

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

In the Matter of:)
)
 K N) OAH No. 15-0811-PFE
) Agency No.
_____)

DECISION

This case involves the garnishment by the Alaska Department of Health and Social Services, Division of Public Assistance (Division) of K N’ permanent fund dividend (PFD) to recover overpaid public assistance benefits. The hearing for Ms. N’ appeal of the agency’s action was scheduled for July 29, 2015. On that day, Jeff Miller appeared telephonically and represented the Division. Ms. N did not appear or accept a telephone call for the hearing. The administrative law judge took the Division’s documentary evidence into the record as permitted by AS 44.62.530.

The Division has shown that it is entitled to execute on Ms. N’ PFD, and its action is upheld.

I. Facts

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

On November 7, 1986, Ms. N signed a confession of judgment¹ and a promissory note² in which she agreed to repay the State of Alaska \$39,028 in overpaid public assistance benefits. Ms. N agreed that she had received \$17,000 in overpaid Food Stamp benefits³ and \$22,028 in overpaid Aid to Families with Dependent Children (AFDC) benefits.⁴ At that time, Ms. N also voluntarily agreed to waive her right to an administrative disqualification hearing to challenge the debt. In signing the waiver agreement, she affirmed that she knew she would incur a disqualification penalty.⁵ On the same day, Ms. N signed an Amnesty Agreement, in which she confirmed her understanding that, if she failed to repay the amount due under her promissory note, she was not entitled to challenge that debt in civil court proceedings. In the Amnesty

¹ Ex. 2, Ex. 4.

² Ex. 5.

³ The Food Stamp program was renamed the Supplemental Nutrition Assistance Program (SNAP) in 2008. It is still commonly referenced as Food Stamps.

⁴ AFDC was replaced in 1996 by the Temporary Assistance for Needy Families (TANF) program.

⁵ Ex. 3.

Agreement, she further agreed to apply for a PFD for all calendar years for which she is eligible, and to assign her right to a PFD to the State of Alaska, in partial repayment of her debt.⁶

On June 10, 2015, the Division sent Ms. N a notice that it would garnish her PFD because she had defaulted on her repayment of overpaid public assistance benefits. The notice informed Ms. N that she currently owed \$18,716.85 in overpaid benefits, and the Department would garnish her PFD up to that amount. It also informed her of her right to a hearing to contest the garnishment.⁷ On June 18, 2015, Ms. N filed a written request for a hearing, but she did not indicate the basis for her appeal.⁸

II. Discussion

State agencies are required to seek recovery of overpaid public assistance benefits, including Food Stamps and ATAP (formerly AFDC) benefits.⁹ Alaska Statute 47.05.080(b) specifically authorizes the Department of Health and Social Services to garnish a PFD to satisfy the balance due in cases of default on public assistance overpayment claims. Before executing on a PFD, the Division must show that it notified the individual involved that future PFDs will be garnished, and it informed the individual of his or her right to request a hearing within 30 days of the notice. It also must show either that the claim of overpaid public assistance benefits has not been contested, or if contested, it has been resolved in favor of the Department of Health and Social Services, and no appeal is pending or available due to the passage of time.¹⁰

The Division's garnishment notice to the individual must include the following information: (1) the amount of the overpayment claim; (2) a statement that PFD amounts up to the amount of the overpayment claim will be paid to the Department of Health and Social Services; and (3) notice that the individual has a right to request a hearing and has 30 days to file an objection to the dividend claim if a mistake has been made.¹¹ If a hearing is requested, it is governed by the Administrative Procedure Act, AS 44.62.330 – 44.62.630, which places the

⁶ Ex. 6-6.1.

⁷ Ex. 7-7.3.

⁸ Ex. 8.

⁹ 7 AAC 45.570 (ATAP/AFDC); 7 C.F.R. § 273.18(a) (Food Stamps regulation adopted by reference in 7 AAC 46.010); *see also* AS 47.05.080(a).

¹⁰ AS 43.23.068(a)(3).

¹¹ AS 43.23.068(b).

burden on the Division to show by a preponderance of the evidence that it is entitled to the proposed garnishment.¹²

The documents in the record indicate that the Division has taken the necessary procedural steps to garnish Ms. N's PFD. Ms. N's 1986 agreements establish the fact and the original amount of the overpayment of her Food Stamps and AFDC benefits. Those agreements preclude her from challenging the existence of her debt, and no appeals are possible. In addition, Ms. N specifically agreed to sign over her permanent fund dividends annually as part of her repayment plan. The Division submitted evidence that its notice to Ms. N included all of the required information, including its calculation that the current balance of her debt is \$18,716.85.

The Division has met its burden. Ms. N has not presented any evidence to show a mistake has been made.

III. Conclusion

The Division sent Ms. N a notice that it would garnish her PFD because of her default in repaying an established debt arising from overpayment of public assistance benefits. It has proved by a preponderance of the evidence that it is entitled to execute on her PFD. As a result, the Division's garnishment action is affirmed.

DATED this 2nd day of September, 2015.

By: Signed
Kathryn A. Swiderski
Administrative Law Judge

¹² AS 43.23.068(c). Because the Division, as petitioner, has filed an accusation in the form of its Notice of Garnishment, the Division bears the burden under AS 44.62.460(e)(1).

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 13th day of October, 2015.

Signed _____

Deborah Erickson

Department of Health and Social Services

Reconsideration Notice

To request reconsideration of this decision, you must file a petition for reconsideration with the Department of Health and Social Services within 15 days after delivery or mailing of this decision. The Department must order reconsideration within 30 days after the delivery or mailing of this decision, or its authority to do so expires. If the Department does not act on a petition for reconsideration within the 30 days, the petition is considered denied.

If reconsideration is requested, the Department of Health and Social Services may reconsider the case on all the pertinent parts of the record and any additional evidence and argument that is permitted. It also may assign the reconsideration to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in [Alaska Statute 44.62.500](#). If oral evidence is introduced before the agency, an agency member may not vote unless that member has heard the evidence.

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