

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

In the Matter of: )  
 )  
 U N ) OAH No. 13-0426-CCA  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

U M. N applied for benefits under the Child Care Assistance Program administered by the Division of Public Assistance. Due to an agency error, she was provided benefits even though her income was in excess of the applicable program limit. The division demanded that she repay the funds it had provided to her under the program.

Ms. N requested a hearing, and the assigned administrative law judge conducted a telephonic hearing. Ms. N participated and Cheryl Windham represented the division.

The division is not required by law to recover overpayments. Because the overpayment in this case is the result of agency error and Ms. N reasonably relied on the division's determination that she was eligible, recoupment may be waived.

**II. Facts**

In the summer of 2011, U M. N, a member of the No Name, was transferred from her station in California, to the No Name.<sup>1</sup> Ms. N was a recently-divorced single parent with a three year old daughter.<sup>2</sup> After her arrival in No Name, on September 1, 2011, Ms. N filed an application for child care assistance from the Division of Public Assistance's Child Care Assistance Program.<sup>3</sup> She also applied for child care assistance from the No Name's child care assistance program, pending a decision on her state application.<sup>4</sup>

Ms. N's state application included a copy of her July 1 paystub from the No Name showing income of \$4,160.14, including basic pay (\$1,729.80) and allowances for housing (\$2,066.00), subsistence (\$325.04), clothing (\$26.30) and cost of living (\$24.00), with net pay of \$1,989.76 after taxes (\$252.88) and deductions (\$1,917.50, including a home mortgage deduction of \$1850.00).<sup>5</sup> In the application space provided for earned income, Ms. N reported

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<sup>1</sup> Exhibit 4q-4u.

<sup>2</sup> Exhibit 4a, 4j-4o.

<sup>3</sup> Exhibit 4a-4h, 5a.

<sup>4</sup> Testimony of U. N.

<sup>5</sup> Exhibit 4i. *See* Position Statement, p. 3; Exhibit 5c. The detailed income itemization totals \$4,171.14, as compared with the indicated total of \$4,160.14. The discrepancy is unexplained.

monthly gross income of \$1,916.10, with payments every two weeks.<sup>6</sup> Ms. N also reported that she was not receiving a housing voucher or cash assistance for housing, which reflects the housing arrangement she has in No Name, where she lives in No Name premises.<sup>7</sup>

Ms. N's state application was processed by the division's authorized local agent, No Name.<sup>8</sup> The agent conducted an interview with Ms. N on September 7, and noted monthly gross income of \$2,066.00.<sup>9</sup> This notation was in error. The agent had mistakenly identified Ms. N's housing allowance (\$2,066.00) as her gross pay, and her deductions (\$1,917.50) as her net pay.<sup>10</sup> Her actual monthly income, based on her July 1 paystub, was \$4,610.14, consisting of her No Name earnings (\$4,160.14) plus child support (\$450.00).<sup>11</sup>

Based on the agent's erroneous record of her income, Ms. N was found eligible for child care assistance. In fact, because her actual monthly income (\$4,610.14) exceeded the maximum allowable monthly income for eligibility (\$4,250.00),<sup>12</sup> she was ineligible. Ms. N's application was approved, and she was provided with a monthly state contribution of \$457 towards her monthly child care expense of \$607.<sup>13</sup>

Ms. N would have been eligible for child care assistance through the No Name; however, because she was found eligible for the state program she was ineligible for the federal program.<sup>14</sup> Ms. N enrolled her daughter in the No Name Child Care Center beginning on September 12.<sup>15</sup> Her eligibility was reconfirmed, using the same erroneous income calculation, in November and again in February, 2012.<sup>16</sup>

In July, 2012, Ms. N submitted a paystub dated July 1, 2012, along with her application to renew her eligibility for another year.<sup>17</sup> Upon reviewing that paystub, the division noticed the

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<sup>6</sup> Exhibit 4b.

<sup>7</sup> Exhibit 4a (11A No Name, No Name), 4b, 23d, e. In California, it appears (based on the mortgage payment shown on her paystub) Ms. N was living in a private residence.

<sup>8</sup> Exhibit 5a. *See* Position Statement, p. 2.

<sup>9</sup> Exhibit 6a, 6e.

<sup>10</sup> Position Statement at 3. *See* Exhibit 4i.

<sup>11</sup> *See* 7 AAC 41.325(a)(1)(A) (salary), (C)(iv) (child support), (xv) (military cash allowances), (xxiii) (housing allowances).

The paystub at Exhibit 4i is a report of her monthly income: it shows year-to-date taxable gross income of \$10,522.80, which is exactly six times the amount shown as current taxable gross income (\$1,753.80). *Cf.* Exhibit 17 (leave and earnings statement showing mid-month and end of month payments, with monthly total).

<sup>12</sup> Position Statement at p. 2. *See* Exhibit 3a.

<sup>13</sup> *See* Ex. 7c.

<sup>14</sup> Ex. 23c. *See* Position Statement, p. 2.

<sup>15</sup> *See* Exhibit 7h.

<sup>16</sup> *See* Exhibits 9c-d, 12a-d, 13a.

<sup>17</sup> Exhibits 14, 15.

error in its agent's 2011 income calculation.<sup>18</sup> The division notified Ms. N that she had been ineligible for the entire period during which benefits were paid, and on February 11, 2013, it demanded that she repay the entire amount of the overpayment, \$5,015.<sup>19</sup>

### **III. Discussion**

The facts in this case are undisputed. The division (through its agent) incorrectly calculated Ms. N's income, despite the fact that she had submitted documentation showing that her actual income was in excess of the program limits. Because of the division's error, Ms. N was unable to take advantage of No Name child care benefits to which she would otherwise have been entitled, and the state paid \$5,015 in child care benefits that would otherwise have been paid by the federal government or Ms. N. Now, having corrected its error, the division has demanded repayment.

The division has not identified any statute or regulation making repayment mandatory. Indeed, there is no provision in AS 47.25.001-.095, which establish the Child Care Program, for recoupment of overpayments at all. 7 AAC 41.420(b)(3) provides that the division may, in the absence of a repayment agreement, seek repayment through unspecified "collection procedures" or by deduction from future benefits. The application form states that the division "may take corrective action" including establishing a repayment plan or suspension or termination of participation in the program. Given the applicable provisions of law and the wording of the application form, it is within the discretion of the division to waive recoupment in whole or in part, depending on the circumstances.

In this particular case, there is no indication that Ms. N intended to deceive the division regarding her eligibility. Nonetheless, she is not entirely without responsibility for the agency's error. Her application erroneously stated that her monthly gross income was \$1916.10, which was incorrect: the paystub submitted with her application shows a monthly gross income of \$4,160.14, and a monthly net income of \$1,989.76. Ms. N's own error may have contributed to the division's error. However, primary responsibility for the agency's error rests with the agency, because Ms. N submitted documentation clearly showing that her actual income was in excess of the applicable program limits and primary responsibility for determining eligibility rests with the agency. Consistent with that reasoning, at the hearing the agency accepted responsibility for the error.

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<sup>18</sup> Exhibits 15i, 19, 20b.

<sup>19</sup> The division initially calculated the overpayment as \$5,472, but subsequently corrected it to \$4,015. See Exhibits 20d, 21a, b.

Even if the division chose not to exercise its discretion to waive recoupment, it might be legally barred from recoupment under the doctrine of equitable estoppel. Under that doctrine, an agency may be barred from recouping overpayments when: (1) the agency asserted a position; (2) a person reasonably relies on the assertion; (3) the person suffers harm; and (4) estoppel serves the interest of justice so as to limit public injury.<sup>20</sup>

#### **IV. Conclusion**

Ms. N was entitled to appeal the division's determination of the amount of the overpayment.<sup>21</sup> In this case, the amount of the overpayment is undisputed, and thus the division may enter into a repayment agreement with Ms. N or, if she declines to enter into such an agreement, obtain repayment by deductions from future child care benefits or by unspecified collection procedures.<sup>22</sup> However, the division bears primary responsibility for the error that occurred and it is possible that recoupment would be barred under the doctrine of equitable estoppel. Moreover, the division has not shown that it is legally obligated to recoup an overpayment caused by agency error. Under these circumstances, the division may, in its discretion, waive recoupment.

DATED October 21, 2013.

*Signed*

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Andrew M. Hemenway  
Administrative Law Judge

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<sup>20</sup> The Alaska Supreme Court has held that the doctrine of equitable estoppel does not apply to bar recoupment of overpayments when federal law requires recoupment. See Allen v. State, Department of Health and Social Services, Division of Public Assistance, 203 P3rd 1155, 1164 (Alaska 2009). The division has not asserted that federal law requires recoupment of state child care assistance program overpayments that occur as a result of state error.

<sup>21</sup> See 7 AAC 41.420(a)(4)(B).

<sup>22</sup> 7 AAC 41.4230(b)(3). The division has not identified any collection procedures that would enable it to obtain repayment absent a court judgment.

## 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 12<sup>th</sup> day of November, 2013.

By: Signed  
Signature  
Terry L. Thurbon  
Name  
Chief Administrative Law Judge  
Title

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