

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

In the Matter of)
)
E T) OAH No. 17-1097-ATP
) Agency No.
_____)

DECISION

I. Introduction

The Division of Public Assistance (DPA) sought to recoup an alleged overpayment of Temporary Assistance to E T and his three children. DPA initially claimed that, due to agency error, Mr. T had received Temporary Assistance benefits that he was not entitled to receive in May and June of 2017 because his children were visiting their mother as of the date of his interview with DPA. After DPA notified Mr. T that he would need to repay those excess benefits, Mr. T requested a hearing.

A hearing was held on November 13, 2017. Mr. T and Sally Dial, who represented the Division, appeared telephonically. Due to errors in the notice sent to Mr. T on September 18, 2017, the parties agreed to continue the hearing until a corrected notice could be prepared.¹ The continued hearing was held on December 4, 2017. The Division's determination, as set forth in the corrected notice, was that Mr. T was not entitled to receive Temporary Assistance benefits in the amount of \$1,015 for June of 2017 and thus had to repay those benefits.² For the reasons discussed below, the Division's determination is reversed.

II. Facts

On May 26, 2017, Mr. T applied for Temporary Assistance for himself and his three children.³ At his interview with DPA on June 14, 2017, Mr. T reported that his children had just taken a plane the previous day to visit their mother, who was living in Georgia.⁴ Mr. T at the interview told the Division that when he filed the temporary assistance application,

¹ The initial notice dated September 18, 2017 stated that Mr. T was overpaid benefits in May and June of 2017. *See* Exh. 3.7. The initial notice had three defects: (1) Mr. T only received \$193 in temporary assistance benefits in May, not \$1,015 in such benefits as the notice claimed; (2) Mr. T received \$1,015 in temporary assistance benefits in June of 2017, not \$193; and (3) Mr. T's children lived with him throughout the month of May. *See* Testimony of Mr. T; *see also* Exh. 4 & Testimony of Ms. Dial.

² *See* Exh. 13.

³ *See* Exh. 1.

⁴ *See* Exh. 2.

there were no plans for the children to visit their mother.⁵ However, because the children's mother had only seen the children for brief periods of time over the past seven years, Mr. T allowed the children to visit their mother for the summer when she subsequently requested a long visit.⁶

Based on his statements and the application, the Division paid Mr. T temporary assistance benefits in the amount of \$193 for the month of May and \$1,015 in such benefits for the month of June.⁷ No benefits were authorized for July of 2017 because the children were going to be absent from Mr. T's home for longer than a month.⁸

During a random audit, the Division concluded that Mr. T should not have been paid benefits in May and June of 2017.⁹ The Division then determined that Mr. T had been overpaid benefits in the amount of \$1,015 for May of 2017 and \$193 in benefits for June of 2017.¹⁰ Subsequently, the Division sent Mr. T a notice, requesting that he repay the Division \$1,208.00 because he had received benefits in May and June of 2017 that he was not entitled to receive.¹¹

At the hearing, Ms. Dial admitted that this initial determination and notice were incorrect but took the position that the amount of overpayment in May and June had simply been reversed – *i.e.*, Mr. T was overpaid \$193 in May of 2017 and overpaid \$1,015 in June of 2017.¹² The hearing was continued and in the interim, the Division concluded that Mr. T was entitled to temporary assistance benefits in May of 2017. However, the Division now alleged that Mr. T had been paid \$1,015 in temporary assistance benefits that he was not entitled to receive in June of 2017 and sent him corrected notice of overpayment on December 1, 2017. Although Mr. T had not received this corrected notice by the time of the continued hearing, it was reviewed with him at the hearing, he confirmed that he understood the Division's most recent notice, and opted to go forward with the hearing. Thus, the only

⁵ See Exh. 2.

⁶ Testimony of Mr. T. Mr. T has full physical and legal custody of his children; there is no court order mandating that the children visit their mother. See Exhs. 2-2.1.

⁷ See Exhs. 2, 3.8 & 3.9

⁸ See Exh. 2.1; *see also* Exh. 5.1 (stating in 7 AAC 45.225(f)(2) that temporary assistance benefits do not continue if a child is absent from the home of the caretaker relative for more than a month unless there is a court order specifying that the child is to visit a parent who resides away from the child's customary home).

⁹ Testimony of Ms. Dial.

¹⁰ As explained later, this notice was in error and the Division subsequently issued a corrected notice.

¹¹ See Exh. 3.7.

¹² Testimony of Mr. T.

issue here is whether Mr. T was overpaid temporary assistance benefits in the amount of \$1,015 in June of 2017.

III. Discussion

The Division at the hearing made two arguments, neither of which was persuasive. The first argument was that Mr. T was not entitled to receive benefits because his children were not in his home at the time of the interview.¹³ In support of this argument, the Division cited the Family Assistance Manual used by the Department.¹⁴ The Manual is neither a statute nor a regulation, so it does not have the force of law. More importantly, the Manual itself does not support the Division's position. Specifically, the Manual states that an "individual must be in the home at least one day of the month to be included in that month."¹⁵ Mr. T's children were living with him from June 1st until they left to visit their mother on June 13th, the day before the interview.¹⁶ Although an individual who "moves out" sometime *after* an application is filed but *before* the interview is not considered part of the family for any month prior to the eligibility determination, the Manual in its Example section makes it clear that a person "moves out" when he or she is "not expected to return."¹⁷ That was not the situation here: Mr. T had full physical and legal custody of his children and they were scheduled to return from their visit with their mother in August.¹⁸

Under 7 AAC 45.225(e), if a child "leaves the home of a caretaker relative during a month, and the child is otherwise eligible, the department may pay benefits for the entire month. . . ."¹⁹ The Division was unable to explain why 7 AAC 45.225(e) was inapplicable to the situation here, where Mr. T's children resided in his home from June 1st through June 13th. Instead, the Division cited 7 AAC 45.225(f) to justify its second argument – *i.e.*, that Mr. T was not entitled to receive temporary assistance in June of 2017 because his children

¹³ Testimony of Ms. Dial; *see also* Exh. 3.7.

¹⁴ Testimony of Ms. Dial.

¹⁵ Exh. 8.

¹⁶ *See* Testimony of Mr. T.

¹⁷ *See* Exh. 8.1.

¹⁸ *See* Exh. 2.

¹⁹ *See* 7 AAC 45.225(e). There are two other conditions that also must be satisfied; they are not at issue in this case since Mr. T had full physical and legal custody of his children. *Cf.* Exh. 9.2 (Temporary Assistance Manual, 711-6 F).

were absent from the home for longer than a month and that absence was not pursuant to a court order.²⁰

The Temporary Assistance regulations provide a clear path in this case as to when a parent may receive these benefits.²¹ First, a child must be living with a caretaker relative.²² “*Except in the case of a temporary absence,*” the child’s home will be presumed to be the place where the child resides more than half of the month in question.²³ It is undisputed that Mr. T is the children’s primary caretaker relative and that the summer visit to their mother was a “temporary absence.” The children reside with him full-time and have for years.²⁴ The mother of the children does not even have court-ordered visitation rights.²⁵ Second, the children were residing with Mr. T at the beginning of June. They did not leave his home for a temporary absence until June 13th.²⁶ If the children leave during the month, the caretaker relative is still eligible for benefits so long as an assistance payment was not already paid to someone else for the children during that month.²⁷ There is absolutely no evidence that a Temporary Assistance payment was made to anyone else during June. Further, the regulations allow payment to a caretaker relative even if the children were present in the caretaker relative’s home for only one day of the month.²⁸ There are even exceptions that allow full payment to the caretaker relative when the children’s absence is for an entire month or longer, so long as the children do not receive Temporary Assistance payments in that other household.²⁹

In short, Mr. T has full legal and physical custody of the children. They were residing with him on June 1. They left on June 13 for a visitation. No one received Temporary Assistance payments for June besides Mr. T, nor did anyone else apply for Temporary Assistance benefits for June. Accordingly, the Division’s argument completely misconstrues the applicable regulations. Thus, the Division correctly paid Mr. T Temporary Assistance

²⁰ See Testimony of Ms. Dial. Mr. T’s children left to visit their mother on June 13, 2017; they returned on August 24, 2017. See Exh. 2.

²¹ See 7 AAC 45.225; see also Exh. 5-5.2.

²² 7 AAC 45.225(a).

²³ 7 AAC 45.225(b)(emphasis added).

²⁴ Testimony of Mr. T.

²⁵ Testimony of Mr. T; see also Exh. 2.1.

²⁶ Testimony of Mr. T; see also Exh. 4.

²⁷ 7 AAC 45.225(e).

²⁸ 7 AAC 45.225(f).

²⁹ 7 AAC 45.225(f). The arguable exception is one where the absence is due to court-ordered visitation. See 7 AAC 45.225(f)(2). However, as the Division noted, the visitation exception would not apply here because the visitation was voluntary and not court-ordered.

benefits in the amount of \$1,015 for himself and his children for the month of June.³⁰ Accordingly, there was no overpayment of benefits.

IV. Conclusion

Mr. T was correctly paid benefits in June of 2017 in accordance with the applicable regulations. The conclusion of the Division's random audit was in error and was based on a misinterpretation of the applicable regulations. Accordingly, the Division's decision to require repayment of \$1,015 is REVERSED.

Dated this 11th day of December, 2017.

Signed _____
Kathleen A. Frederick
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 2nd day of January, 2018.

By: *Signed* _____
Name: Deborah L. Erickson
Title: Project Coordinator
Agency: Office of the Commissioner, DHSS

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

³⁰ See Exh. 5.1. Under Section 7 AAC 45.225(e), the department may pay benefits for the *entire month* if the child leaves the home of a caretaker relative during a month and the child is otherwise eligible. See Exh. 5.1 (emphasis added).