

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

In the Matter of)
)
K H)
_____)

OAH No. 14-0833-ATP
Agency No.

DECISION

I. Introduction

K H received Alaska Temporary Assistance (ATAP) benefits through May of 2014. The Division of Public Assistance notified him that he had been paid \$1042 more in ATAP benefits than he was entitled to receive, and that he was required to repay that amount. He requested a hearing, contending that the overpayment was not his fault.

Mr. H’s hearing was held on July 30, 2014. He represented himself and testified on his own behalf. Public Assistance Analyst Jeff Miller represented the Division.

Because Mr. H did receive an overpayment, the Division’s decision requiring repayment is affirmed. For purposes of the requirement to repay, the reason for the overpayment is immaterial.

II. Facts

There is no dispute about the facts of this case. Mr. H was receiving ATAP benefits, with his self-sufficiency plan overseen by a No Name Agency case manager, when he was hired by No Name Agency itself. The hire was effective March 17, 2014, with Mr. H receiving his first pay check (covering a month of work) on April 29, 2014.¹

Mr. H’s No Name Agency case manager promised to notify the Division of Public Assistance of his hire, but she forgot to do so.² The Division did not receive verification of the hire until April 15, 2014.³ By that time, it was too late to prevent Mr. H from being included in the “run” for issuance of May benefits, and he received a May 2014 benefit of \$1042 on his card on the first of that month. He used the benefit.⁴

Mr. H’s No Name Agency income of nearly \$3000 per month put him over the income threshold for ATAP, and there is no dispute that no May benefit was due. The Division mailed

¹ Testimony of Mr. H.
² *Id.* She has apologized for the omission.
³ Ex. 5.
⁴ Testimony of Mr. H.

Mr. H a closure notice on April 30, 2014,⁵ and a recoupment notice on May 6, 2014.⁶ Mr. H appealed the latter.

III. Discussion

Mr. H does not dispute—and it is plainly true—that he was not eligible for a May 2014 ATAP benefit, which occurred after he had begun receiving income from a job in excess of the income threshold for the program. Mr. H argues that he reasonably relied on his No Name Agency case manager to report his hire to the Division so that they could terminate his benefits at the right time, and thus the overpayment was not his fault.

Mr. H is correct that the primary cause (though not the sole cause) of the overpayment was an oversight by the No Name Agency case manager, who in this context may have been acting as an agent of the department. However, the department’s administration of the ATAP program is governed by the department’s regulations. Regulation 7 AAC 45.570(a) provides:

Except as provided in (k) of this section, the department will pursue collection from . . . a former recipient of ATAP . . . 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 \$100.⁷

The exception in (k), which relates to forbearance when collection efforts cease to be cost-effective and to a ten-percent limitation on benefit reductions to collect amounts owed, is not within the scope of this case. The amount of the overpayment exceeds \$100, and the overpayment was in any event not the fault of the department. Thus, the department must recover from Mr. H “regardless of the . . . cause” of the erroneous payment of the May benefit.

A similar no-fault rule in recovering overpaid public benefits has been confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*.⁸ In that case, after holding that federal law required the state to pursue repayment of all overpaid Food Stamp benefits, the court observed:

We are sympathetic to the argument that it is unfair to require indigent food stamp recipients to repay benefits that were overissued to them through no fault of their own, but Congress has already made the policy decision that a ten dollar or ten

⁵ Ex. 8.

⁶ Ex. 9.

⁷ Only the relevant portion of the provision has been quoted. The italics have been added.

⁸ 203 P.3d 1155 (Alaska 2009).

percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness.^[9]

Similarly, the ATAP program has been designed with a policy choice to require wrongly-distributed benefits to be returned to the program, subject to certain limitations that do not apply to Mr. H.

IV. Conclusion

The Division's decision to seek recovery of the \$1042 in Temporary Assistance benefits which were overpaid to Mr. H during May 2014 is affirmed.

DATED this 11th day of August, 2014.

Signed _____
Christopher Kennedy
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 21st day of August, 2014.

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

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

⁹ *Id.* at 1164 (footnotes omitted). *Allen* held that Alaska common law regarding estoppel against the government would have to yield to federal preemption in the context of Food Stamps. There would be no such preemption of estoppel in an ATAP case. However, Mr. H is far short of establishing the elements of estoppel, which require considerably more than a governmental error. *Cf. In re C.G.*, OAH No. 13-0119-MDE (Comm'r of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE130119.pdf>).