

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

In the Matter of)	
)	
N S)	OAH No. 17-0105-ATP
_____)	Agency No.

DECISION

I. Introduction

N S (Ms. S) appeals a decision by the Division of Public Assistance (Division) to reduce Temporary Assistance benefits received by her household and to recoup allegedly overpaid past benefits.¹ The Division notified Ms. S of its decision by written notice dated January 6, 2017.² Because the Division’s January 6 notice is defective and fails to satisfy procedural due process requirements, the Division’s decision is reversed.

II. Facts

Ms. S lives with her husband and two minor children. She receives Temporary Assistance benefits for those two children.³ By notice dated January 6, 2017, the Division notified Ms. S that her “Temporary Assistance benefit will change for FEBRUARY 2017.”⁴ The Division’s January 6 notice stated that “the reason for this change [is explained] at the bottom of this letter.”⁵ The last paragraph of the January 6 notice states:

Reason(s) for the change in your Temporary Assistance payment:
WE REMOVED F [Ms. S’s spouse] FROM YOUR TEMPORARY
ASSISTANCE CASE.[⁶]

Immediately preceding this statement, the Division’s notice stated that its decision “is based on Temporary Assistance Manual Section 711.”⁷ The notice informed Ms. S that her “family’s new payment will be \$291.00.”⁸ The notice does not explain or state that the new benefit amount reflects a recoupment of – what the Division evidently regards as – unspecified past overpaid benefits.⁹

¹ Ex. 5.
² Ex. 4.
³ Exs. 1, 6.
⁴ Ex. 4.
⁵ *Id.*
⁶ *Id.*
⁷ *Id.*
⁸ *Id.*
⁹ Exs. 4, 6.1.

On January 23, 2017, Ms. S timely requested a Fair Hearing on the Division’s January 6 decision.¹⁰ Ms. S explained that she was requesting a hearing because

My aid for children is being lowered because my husband is being taken off the case[.] But he was never on the cash[.] It was only two children. So my aid should stay the same since we never received cash for him.[¹¹]

On February 3, 2017, the Department of Health and Social Services referred Ms. S’s case to the Office of Administrative Hearings (OAH), and a hearing was held on March 8, 2017. During the March 8 hearing, the Division’s representative stated on the record that on February 9, 2017, the Division sent Ms. S a new notice regarding its January 6 benefits redetermination decision. The Division’s February 9 notice to Ms. S is not in the record of this case. However, at the March 8 hearing the Division’s representative represented that the February 9 notice provided a more detailed explanation of the Division’s original decision and read from that notice on the record.

III. Discussion

Alaska Fair Hearings regulation 7 AAC 49.060 provides that the “department will give written notice to the recipient not later than 10 days before the date the department intends to take action denying, reducing, suspending, or terminating assistance, unless” one of eight exceptions not relevant here applies. Fair Hearings regulation 7 AAC 49.070 provides that “[i]n a written notice provided under 7 AAC 49.060 of a department action to deny, reduce, suspend, or terminate assistance . . . the department will state in the written notice the reasons for the proposed action, including the statute, regulation, or policy upon which that action is based.”

In *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1007 (Alaska 2008), the Alaska Supreme Court held that a Medicaid Personal Care Assistant services reduction notice was defective because it failed to provide the recipients with adequate notice: “due process demands that recipients facing a reduction of their public assistance benefits be provided a meaningful opportunity to understand, review, and where appropriate, challenge the department’s action.”¹²

In *Allen v. State, Dept. of Health & Social Services*, 203 P.3d 1155, 1168-70 (Alaska 2009), the Alaska Supreme Court held that before the Division could require repayment of allegedly overpaid Food Stamp benefits from a recipient, the Division was required to send the

¹⁰ Ex. 5.

¹¹ *Id.*

¹² *Baker*, 191 P.3d at 1011.

recipient notice containing its detailed calculations and the reasons for the repayment. The *Allen* court stated: “If a major purpose served by benefit change or denial notices is protecting recipients from agency mistakes, then it stands to reason that such notices should provide sufficient information to allow recipients to detect and challenge mistakes.”¹³

A benefit denial or reduction notice must stand on its own; the Division may not rely on supplemental notices or the hearing process to supply information which should have been provided in the first instance.¹⁴

This Decision by OAH does not reach the underlying substantive merits of the Division’s January 6 benefits determination because the agency’s January 6 notice to Ms. S of that decision is defective and fails to satisfy Ms. S’s right to procedural due process provided above. When the Division proposes to reduce a recipient’s benefits, the Division’s regulations require the agency to “state in the written notice the reasons for the proposed action, including the statute, regulation, or policy upon which that action is based.” 7 AAC 49.070. This regulation reflects the demands of due process, which requires the Division to explain its action sufficiently to give recipients a “meaningful opportunity” to evaluate and test the Division’s action.¹⁵

Here, the Division’s notice fails to satisfy these requirements for at least two distinct reasons. First, the January 6 notice simply does not include sufficient information or explanation to provide Ms. S a meaningful opportunity to evaluate and understand the agency’s action. The January 6 notice states only that Ms. S’s benefits were reduced because her husband was removed from her Temporary Assistance case.¹⁶ The notice, however, fails to meaningfully explain *why* the Division removed Ms. S’s husband from her case. This omission leaves Ms. S to guess why her husband was removed from her case and renders her unable to meaningfully evaluate the Division’s action.

The January 6 notice referenced Temporary Assistance Manual Section 711. Section 711-2 of the Manual states that the parents of a dependent child receiving benefits, such as Ms. S’s husband, “must be included in the assistance unit, **unless they are excluded for one of the reasons listed in section 711-4 or section 750-2.**” [Emphasis original.] The January 6 notice does not explain why Ms. S’s husband was excluded from the family’s assistance unit or identify which of the reasons listed in Sections 711-4 or 750-2 the Division was relying on to exclude him.

¹³ *Allen*, 203 P.3d at 1168.

¹⁴ *Allen*, 203 P.2d at 1169.

¹⁵ *Baker*, 191 P.3d at 1011.

¹⁶ Ex. 4.

That the Division evidently saw the need to bolster its original notice with a new, more robust notice on February 9 further corroborates the conclusion that the original notice was insufficient.

Second, the January 6 notice does not notify Ms. S that the reduced benefit for February 2017 of \$291 reflects a recoupment of \$55.¹⁷ Nor does the January 6 notice identify and explain the alleged past overpayment or the reason(s) for recouping previously paid benefits from Ms. S.¹⁸ That calculation is reflected on a Payment Determination form attached to the Division's Position Statement in this proceeding, but the limited record does not show that it was provided to Ms. S with the January 6 notice. The Payment Determination form does not explain the reasons for recouping benefits from Ms. S either. Again, these omissions left Ms. S without sufficient information to meaningfully understand and evaluate the basis for the Division's reduction of her benefits or test that action for possible error.¹⁹ The fact that the Division sent Ms. S a supplemental notice after she requested a hearing does not cure its earlier deficiency.

IV. Conclusion

The Division's January 6 notice of its decision to reduce Ms. S's Temporary Assistance benefits is defective and fails to satisfy Ms. S's right to procedural due process. The Division's decision is therefore REVERSED.²⁰

DATED: March 10, 2017.

By: Signed _____
David J. Mayberry
Administrative Law Judge

¹⁷ Exs. 4, 6.1.

¹⁸ Ex. 6.1.

¹⁹ The possibility of error is not purely conjectural. For example, the Division's Position Statement states that Ms. S's husband "was included in Temporary Assistance for the month of January 2017 as his Social Security had stopped," but that he was removed on January 5, 2017. Pos. Stat. at 2. Under Sections 711-2 and 711-4 of the Temporary Assistance Manual, Mr. S's loss of Supplemental Security Income would suggest that he should have been *included* in Ms. S's case (assistance unit), not removed.

²⁰ The Division may pursue this action, if it renotices Ms. S. *Allen*, 203 P.3d at 1169.

Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, adopts this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of March, 2017.

By: Signed
Signature
David J. Mayberry
Name
Administrative Law Judge
Title

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