient, if the repayment would constitute an extreme hardship. However, there is no regulatory provision allowing a forgiveness of the claim, and temporary suspension of collection efforts is completely discretionary with the Division. See 7 AAC 45.570(f).