

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

In the Matter of)
)
 D N)
_____)

OAH No. 14-0980-PFE
Agency No. 05592090

DECISION

I. Introduction

This case is an appeal filed by D N regarding the garnishment of her Permanent Fund Dividend (PFD) to recover \$488 in overpayments of Alaska Temporary Assistance Program benefits. A hearing on Ms. N’s garnishment appeal was held on August 14, 2014. Jeff Miller represented the Division of Public Assistance (division) at the hearing. Ms. N also participated. Because Ms. N did not raise any issues about the garnishment of her PFD other than her questions about whether the division had correctly assessed the overpayment that they were seeking to collect through the garnishment, the division’s execution on her PFD is upheld. Ms. N already appealed the original assessment of the overpayment and her appeal was dismissed in a final administrative order. The garnishment hearing could not revisit issues that had already been resolved through the administrative appeals process.

II. Facts¹

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

In a letter dated May 1, 2013 the division assessed Ms. N \$488 for overpayments of Alaska Temporary Assistance Program benefits. Ms. N appealed and requested a formal hearing. She did not appear for the scheduled hearing on June 4, 2013. Ms. N was sent a notice giving her until June 14, 2013 to show good cause for failing to appear at the hearing. She did not respond to the notice and an order was issued on June 18, 2013 dismissing her request for a hearing. This order notified Ms. N that she had 30 days to appeal the dismissal in Superior Court. Ms. N did not appeal the dismissal.

On May 28, 2014, the division sent Ms. N a notice that it was garnishing her PFD to recover the \$488 that she owed as the result of the overpayment. On June 12, 2014, Ms. N filed a form requesting a formal hearing to challenge the garnishment. On July 24, 2014, Ms. N

1 These facts are based upon Exhibits 1-9, and Ms. N’s testimony.

participated in a prehearing conference at which a hearing date was set and it was explained that the issue to be resolved at the hearing would focus on whether the division could garnish her PFD and that the merits of the division's original assessment of the \$488 overpayment would not be re-litigated. At the hearing, however, Ms. N only explained her confusion about how the division had determined that there was an overpayment, and explained that she thought that the division had agreed that there was no overpayment.

III. Discussion

The division must attempt to recover overpayments of Alaska Temporary Assistance Program benefits.² The division has the authority to garnish a PFD to recover these overpayments.³ The overpayment to Ms. N and the amount of that overpayment have already been established in a final administrative order that was not appealed after Ms. N's request for a hearing was dismissed. Ms. N did not assert that she had made any payments on that debt or that the division had failed to provide the notice or follow the procedures required to execute on that debt by garnishing her PFD.⁴ AS 43.23.068(c) 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 in the dismissal order issued on June 18, 2013.

IV. Conclusion

The division's action garnishing \$488 from Ms. N's PFD to recover overpayments from the Alaska Temporary Assistance Program benefits is upheld.

DATED this 15th day of August, 2014.

Signed

Mark Handley

Administrative Law Judge

2 7 AAC 45.570.

3 AS 43.23.068.

4 The notice and procedural requirements are set out in AS 43.23.068(a)-(c).

Adoption

The undersigned, by delegation from 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 12th day of September, 2014.

By: Signed
Name: Mark T. Handley
Title: Administrative Law Judge

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