

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

In the Matter of)
)
 Q S) OAH No. 13-1353-ATP
) Division No.
 _____)

DECISION

I. Introduction

Q S is a former Alaska Temporary Assistance recipient. The Division of Public Assistance (Division) sent her notice that she had received \$1,456 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. S' hearing was held on October 31, 2013. She represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented and testified on behalf of the Division.

Because Ms. S received \$1,456 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. Motion to Dismiss

The Division requested that this case be dismissed as having been filed beyond the 30 day time period allowed for requesting a hearing.¹ The basis for its request was that the Division's notice requesting repayment was dated April 9, 2013 and Ms. S' hearing request was made on September 30, 2013, which was more than 30 days after the date of the repayment letter.² However, after listening to the parties' testimony, there was some ambiguity present regarding whether Ms. S received the original repayment letter in April 2013.³ Ms. S testified that she found out about the repayment issue when there was an issue regarding her family's Medicaid coverage. A Division casenote documents that Ms. S called and requested a copy of

¹ See 7 AAC 49.030(a).

² Exs. 9.0, 10.

³ Ms. S testified that she has occasional difficulty receiving mail.

the repayment notice on September 16, 2013.⁴ After she received those documents, she promptly requested a hearing on September 30, 2013.

Ms. S' testimony demonstrates that she may well have not received written notice of the Division's repayment claim in April 2013. However, she definitely received it in September 2013. Her September 30, 2013 hearing request was therefore accepted as timely. The Division's request for dismissal was denied and the case proceeded to hearing on the merits.

III. Facts

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

Ms. S has a two person household: herself and one minor child. She was receiving Temporary Assistance benefits in August 2012 and applied to renew those benefits on August 2, 2012.⁵ Ms. S was employed as a waitress at the time and provided the Division copies of her paystubs for June and July 2012 as part of her application.⁶ On August 27 and 28, 2012, the Division reviewed Ms. S' paystubs and determined that she earned \$2,819 per month in gross income, which made her financially ineligible for Temporary Assistance benefits.⁷ The Division was not able to terminate her benefits immediately due to notice requirements and issued her \$216 in benefits for the month of September 2012.⁸ The Division, however, did not terminate her benefits the following month, October 2012, and did not discover that it had not acted to terminate her benefits until it reviewed her case on February 7, 2013.⁹ The Division issued Ms. S \$216 in benefits during September 2012, \$244 in benefits during each of the months of October through December 2012, and \$254 in benefits during each of the months of January and February 2013.¹⁰

The Division sent Ms. S notice that, because she was not financially eligible for Temporary Assistance benefits from September 2012 through February 2013, she was required to repay the entire amount of the benefits she received during those months - \$1,456. The Division's repayment calculations were based upon Ms. S receiving \$2,819 in gross employment income during each of the months in question.¹¹

⁴ Gagne testimony.

⁵ Exs. 4.0 – 4.6.

⁶ Exs. 4.7 – 4.8.

⁷ Ex. 5.

⁸ Ex. 3.

⁹ Gagne testimony; Ex. 6.0.

¹⁰ Ex. 9.9.

¹¹ Exs. 9.0 – 9.8.

Ms. S testified as follows:

- She had surgery on or about September 20, 2012.
- She then missed two weeks of work due to her recovery.
- When she returned to work, she temporarily worked as a hostess, which meant that she did not receive tip income, only an hourly wage.
- She returned to waitressing full time towards the end of October 2012.
- Her income did not return to its presurgery level until December 2012, *i.e.*, \$2,819 was an appropriate gross income figure for the Division to use in its calculations for the months of December 2012 forward.

Ms. S was provided the opportunity to supplement the record with her actual paychecks for September, October, and November 2012. She did not avail herself of the opportunity.

Ms. S disagreed with the requirement that she repay the Temporary Assistance benefits, because the overpayment was caused by the Division's error. In addition, Ms. S testified that having to repay the Temporary Assistance benefits would be a significant hardship.

IV. Discussion

The issue in this case is whether Ms. S is required to pay back \$1,456 in Temporary Assistance benefits that were allegedly issued to her in error. The alleged overpayment was due to Division error. The Division has the burden of proof by a preponderance of the evidence.¹²

The Temporary Assistance program provides cash assistance to needy families. The benefit amount is based upon the family size and the family income.¹³ A two person family (one parent and one child) is not eligible to receive Temporary Assistance benefits if the family's gross monthly income is greater than a set limit. That limit was \$2,491 in calendar year 2012 and \$2,532 in calendar year 2013.¹⁴ The Temporary Assistance program has a requirement that 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.^{15]}

¹² 7 AAC 49.135.

¹³ 7 AAC 45.520(a).

¹⁴ 7 AAC 45.470(a)(2); Ex. 9.6.

¹⁵ 7 AAC 45.570(a).

The Temporary Assistance regulations define an “overpayment” as the “amount of assistance given under this chapter to which a recipient was not entitled.”¹⁶

The question is therefore whether Ms. S received Temporary Assistance benefits to which she “was not entitled.” Ms. S does not dispute that her income would have been approximately \$2,819 from December 2012 through February 2013. This is greater than the Temporary Assistance income limit for her two person household. Accordingly, she should not have received Temporary Assistance benefits during those three months. The factual question then arises regarding whether Ms. S’ income exceeded the Temporary Assistance income limit for the months of September through November 2012. The Division established that her monthly income was \$2,819 in the months immediately preceding September 2012, which exceeded the Temporary Assistance income limit. Ms. S testified that she had a decrease in her income for the months of September through November 2012. Ms. S was provided the opportunity to submit her actual paystubs for those three months, but did not. Accordingly, the weight of the evidence supports a finding that the Division met its burden of proof on this factual issue, and that Ms. S’ income exceeded the Temporary Assistance program income limit during the months of September through November 2012. Accordingly, she should not have received Temporary Assistance benefits during those three months. Ms. S therefore received Temporary Assistance benefits during the months of September 2012 through February 2013, and was overpaid a total of \$1,456.

Ms. S argued that she should not have to pay back the \$1,456 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. 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.¹⁷ With regard to Ms. S’ second argument, hardship is not an available defense to collection.¹⁸

¹⁶ 7 AAC 45.570(o)(1).

¹⁷ 7 AAC 45.570(a).

¹⁸ The Division can suspend collection for up to three months only if the responsible party is a current Temporary Assistance recipient, and 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).

Ms. S is therefore required to repay the Division the \$1,456 in Temporary Assistance benefits that she received in the months of September 2012 through February 2013, regardless of the fact she was not at fault and the overpayment was caused by the Division's error.

V. Conclusion

The Division's decision to seek recovery of the \$1,456 in Temporary Assistance benefits which were overpaid to Ms. S is affirmed.

DATED this 13th day of December, 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 27th day of December, 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.]