

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

In the Matter of:)
)
 S X) OAH No. 16-0100-CCA
) Agency No.
_____)

DECISION

I. Introduction

The issues in this case are (1) whether S X's monthly income exceeded the Child Care Assistance Program (CCAP) maximum income limit during the period from December 2014 through June 2015; (2) whether Ms. X received CCAP benefits to which she was not entitled during that period; (3) whether the Division of Public Assistance (DPA or Division) is entitled to seek repayment of any overpayments; and (4) whether the Division is entitled to disqualify Ms. X's family from further participation in the CCAP program based on a failure to enter into a repayment agreement.

This decision concludes that the Division correctly determined that Ms. X's income exceeded the applicable CCAP monthly income limit during the seven months at issue. As a result, Ms. X received \$5,886.00 in CCAP benefits for which she was not financially eligible. The benefits she received are overpayments which the Division is entitled to recover. However, due to notice deficiencies,¹ Ms. X cannot yet be permanently disqualified from further participation in CCAP. Ms. X has thirty days from the date of this decision to enter into a repayment agreement with the Division. If Ms. X fails to enter into a satisfactory repayment agreement with the Division within that time, then the Division may, after providing written notice, disqualify Ms. X's household from further participation in the Child Care Assistance Program.

II. Facts

Ms. X works full time at a dental office.² She has a four person household consisting of herself and her three minor children: Q, N, and L.³ Each of the three children is under 13 years old, and thus all of them are age-eligible for CCAP participation.⁴

¹ The notice problems in this case were discussed at hearing, and the Division did not dispute them.

² Ex. B2.0; S X's hearing testimony.

³ Ex. B2; S X's hearing testimony.

⁴ Pursuant to 7 AAC 41.350(a)(1), a child is only eligible to participate in CCAP if the child is under 13 years old. The only exception is if the child has a developmental disability, in which case the child must be under 19 years old (7 AAC 41.350(a)(2)).

During the nine month period from September 1, 2014 through May 31, 2015, Ms. X's gross earned income, based on the pay statements issued by her employer, was as follows:⁵

<u>Pay Period</u>	<u>Gross Pay</u>
September 1 - 15, 2014	\$2,384.91
September 16 - 30, 2014	\$1,628.10
October 1 - 15, 2014	\$1,792.29
October 16 - 31, 2014	\$1,963.80
November 1 - 15, 2014	\$2,156.96
November 16 - 30, 2014	missing statement
December 1 - 15, 2014	missing statement
December 16 - 31, 2014	missing statement
January 1 - 15, 2015	\$2,016.33
January 16 - 31, 2015	\$1,602.00
February 1 - 15, 2015	\$2,219.42
February 16 - 28, 2015	\$1,602.90
March 1 - 15, 2015	\$2,040.83
March 16 - 31, 2015	missing statement
April 1 - April 15, 2015	\$2,385.63
April 16 - 30, 2015	\$1,789.20
May 1 - 15, 2015	\$2,645.24
May 16 - 31, 2015	\$1,634.95

Ms. X's earnings during the 14 pay periods (above) for which records are available, average \$1,990.18. If this average figure is imputed to the four pay periods for which pay statements are missing, then the average for the 18 pay periods is once again \$1,990.18. Since there are two pay periods per month, this equates to average gross monthly wages of \$3,980.36.

The records of the Child Support Services Division (CSSD) indicate that, during the nine month period from September 1, 2014 through May 31, 2015, Ms. X received the following amounts of child support:⁶

<u>Month</u>	<u>Total Payments</u>
September 2014	None
October 2014	\$2,691.46
November 2014	\$825.46
December 2014	\$1,892.29

⁵ All factual findings concerning Ms. X's earned income are based on Exs. 17.1 - 17.15. The nine month period from September 2014 through May 2015 was chosen for income averaging because the record contains pay statements for 14 of the 18 semi-monthly pay periods during this nine month period.

⁶ All factual findings concerning Ms. X's child support income are based on Exs. B11.0 - B11.2. The nine month period from September 2014 through May 2015 was chosen for child support averaging because the period corresponds to the months for which pay statements are also available.

January 2015	\$1,338.80
February 2015	\$1,238.19
March 2015	\$1,829.65
April 2015	\$1,606.97
May 2015	\$1,453.23

Thus, based on CSSD's records, Ms. X received an average of \$1,430.67 in child support during the nine month period from September 1, 2014 through May 31, 2015.

On December 3, 2014 Ms. X submitted an application to renew her children's CCAP benefits for the period from January 1 - June 30, 2015.⁷ She declared on her application that she worked 40 hours per week at the rate of \$18.00 per hour. She also declared that she received child support from her children's father, but stated that the children's father worked seasonally, and that she was not receiving support payments at that time. Ms. X participated in an eligibility interview on December 5, 2014, and her application was approved on December 16, 2014. The approval was based on countable monthly income of \$3,833.00.⁸

On May 27, 2015 Ms. X submitted an application to renew her children's CCAP benefits for the period from July 1 - December 31, 2015.⁹ She declared on her application that she was still working 40 hours per week, but that her wage had increased to \$19.00 per hour. She also declared that she received \$412.00 per month in child support from her children's father, but indicated that the children's father worked seasonally, and that she did not know how frequently she would receive those support payments. Ms. X participated in an eligibility interview on June 2, 2015, and her application was denied on June 3, 2015. The denial was based on the Division's finding that Ms. X had monthly countable income of \$6,107.00, and that this sum exceeded the CCAP's monthly income limit for a four person household.¹⁰ On June 4, 2015 Alaska Family Services (AFS) notified Ms. X that her CCAP renewal application of May 27, 2015 had been denied; the notice stated that her countable monthly income of \$6,107.00 exceeded the CCAP's monthly income limit for a family of four (\$4,614.00).¹¹

On June 10, 2015 Ms. X submitted a second application to renew her children's CCAP benefits for the period from July 1 - December 31, 2015.¹² This content of the second application

⁷ All factual findings in this paragraph are based on Exs. B2.0 - B2.7 unless otherwise stated.

⁸ Ex. B3.

⁹ All factual findings in this paragraph are based on Exs. B4 - B5 unless otherwise stated.

¹⁰ Ex. B5.

¹¹ Ex. 18.

¹² All factual findings in this paragraph are based on Exs. B6.4 - B6.8 unless otherwise stated.

was the same as that of the first application, except that Ms. X did not list a specific dollar amount for child support.¹³ Ms. X participated in an eligibility interview for this application on June 10, 2015, and her application was denied on July 7, 2015.¹⁴

On August 3, 2015 the Division determined that, during the period from December 2014 through June 2015, Ms. X had received a total of \$5,886.00 in CCAP payments for which she had been financially ineligible.¹⁵ On August 7, 2015 the Division mailed a notice to Ms. X advising her of its determination and requesting repayment of the \$5,886.00 in CCAP benefits.¹⁶ The notice further stated that, if Ms. X did not make arrangements with the Division to repay the overpaid benefits within thirty days, Ms. X's household would be placed on the CCAP's list of ineligible families.

Ms. X did not contact the Division to enter into a repayment agreement, and on January 5, 2016 the Division notified her that her household would be disqualified from further participation in CCAP if she did not enter into a repayment agreement within 15 days.¹⁷ On January 29, 2016 Ms. X requested a hearing.¹⁸

Ms. X's hearing was held on February 23 and March 31, 2016. Ms. X participated in the hearing by phone, represented herself, and testified on her own behalf. Sally Dial participated in the hearing by phone and represented the Division. All testimony and exhibits offered by the parties were admitted into evidence. At the end of the hearing the record was held open for post-hearing filings through April 18, 2016, after which date the record closed.

III. Discussion

A. The Child Care Assistance Program - Relevant Statutes and Regulations

The Child Care Assistance Program (CCAP) is established pursuant to Alaska Statutes (“AS”) 47.25.001 - 47.25.095.¹⁹ The regulations governing CCAP are set forth in the Alaska Administrative Code (AAC) at 7 AAC 41.010 - 7 AAC 41.990.

Under the CCAP, parents or guardians select a day care facility for the care of their children, and then benefits are paid by the Division.²⁰ A family's eligibility for CCAP day care benefits is

¹³ The record does not indicate (1) why this second application was filed for the same certification period, or (2) why the Division processed the second application when it had already denied an application for the same certification period.

¹⁴ All factual findings in this paragraph are based on Exs. B6.0 - B6.3 unless otherwise stated.

¹⁵ Exs. B7.0 - B7.1.

¹⁶ All factual findings in this paragraph are based on Exs. B8.0 - B8.1 unless otherwise stated.

¹⁷ Ex. B9.

¹⁸ Exs B10.0 - B10.1.

¹⁹ A.S. § 47.25.001(a)(1) requires that the Department of Health and Social Services "implement and administer a program to assist in providing day care for the children of low and moderate income families"

determined based on (1) the income of the family; (2) the number of children in the family; and (3) whether there is one parent or guardian solely responsible for the care of the family.²¹ The program's maximum monthly income limits vary based on the size of the family, and are set forth in a Family Income and Contribution Schedule which has been adopted into regulation by reference.²²

Under the CCAP, a family's monthly income is determined by totaling the monthly gross earned and unearned income of each parent.²³ Earned income includes earnings from employment and self-employment.²⁴ Unearned income includes things like unemployment benefits, alimony, and child support payments.²⁵ However, Alaska Permanent Fund Dividends, Medicare, Medicaid, food stamps, and benefits from some other programs do not count as income for purposes of the CCAP.²⁶

A family applying for child care assistance must provide complete, accurate, and current information concerning the children at issue, family income, hours of employment or training, work activities, and other factors that would affect the family's eligibility for CCAP benefits.²⁷

A family participating in the Child Care Assistance Program must notify the Division or its designee within seven days of an income change in excess of \$200.00 per month, or any other change that would affect the family's CCAP eligibility or benefits.²⁸ A participant's failure to notify the Division of such events may result in a determination of CCAP benefit overpayments and subsequent collection action by the Division.²⁹

An overpayment of CCAP benefits occurs if a family or provider receives benefits it is not entitled to.³⁰ If the Division determines that an overpayment of CCAP benefits has occurred, the Division must provide written notice that (1) includes the determination and the basis for the determination; (2) advises of the opportunity to develop a repayment plan; (3) advises that if the family or provider refuses to cooperate in the development of a repayment plan within 15 days after receiving notice, the Division will take action to recover the overpayment through collection procedures or deduction from any future CCAP benefits paid; and (4) advises that the family or

²⁰ A.S. § 47.25.051.

²¹ See A.S. § 47.25.031 1 ("Eligibility of Families for Benefits").

²² 7 AAC 41.335.

²³ See 7 AAC 41.325 ("Family Income Determination").

²⁴ See 7 AAC 41.325 ("Family Income Determination").

²⁵ See 7 AAC 41.325 ("Family Income Determination").

²⁶ See 7 AAC 41.325 ("Family Income Determination").

²⁷ 7 AAC 41.320(a) ("Family Responsibilities").

²⁸ 7 AAC 41.320(c)(2) ("Family Responsibilities").

²⁹ 7 AAC 41.320(c)(2) ("Family Responsibilities").

³⁰ 7 AAC 41.420(a) ("Overpayment of program benefits").

provider has the right to request an administrative review under 7 AAC 41.435, or to request a hearing under 7 AAC 49.³¹

If the family or provider fails to comply with a repayment plan, the Division must (1) take action to recover the overpayment through collection procedures or deduction from any future CCAP benefits; (2) place the family's name on a list of ineligible families; and (3) provide written notice to the family or provider that (A) describes the action the Division intends to take, and the effective date of that action; and (B) advises the family or provider of the right to request an administrative review under 7 AAC 41.435 or request a hearing under 7 AAC 49.³²

B. Was the Division Correct to Deny Ms. X's Child Care Assistance Program Renewal Applications of May and June 2015?

When the Division is processing an application for CCAP benefits, it must necessarily estimate the applicant's *future* income for the upcoming certification period based on the applicant's prior income. Where, as here, the applicant's income fluctuates from month to month, an income averaging approach is appropriate. In this case, when Ms. X applied for renewal of her CCAP benefits at the end of May 2015, her average monthly income from employment over the preceding nine months was \$3,980.36, and her average monthly income from child support during this period was \$1,430.67. When these two types of income are added together, Ms. X's average monthly gross income totals \$5,411.03. This is about \$696.00 less than the \$6,107.00 estimated income figure which the Division calculated in June 2015. However, this is still \$797.03 *more than* the CCAP maximum monthly income limit for a four person family (\$4,614).³³ Accordingly, the Division was correct to deny Ms. X's CCAP renewal applications of May 27 and June 10, 2015 because her monthly income exceeded the applicable CCAP income limit.

C. Did Ms. X Receive Child Care Assistance Program Benefits for Which she was not Eligible? If so, Must DPA Seek to Recover Them?

Income averaging is an appropriate approach for estimating *future income*. However, when determining whether a past overpayment has occurred, it is possible to "look back" and determine eligibility based on the *actual income* which the recipient received during the period at issue.

In this case, Ms. X's actual income (including income from both employment and child support) was \$5,872.65 for December 2014; \$4,957.13 for January 2015; \$5,060.51 for February

³¹ 7 AAC 41.420(b) ("Overpayment of program benefits").

³² 7 AAC 41.420(d) ("Overpayment of program benefits"). A family on the CCAP ineligible list may not participate in the PASS II or PASS III child care assistance programs. 7 AAC 41.450(b).

³³ See the CCAP "Family Income and Contribution Schedule" (Exs. 19.0 - 19.1), incorporated into regulation by reference in 7 AAC 41.335.

2015; \$5,860.66 for March 2015; \$5,781.80 for April 2015; and \$5,733.42 for May 2015.³⁴ Thus, Ms. X's monthly income exceeded the CCAP maximum monthly income limit for a four person family (\$4,614.00) during each of those six months. Accordingly, Ms. X's household was financially ineligible for CCAP benefits during those six months, and so any CCAP benefits paid on behalf of Ms. X during those six months constitute overpayments which the Division is entitled to recover.

The Division asserts that it paid the following CCAP benefits on behalf of Ms. X's children during the six months at issue: \$41.00 for December 2014; \$942.00 for January 2015; \$792.00 for February 2015; \$862.00 for March 2015; \$708.00 for April 2015; and \$1,107.00 for May 2015.³⁵ Ms. X did not dispute that the Division paid these benefits on her children's behalf during the six months referenced above. Accordingly, during the period December 2014 through May 2015, Ms. X received CCAP overpayments totaling \$4,452.00. The Division is required to attempt to collect these overpayments pursuant to 7 AAC 41.420(a).

The situation is somewhat different with regard to the Division's claim for the \$1,434.00 overpayment that it claims for June 2015. The Division did not introduce evidence of Ms. X's total actual wages for June 2015. The Division bears the burden of proving each month's overpayment by a preponderance of the evidence.

If a higher standard of proof applied to this case, I would find that the Division failed to prove that Ms. X's total income for June 2015 exceeded the applicable CCAP income limit.

However, in this case, the Division need only prove that it is *more likely than not* that Ms. X's total income exceeded \$4,614.00 for June 2015. Because (as discussed above) Ms. X's average gross income, over the preceding nine month period, was \$5,411.03, it is more probable than not that Ms. X's total gross income was greater than \$4,614.00 for June 2015. As a result, Ms. X was over-income for CCAP benefits during June 2015; the \$1,434.00 in benefits paid by the Division that month constitute overpayments; and the Division may seek to recover those benefits. Ms. X thus owes the Division a total of \$5,886.00 in overpayments during the period from December 2014 through June 2015.

³⁴ See payment summaries at pages 2 - 3, above.

³⁵ Ex. B7.

IV. Conclusion

The Division correctly determined that Ms. X's income exceeded the applicable CCAP monthly income limit during the seven months at issue. As a result, Ms. X received \$5,886.00 in CCAP benefits for which she was not financially ineligible. The benefits she received are overpayments which the Division is entitled to recover. However, due to notice deficiencies, Ms. X cannot yet be permanently disqualified from further participation in CCAP. Ms. X has thirty days from the date of this decision to enter into a repayment agreement with the Division. If Ms. X fails to enter into a satisfactory repayment agreement with the Division within that time, then the Division may, after providing written notice, disqualify Ms. X's household from further participation in the Child Care Assistance Program.

DATED this 4th day of May, 2016.

Signed _____
Jay Durych
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 13th day of May, 2016.

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

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