

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

In the Matter of:)
)
 U P) OAH No. 16-0836-PFE
) Agency No. 05347909
_____)

DECISION

U P received food stamp benefits. The Division of Public Assistance determined that Ms. P had received more food stamp benefits than she was entitled to receive. Ms. P has not repaid the full amount of overpaid benefits. The division notified Ms. P that it would be garnishing her permanent fund dividend to satisfy a portion of the overpayment claim. Ms. P appealed.

The division properly established the overpayment claim and gave adequate notice of the garnishment. Ms. P took issue with the original overpayment finding, which has already been established. The division's decision to garnish Ms. P's permanent fund dividend is upheld.

I. Facts

U P received food stamps from September 2008 through December 2009.¹ The division notified Ms. P in September 2009 that her resources exceeded the limit for participation in the food stamp program.² Ms. P requested a fair hearing and continued to receive benefits.³ On October 2, 2009, she submitted a food stamp application to the division.⁴ That application was denied, Ms. P appealed, and the division's decision to deny the application was upheld.⁵ On December 16, 2009, she submitted a food stamp recertification application to the division.⁶ That application was denied because the division found that Ms. P's resources were over the program limit, and the denial was upheld on appeal.⁷

In July 2010, the division notified Ms. P that her food stamp benefits had been overpaid by \$21,446 for the period September 2008 through September 2009, and by \$5,517 for the period

¹ Exhibit 2, 2.2.

² OHA Case No. 09-FH-556 at 2 (Department of Health and Social Services Office of Hearings and Appeals 2010), available at <http://aws.state.ak.us/officeofadminhearings/Documents/HSS/09-FH-556.pdf>.

³ Exhibit 2.

⁴ OHA Case No. 09-FH-556 at 2.

⁵ *Id* at 2, 5.

⁶ OHA Case No. 10-FH-39 at 2 (Department of Health and Social Services Office of Hearings and Appeals 2010), available at <http://aws.state.ak.us/officeofadminhearings/Documents/HSS/10-FH-39.pdf>.

⁶ Exhibit 2.

⁷ OHA Case No. 10-FH-39 at 3, 7.

October 2009 through December 2009.⁸ The division notified Ms. P that it would seek repayment, and that if the repayment became delinquent, that it could garnish her permanent fund dividend.⁹ Ms. P contested the repayment obligation, but failed to appear for a hearing.¹⁰

In July 2016, the division notified Ms. P that it would be garnishing her permanent fund dividend because she was delinquent in repaying the overpayment.¹¹ Ms. P appealed.

A telephonic hearing was held on August 22, 2016. Ms. P represented herself. Public Assistance Analyst Sally Dial represented the division. At the conclusion of the hearing, Ms. P requested additional time to review and respond to the division's position statement. The record was held open until August 29, 2016, but nothing further was received from Ms. P.

II. Discussion

When the division has paid a recipient more food stamp benefits than the recipient is entitled to, the division is required under federal law to recover the overpayment.¹² The division may garnish a permanent fund dividend to satisfy an overpayment claim.¹³

To garnish a permanent fund dividend, the division must follow certain procedural safeguards.¹⁴ First, the division must notify the recipient that future permanent fund dividends may be taken to satisfy the overpayment claim. Second, the recipient must be given notice of the right to request a hearing on the overpayment claim. The division's July 13, 2010 letters to Ms. P provided her with these required notices.¹⁵ Third, if the recipient contested the overpayment claim, the division must verify that "the issue has been resolved in favor of the Department ... [and] no appeal is pending, the time limit for filing an appeal has expired, or the appeal has been resolved in favor of the Department."¹⁶ The division's July 1, 2016 notice of garnishment provides this verification.¹⁷ Ms. Dial's testimony clarified that although Ms. P had contested the

⁸ Exhibit 2.2 - 2.3; Exhibit 2.

⁹ *Id.*

¹⁰ Ms. Dial testified that Ms. P had requested a fair hearing on October 17, 2011, that the hearing was convened November 22, 2011, the hearing was rescheduled for January 11, 2012, and that Ms. P failed to appear. A review of Office of Hearings and Appeals records substantiates Ms. Dial's testimony. *See* OHA Case No. 11-FH-394.

¹¹ Exhibit 3.

¹² 7 CFR 273.18.

¹³ AS 47.05.080(b).

¹⁴ AS 43.23.068(a).

¹⁵ Exhibit 2 - 2.3.

¹⁶ AS 43.23.068(a)(3).

¹⁷ Exhibit 3.

overpayment claim, she failed to appear for a hearing and the matter was dismissed. Thus, the matter was resolved in favor of the division.

In addition, the division must notify the recipient of the amount of the overpayment being claimed, that the amount of the permanent fund dividend that does not exceed the amount of the overpayment will be paid to the Department of Health and Social Services, and that the recipient has the right to request a hearing on the garnishment of the dividend “if a mistake has been made.”¹⁸ The division’s letter to Ms. P dated July 1, 2016 satisfied these requirements.¹⁹

All that is at issue in this appeal is whether the division made a mistake in seeking to garnish Ms. P’s permanent fund dividend. At the hearing, Ms. P argued that the division must have made a mistake given her low income, discussed living in Delta Junction and in Wasilla and addressed why she had moved, stated that she had reported everything correctly to the division, questioned whether the division had correctly calculated the amount of her arrears, and expressed her desire to get her money back. Ms. P’s arguments, however, go to whether the division correctly determined that she was not eligible for food stamps during the period September 2008 through December 2009, and whether it correctly calculated the amount of benefits that she was required to repay. However, Ms. P had the opportunity to appeal those decisions when the division notified her of them in 2009 and 2010. The time for appeal of those decisions is long past. They are not subject to challenge in the context of this proceeding.

The division established the amount of the overpayment obligation and the susceptibility of Ms. P’s permanent fund dividends to garnishment in its notices dated July 13, 2010. It fulfilled its remaining obligations to Ms. P under AS 43.23.068 with its letter dated July 1, 2016. Ms. P was notified of the overpayment and had the opportunity to appeal. The division’s obligation to recover the amount of the overpayment is clear. The division satisfied the requirements for garnishing Ms. P’s permanent fund dividend, and Ms. P did not show that the division made a mistake when it issued the notice of garnishment.

III. Conclusion

The division’s decision to garnish Ms. P’s permanent fund dividend because she failed to

¹⁸ AS 43.23.068(b).

¹⁹ Exhibit 3 – 3.1.

repay an established debt arising from overpayment of food stamp benefits is upheld.

DATED: September 14, 2016.

Signed

Kathryn L. Kurtz
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of October, 2016.

By: Signed

Signature
Douglas Jones

Name
Medicaid Program Integrity Manager
Title

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