

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

In the Matter of )  
 )  
 D X )  
\_\_\_\_\_ )

OAH No. 14-0936-PFE<sup>1</sup>  
Agency No.

**DECISION**

**I. Introduction**

D X appeals the garnishment of his Permanent Fund Dividend (PFD) to recover \$3,410.24 in defaulted overpayments of Alaska Temporary Assistance Program and Food Stamp benefits. A hearing on Mr. X’s garnishment appeal was held on August 14, 2014. Mr. X represented himself and Jeff Miller represented the Division of Public Assistance. Because Mr. X’s overpayments are long-established and because the Division has the right to garnish Mr. X’s PFD in order to satisfy those overpayments, the Division’s decision to garnish Mr. X’s PFD is upheld.

**II. Facts**

The following facts were established by a preponderance of the evidence in the record.

In December 2001, the Division’s Fraud Control Unit sent Mr. X two notices titled “Notification of Suspected Intentional Program Violation and Your Option to Waive and Administration Disqualification Hearing.”<sup>2</sup> The Notices stated that Mr. X failed to disclose income from several sources from 1993 – 1998 and as a result received \$511 in Food Stamp overpayments and \$5,320 in AFDC/ATAP overpayments.<sup>3</sup> Part 4 of the Notice gave Mr. X the right to waive an administrative disqualification hearing.<sup>4</sup> There were two options to waive hearing rights. In the first option, the recipient admits to the facts of the fraudulent overpayment and consents to disqualification.<sup>5</sup> In the second option, the recipient does not admit to the facts of the fraudulent overpayment, but still consents to the disqualification.<sup>6</sup> On January 6, 2002,

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1 The case was originally identified as 14-0936-ATP. The case number was amended to 14-0936-PFE in order to reflect that it is a Permanent Dividend Fund execution (PFE) case.

2 Ex. 2.10 – 2.13.

3 Ex. 2.10 – 2.13.

4 Ex. 2.10; Ex. 2.12.

5 Ex. 2.10; Ex. 2.12.

6 Ex. 2.10; Ex. 2.12.

Mr. X admitted to the fraudulent overpayment facts and consented to a 12-month Food Stamp disqualification period and a 6-month ATAP disqualification period.<sup>7</sup>

On January 2, 2002, Mr. X signed both a Promissory Note and “Confession of Judgment without Action” stating that he owed the Alaska Department of Health and Services \$5,831 because he received benefits to which he was not entitled.<sup>8</sup> Both documents outlined a repayment plan and the state’s right to take legal action if Mr. X failed to repay the funds.<sup>9</sup>

On February 8, 2005, the Division sent Mr. X notice that his payments were past due. On February 18, 2005, Mr. X responded explaining he was incarcerated, had no income, and would contact the office when he was released and had income.<sup>10</sup> Mr. X’s response also stated that eventually he would be filing for PFDs again to help with the overpayment debt.<sup>11</sup> On March 31, 2011, the Division again sent Mr. X a notice that his payments were past due.<sup>12</sup> The record does not contain a response to the past due notice.

From 2005-2006 and again in 2012, the Division recouped a portion of the overpayment through reductions in Mr. X’s public assistance benefits.<sup>13</sup> Mr. X has never initiated any repayments on his own.<sup>14</sup> As of May 2014, Mr. X’s remaining debt from the fraudulent overpayments was \$3,410.24.<sup>15</sup>

On May 28, 2014, the Division sent Mr. X “Notice of Garnishment of Permanent Fund Dividend for Defaulted Public Assistance Overpayment.”<sup>16</sup> The Notice states that Mr. X defaulted on his overpayment debt, that any challenge to the debt was resolved in the Division’s favor, that the Division intended to garnish his PFD up to the full amount of the debt, and that he may request an administrative appeal on the garnishment if he believes the Department made a mistake.<sup>17</sup> Mr. X requested an administrative hearing to challenge the garnishment.<sup>18</sup>

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7 Ex. 2.10; Ex. 2.12.  
8 Ex. 2.3 – 2.9.  
9 Ex. 2.3 – 2.9.  
10 Ex. 4-4.1.  
11 Ex. 4.1  
12 Ex. 5.0  
13 Ex. 5.1; Ex. 5.2; Ex. 6.4.  
14 X testimony.  
15 Ex. 6.  
16 Ex. 6.  
17 Ex. 6 – 6.1.  
18 Ex. 7.

At hearing Mr. X did not challenge the Division's notice or that garnishment was an option to collect overpayments. Instead, Mr. X wanted to challenge the original overpayment and fraud finding.

### **III. Discussion**

The Division must attempt to recover overpayments of Public Assistance benefits.<sup>19</sup> The Division has the authority to garnish a PFD to recover these overpayments.<sup>20</sup> AS 43.23.068(c)<sup>21</sup> specifically provides that the Division may garnish a PFD to recover a claim for an overpayment even when that overpayment is contested, if the issue has been resolved in the Division's favor. In this case, the issue was resolved in the Division's favor when Mr. X admitted to the alleged facts that he failed to report income, waived his right to an administrative hearing, signed confession of judgment, and executed a promissory note in 2002. In 2005 Mr. X responded to the Division's payment overdue notice stating he would contact them to address his failure to repay.

Now, in 2014, Mr. X argues that he signed the promissory note under duress or coercion. He stated at hearing that unless he agreed to the overpayment findings he would not be eligible for Food Stamps for his daughter. He contends that this circumstance created duress. Mr. X testified that the Division never explained the basis for the overpayment findings and fraud was never shown. Mr. X also argues that because the debt is so old it should be uncollectible due to a statute of limitations.

These issues- coercion, duress, and statute of limitations, are beyond the scope of this garnishment hearing.<sup>22</sup> The garnishment hearing is not meant to challenge the underlying overpayment, once established, as is the case here. The hearing is only meant to examine if the Division has the right to garnish Mr. X's PFD in order to recover the overpayment. Mr. X was free to request an administrative hearing if the Department of Health and Social Services made a mistake. Examples of such a mistake might include that the overpayment was already satisfied or that insufficient notice was given. Mr. X's ability to mount a challenge to the underlying overpayment in this forum expired when he admitted to the fraudulent overpayment findings and waived his right to appeal.

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19 7 AAC 45.570.

20 AS 43.23.068; AS 47.05.080..

21 The garnishment is also supported by 7 AAC 45.570 and 7 CFR 273.18.

22 Mr. X may attempt to seek redress in the Superior Court.

#### **IV. Conclusion**

The Division's action garnishing up to \$3,410.24 from Mr. X's PFD to recover overpayments from the Alaska Temporary Assistance and Food Stamp programs is upheld.

DATED September 25, 2014.

*Signed* \_\_\_\_\_  
Bride Seifert  
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 14<sup>th</sup> day of October, 2014.

By: *Signed* \_\_\_\_\_  
Name: **Bride Seifert** \_\_\_\_\_  
Title/Division: **ALJ/OAH** \_\_\_\_\_

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