

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

In the Matter of )  
 )  
B D E S ) OAH No. 18-0096-CCA  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION AND ORDER**

Ms. D E S received Child Care Assistance through the Child Care Assistance (“CCA”) program administered by the Alaska Department of Health and Social Services, Division of Public Assistance (“Division”). The Division subsequently determined that benefits paid to Ms. D E S for her oldest child should not have been paid because he had not been in the United States for five years at the time of application. The Division sought to recoup \$4,099.25 in overpayments for the time period from April 2017 through November 2017. After an administrative review upheld the recoupment claim, Ms. D E S filed this appeal arguing that she should not have to repay the benefits because the overpayment was the result of error by the agency.

The hearing was held on February 14, 2018. Ms. D E S appeared by telephone and provided testimony and represented herself. Ms. Dial appeared telephonically and testified and represented the Division. After review of the testimony, evidence, and applicable law, the Division’s decision is affirmed because the Division may seek recoupment of overpaid benefits even if the overpayment was the result of Agency error.

**I. Facts**

Ms. D E S first applied for CCA benefits in April 2017 for her two children.<sup>1</sup> As part of that application she provided a birth certificate for her oldest child, Z, and permanent resident cards for herself, Mr. S and Z.<sup>2</sup> The Division approved benefits for both children starting April 2017. On September 14, 2017, Ms. D E S submitted an application for renewal of her CCA benefits. Her request was again approved, and benefits were awarded for both children.<sup>3</sup>

Z was ineligible for CCA benefits because as a non-citizen resident alien he did not meet the so-called “five-year bar” contained in 8 U.S.C. §1613(a). The Division realized its error on

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibits 2-2.14. Ms. D E S’ youngest son is an American citizen. Exhibit 2.10.

<sup>3</sup> Exhibits 3,4 and 5.

January 3, 2018.<sup>4</sup> As a result of this error, the Division overpaid Ms. D E S \$ 4,099.25 in CCA benefits for Z for the months of April through November 2017.<sup>5</sup> The Division sent a notice of overpayment to Ms. D E S on January 4, 2018, indicating that the erroneously awarded benefits would have to be repaid.<sup>6</sup> Ms. S requested an administrative review, which was denied.<sup>7</sup> Ms. S then requested this hearing seeking to overturn the Division’s decision because any overpayment was caused by agency error and was not caused by any mistake that she made.

## II. Discussion

The Division’s position is that Z was not eligible for CCA benefits, as a non-citizen resident alien subject to the five-year bar contained in 8 U.S.C. §1613(a). Therefore, even though the benefits were approved in error through no fault of Ms. D E S, they were paid to an ineligible recipient and must be repaid.

7 AAC 41.350(a) governs the eligibility of children for CCA benefits; it provides:

Subject to (b) of this section, a child eligible to participate in the child care assistance program under this chapter is an individual (1) who is younger than 13 years of age;... and (4) who is (A) a United States citizen; (B) a United States national; or (C) a qualified alien under 8 U.S.C. 1613 and 1641.

8 U.S.C. §1613 bars children who have not been in this country for 5 years from eligibility; it provides:

Notwithstanding any other provision of law and except as provided in subsections (b),(c), and (d), [which do not apply here] an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for an Federal means-tested public benefit for a period of 5 years beginning on the date of the alien’s entry into the United States with a status within the meaning of the term “qualified alien”.

Ms. D E S’ oldest child is a qualified alien under §1614. However, he had not been in the country for more than five years, when the Division initially approved CCA benefits for him. Under 7 AAC 41.420(c) (2) the Division is authorized to seek repayment of any overpayment of benefits as long as the overpayment occurred within 12 months since the error was discovered.<sup>8</sup>

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<sup>4</sup> 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).

<sup>5</sup> Exhibits 6-6.1.

<sup>6</sup> Exh. 9.

<sup>7</sup> Exhs. 11.1, 12.

<sup>8</sup> 7 AAC 41.420 also sets forth a number of other requirements, such as notice of the amount and basis of overpayment, the right to a hearing – all of which were complied with here. Exhibit 6.2.

This right to seek recoupment of any overpayment exists even when the overpayment was based on agency error.<sup>9</sup>

Ms. D E S is correct that the overpayment in this case was not her fault. However, the Division is entitled to seek repayment of the benefits paid on her oldest child's behalf, despite her lack of fault. Under 7 AAC 41.420(d) and (e) the Department is required to consult with the family to develop a repayment plan and consider whether such a plan might impose an extreme hardship. The Division should do so here.

### **III. Conclusion**

Ms. D E S' oldest child was ineligible for CCA benefits in 2017. The Division is entitled to repayment of the \$ 4,099.25 paid on his behalf for the period from April through November 2017 despite the fact that overpayment was due to agency error. The decision of the Division is affirmed.

DATED February 22, 2018

*Signed* \_\_\_\_\_  
Karen L. Loeffler  
Administrative Law Judge

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, adopts this Decision 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 19 day of April, 2018.

By: *Signed* \_\_\_\_\_  
Signature  
Karen L. Loeffler \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>9</sup> See 7 AAC 41.420(c) setting forth notice procedures if the department determines that an overpayment of over \$100 has occurred "regardless of cause".