

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

In the Matter of )  
 )  
D U ) OAH No. 15-0065-ATP  
 ) Agency No.  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

D U received Alaska Temporary Assistance (ATAP) benefits between May of 2014 and January of 2015. In January of 2015, the Division of Public Assistance notified her that she had been paid \$1,126 more in ATAP benefits than her household was entitled to receive, and that she was required to repay that amount. She requested a hearing.

Ms. U’s hearing took place on March 3, 2015 before Administrative Law Judge Kay Howard. She represented herself and testified on her own behalf. Public Assistance Analyst Michelle Cranford represented the Division.

At the hearing, Ms. U established that she is under financial pressure and that repaying the money could present a hardship. It was also undisputed that the overpayment was entirely the agency’s fault. However, because Ms. U 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.

**II. Facts**

No facts are in dispute in this case. D U and her boyfriend of 19 years live with, and care for, their disabled daughter. The family income is very small; however, the daughter does receive some SSI income. Ms. U has been completely frank in disclosing that income to the Division.<sup>1</sup> However, the Division erroneously failed to account for it in calculating the household’s ATAP benefits between May of 2014 and January of 2015. This caused the monthly ATAP amount credited to Ms. U’s benefits card to be about 20 percent more than it should have been. The total overpayment over the course of the nine months before the mistake was corrected was \$1,126, as shown in the calculation at Exhibit 4.

**III. Discussion**

Ms. U does not dispute—and it is plainly true—that failing to include her child’s SSI income in the benefit calculation was an error. Ms. U met her responsibilities to the ATAP

---

<sup>1</sup> E.g., Ex. 2.6.

program, and the mistaken payments were an outgrowth 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.<sup>2</sup>

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 department must recover from Ms. U "regardless of the . . . cause" of the erroneous payments.

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*.<sup>3</sup> 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.<sup>4</sup>

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. U.

#### **IV. Conclusion**

The Division's decision to seek recovery of the \$1,126 in Temporary Assistance benefits which were overpaid to Ms. U during May 2014 through January 2015 is affirmed.

DATED this 7th day of July, 2015.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

---

<sup>2</sup> Only the relevant portion of the provision has been quoted. The italics have been added.

<sup>3</sup> 203 P.3d 1155 (Alaska 2009).

<sup>4</sup> *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. U 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 22nd day of July, 2015.

By: Signed \_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Deputy Chief Administrative Law Judge

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