

her qualified.” Mr. D never signed an application seeking benefits for G; apparently, the caseworker added G to the application to potentially qualify her for benefits.⁴

The application was approved and benefits were awarded for both children. The Division admits that the award for G was “agency error.” \$2485 in benefits were erroneously awarded for G for the months of April through September 2014. The Division realized its error in October 2014 and notified Mr. D that G was ineligible because as a non-citizen she did not meet the so-called “five year bar.”⁵ The Division then sent a notice of overpayment to Mr. D in November 2014, indicating that the erroneously awarded benefits would have to be repaid.⁶ He requested an administrative review, which was denied.⁷ Mr. D then requested this hearing.

Mr. D testified credibly that when he initially applied for benefits, his primary concern was his infant daughter, S, because she required a fair amount of care, and he and his wife were working full time. He didn’t even intend to apply for benefits for G, who was eight years old. He further testified that had the Division not awarded benefits for G, he would have had his relatives care for her while he and his wife were working. Because the benefits were approved, however, he had her attend a daycare facility, and the benefits were expended.

III. Discussion

The Division’s position in this matter is simply that G was not eligible for CCA benefits, as a non-citizen subject to the five year bar; that the benefits were approved and paid out due to an agency error; and that any such benefits paid to an ineligible recipient are properly considered to be an overpayment and 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.⁸

⁴ See Exh. 2.3.

⁵ See Exh. 15.1 (resident aliens are ineligible for child care assistance benefits until they have been in the United States for five years or until they become U.S. citizens).

⁶ Exh. 9.

⁷ Exhs. 11.1, 12.

⁸ There does not appear to be any federal statutory requirement mandating that the Division seek repayment of overpaid childcare assistance benefits. Testimony of J. Miller.

The Division's view of this case fails to take into account that Mr. D never had the intention of applying for benefits for G, that G received benefits only through the efforts of a Division employee, and that Mr. D would not have enrolled G in the daycare and expended funds on care for G at all if the benefits for her had not been requested and approved.

Given the facts presented during the hearing, the doctrine of equitable estoppel bars the agency's recoupment effort. 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.⁹ Here, when the Division's caseworker added G to Mr. D's CCA application, notwithstanding Mr. D's statement to the caseworker that she is not a citizen and his indication on the application form to the same effect, the Division took the position that it was appropriate to apply for benefits for G and "see if we can get her qualified." When the Division approved benefits for her, the Division took the position that she was eligible and that the benefits were correctly awarded for her. Mr. D then reasonably relied on the agency's position by enrolling G in subsidized daycare, a process that he would have not undertaken absent the Division's approval of benefits for her. Without the award of benefits for G, Mr. D simply would have set up a different routine and schedule for his family that would have included his relatives caring for G while he and his wife were at work. He would not have paid for the daycare services out of pocket. Mr. D will clearly suffer harm from the agency's demand for repayment; he has already utilized the subsidized daycare benefits for G, and if recoupment is required, the net result will be that he will have incurred significant out-of-pocket daycare costs he would not have otherwise incurred. Lastly, the application of estoppel in this case¹⁰ will serve the interests of justice by avoiding this unfair result, which would in effect amount to penalizing Mr. D for not objecting to the Division's caseworker's actions in adding G to his CCA application.

From the perspective of the administrative law judge, an important element supporting the application of estoppel in this case is the fact that Mr. D structured his family's life around the approval of benefits for G. 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

⁹ *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).

¹⁰ 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.

overpayments. Here, Mr. D would not have incurred the childcare expense, absent the inclusion of G in the application by the Division's employee and the subsequent erroneous approval of the benefits for G. These facts clearly demonstrate Mr. D'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 actions taken by the Division's caseworker, which Mr. D had no intention of undertaking, he reasonably relied on the agency position by enrolling his child in subsidized daycare, and the payments do not constitute a windfall to Mr. D; recoupment is barred by the doctrine of equitable estoppel. The agency's action in demanding repayment, therefore, is overturned.

Dated this 7th day of April, 2015.

Signed _____
Andrew M. Lebo
Administrative Law Judge

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 21st day of April, 2015.

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

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