

between Ms. C and the caseworker took place on October 4, 2013.² The application was approved on October 14, 2013,³ and Ms. C started receiving benefits. Because she had been approved for childcare benefits, she structured her work schedule based on the availability of child care services that she would not otherwise have been able to afford. Ms. C testified emphatically and credibly that if she had not been approved for the benefits, she would have made other childcare arrangements and arranged her work schedule differently.

On December 2, 2013, Ms. C provided updated income information that included a disclosure regarding Mr. H's regular job and increased income in September, October and November, 2013.⁴ The Division reviewed the file and determined that Ms. C's household was over the income limit for a three-person household, and therefore they should not have received benefits. The Division arrived at this conclusion by taking into account Mr. H's income only for September 2013 (which happened to be the highest monthly income amount that he earned during the entire year). The Division determined that if that income figure had been disclosed as of the October 4 interview, the caseworker would have extrapolated that amount to an annual income amount that would have put the household over the limit and rendered them ineligible for childcare benefits.⁵ As a result, the Division determined that \$1,639.70 in benefits had been overpaid to Ms. C, and it sent her a repayment demand ("notice of overpayment").⁶

Ms. C submitted a request for administrative review of the notice of overpayment in early March 2014⁷. The Division, however, misrouted the request, and as a result, a decision was not issued on the request for administrative review until July 24, 2014,⁸ at which time the Division upheld the notice of overpayment.⁹ This appeal followed.

III. Discussion

The Division's position in this matter is summarized as follows. If Mr. H's September 2013 income had been disclosed at the time of the October 4, 2013 interview, Ms. C's household

² Division Exhibit 1.0.

³ Division Exhibit 1.18.

⁴ See C Exhibit 9. The Division stated in its filings in this matter that it "discovered" Mr. H's additional income by investigating a report that he had filed an unemployment claim. In fact, Ms. C did disclose his job and additional income prior to the Division's inquiry regarding the unemployment claim, and at the hearing, the Division acknowledged that it is not accusing Ms. C of improperly withholding information.

⁵ Testimony of Mr. Miller.

⁶ Division Exhibit 7.0.

⁷ Division Exhibit 8.1.

⁸ See Division Exhibits 8.0, 9.0-9.2.

⁹ Division Exhibit 9.2.

income would have been deemed to be in excess of the applicable limit for a three-person household. The Division, therefore, would have determined that Ms. C was ineligible, and the benefits for September through November, 2014 would not have been awarded to her. Therefore the benefits are properly considered to be an overpayment, and they must be repaid.

In support of its recoupment effort, the agency cites relevant Alaska regulations, including 7 AAC 41.415 (“determination of overpayment of program benefits...”), and 7 AAC 41.420 (“overpayment of program benefits”). These regulations provide the authority for the agency to determine whether overpayments have occurred and to seek recoupment of those payments. They provide no guidance, however, regarding whether the agency should seek recoupment under circumstances such as are presented in this case.¹⁰

The Division’s view of this case fails to take into account that Ms. C followed the instructions of her caseworker regarding disclosure of Mr. H’s income. The Division’s view also fails to acknowledge the fact that Ms. C relied on the Division’s approval of her application when she set up her work and family schedule, and that she would not have utilized childcare services at all if her application had not been approved.¹¹

Given the facts presented during the hearing, the doctrine of equitable estoppel bars the agency’s recoupment effort.¹² Under that doctrine, an agency may be barred from recouping overpayments when: (1) the agency has asserted a position; (2) a person reasonably relies on the assertion; (3) the person suffers harm; and (4) estoppel serves the interest of justice.¹³ Here, when the Division’s caseworker told Ms. C that she should wait to submit Mr. H’s income information until December, the Division took the position that the information she had already supplied was appropriate and sufficient for processing of her application. And when the Division approved her application, it formally took the position that her household was eligible for the benefits. Ms. C then reasonably relied on the agency’s position by enrolling her child in subsidized childcare, a process that she would have not undertaken absent the Division’s

¹⁰ There does not appear to be any federal statutory requirement mandating that the Division seek repayment of overpaid childcare assistance benefits.

¹¹ See Ms. C’s testimony, Hearing Record at 34:48, 41:50, and 44:40.

¹² During the hearing, Ms. C strenuously disputed the manner in which the Division based its determination that the household was over the limit solely on Mr. H’s September income, his highest for the entire year, rather than averaging his income over September through November. Because this Decision finds that recoupment is barred, however, it is not necessary to reach the questions of whether the Division’s calculation method was appropriate, and if not, whether averaging the income amounts would have affected the eligibility determination.

¹³ *Nelson v. State, Commercial Fisheries Entry Commission*, 186 P.3d 582, 585 (Alaska 2008); *Allen v. State, Department of Health and Social Services, Division of Public Assistance*, 203 P3rd 1155, 1164 (Alaska 2009).

approval of her application. Without the childcare benefits, Ms. C would have set up a different schedule for her business and her family, and she would not have paid for those childcare services out of pocket. Ms. C will clearly suffer harm from the agency's demand for repayment; she has already utilized the subsidized childcare benefits, and if recoupment is required, the net result will be that she will have incurred significant out-of-pocket childcare costs she would not have otherwise incurred. Lastly, the application of estoppel in this case¹⁴ will serve the interests of justice by avoiding this unfair result, which would in effect amount to penalizing Ms. C for following the instructions of the Division's caseworker.

From the perspective of the administrative law judge, an important element supporting the application of estoppel in this case is the fact that Ms. C structured her family's life around the approval of her application. This is not a situation where a public assistance recipient simply has received more benefits than he or she was entitled to and is then required to repay the overpayments. Here, Ms. C would not have incurred the childcare expense, absent the approval of her application by the Division. These facts clearly demonstrate Ms. C's detrimental reliance on an agency error, and application of equitable estoppel here is appropriate.

IV. Conclusion

Under the particular circumstances of this case, the agency is not required by law to recover overpayments. Because the overpayments in this case were the result of instructions given by the Division's caseworker, Ms. C reasonably relied on the agency position by enrolling her child in subsidized childcare, and the payments do not constitute a windfall to her; recoupment is barred by the doctrine of equitable estoppel. The agency's action in demanding repayment, therefore, is overturned.

Dated this 12th day of February, 2015.

Signed

Andrew M. Lebo
Administrative Law Judge

¹⁴ 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*, 203 P3rd at 1164. As mentioned above, however, federal law does not require the Division to seek recoupment of childcare subsidy overpayments.

Adoption

The undersigned, by delegation from of 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 26th day of February, 2015.

By: Signed
Name: Andrew M. Lebo
Title: Administrative Law Judge

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