

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

In the Matter of)	
)	
M T)	OAH No. 14-1701-ATP
_____)	Agency No.

DECISION

I. Introduction

M T received Alaska Temporary Assistance (ATAP) benefits through July of 2014. In August, the Division of Public Assistance notified her that she had been paid \$750 more in ATAP benefits than her three-person household was entitled to receive, and that she was required to repay that amount. She requested a hearing, contending that the overpayment was not her fault.

Ms. T's hearing took place on October 30, 2014. She represented herself and testified on her own behalf. Public Assistance Analyst Jeff Miller represented the Division.

At the hearing, Ms. T did show that she had been meticulous about meeting her own obligations to report income and employment, and that the overpayment was the result of Division errors and delays that she could not have been expected to identify or correct. However, because Ms. T did receive an overpayment, the Division's decision requiring repayment must be affirmed. For purposes of the requirement to repay, the reason for the overpayment is immaterial.

Although the decision itself must be affirmed, the statement in the decision that places blame on Ms. T is withdrawn.

II. Facts

Ms. T, T C, and one child form a household for ATAP purposes. They were receiving ATAP benefits, with self-sufficiency plans overseen by a No Name, when both were hired into good jobs during April of 2014.¹ Either job alone, and certainly both together, would put the household over the income limit for ATAP eligibility.

Ms. T and Mr. C were highly diligent about letting both No Name and the Division know about their new employment.² However, a Division representative with whom they met on May 2 made a calculation error. As a result of that error, she authorized them, in a notice dated May

¹ Testimony of Ms. T; Ex. B.

² Ms. T, who seems to be very organized, kept an excellent record of these contacts. Her record was backed up by the agency documents and notices.

5, 2014, to receive ongoing benefits at \$500 per month, whereas the benefits should have ended entirely at the end of May.³ Other errors and failures to communicate ensued. Notably, additional detailed income information was faxed to the Division in early June, but the Division did not process the June papers until July 16.⁴

Ms. T does not dispute that she received and used a May 2014 benefit of \$500 and a June 2014 benefit of \$250.⁵ The Division mailed Ms. T a closure notice on July 17, 2014,⁶ and a recoupment notice on August 26, 2014.⁷ Ms. T appealed the latter.⁸

III. Discussion

Ms. T does not dispute—and it is plainly true—that her household was not eligible for June and July 2014 ATAP benefits, which occurred after she and Mr. C had begun receiving income from jobs that was well in excess of the income threshold for the program. Ms. T points out that both she and Mr. C were extremely prompt in reporting their new jobs: Mr. C’s hire was discussed with a Division representative on his first day of work, and Ms. T’s hire was reported, among other ways, in a face-to-face, in-person meeting just four days after she started work.⁹ She contends that the overpayments were not her fault.

Ms. T is correct that she met her responsibilities to the ATAP program, and that the mistaken payments were an outgrowth of an unfortunate series of errors by state employees. 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 \$100.¹⁰

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. Thus, the

³ Ex. B; Miller explanation at hearing.

⁴ This seems to have occurred because of a staffing shortage.

⁵ See Ex. 5.7 – 5.9.

⁶ Ex. B.

⁷ Ex. 5. This notice was slightly amended on October 15, 2014 (Ex. 19).

⁸ Ex. 6.

⁹ Testimony of Ms. T. This testimony was backed up by documents and was not disputed.

¹⁰ Only the relevant portion of the provision has been quoted. The italics have been added.

department must recover from Ms. T “regardless of the . . . cause” of the erroneous payment of the June and July benefits.

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*.¹¹ 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 percent cap on monthly allotment reduction, coupled with allowing state agencies some flexibility to compromise claims, is sufficient to mitigate this unfairness.¹²

Likewise, 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 Ms. T.

There is one error in the recoupment decision that must be corrected. The agency’s letter contains the following sentence: “This is because you did not report timely that you and T’s new job income” (*sic*). Putting the blame on Ms. T is entirely wrong in this case, and the sentence is withdrawn.

IV. Conclusion

The Division's decision to seek recovery of the \$750 in Temporary Assistance benefits which were overpaid to Ms. T during June and July 2014 is affirmed. The factual basis for the recoupment, as stated in the decision, is modified as set forth above.

DATED this 31st day of October, 2014.

Signed _____

Christopher Kennedy
Administrative Law Judge

¹¹ 203 P.3d 1155 (Alaska 2009).

¹² *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, Ms. T falls 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>).

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 19th day of November, 2014.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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