

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

In the Matter of	)	
	)	
G G	)	OAH No. 16-0937-PFE
_____	)	Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance notified G G that it would garnish her Permanent Fund Dividend (PFD) in order to pay what it claimed was her outstanding debt for overpaid child-care assistance. Ms. G appealed the garnishment notice.

At the hearing, Ms. G explained that she had questioned whether the Division was correct about the overpayment amount. However, since garnishment hearings normally cannot consider the underlying merits of whether the debt is owed, this issue was not fully explored during the hearing. On reviewing the written record after the hearing, however, the administrative law judge has discovered that there was a fatal procedural flaw in the Division’s effort to collect this purported debt. Therefore, the garnishment must be overturned.

**II. Background**

Between June of 2012 and March of 2013, Ms. G received Child Care Assistance benefits that apparently were calculated without including her husband (who lived in another country) in the household.<sup>1</sup> When this error was discovered, the Division concluded that the husband’s income would have lowered the assistance for which the household was eligible during that period by \$10,210. On September 6, 2013, the Division sent Ms. G a notice telling her she had been overpaid by this amount.<sup>2</sup> The notice gave her two options: (1) “establish payment arrangements within 30 days” or (2) request an administrative review.<sup>3</sup> It told her that if she did not choose the first option, the Division would pursue PFD and/or wage garnishment.<sup>4</sup>

Ms. G had a telephone conversation with the Division a week later, in which she raised an issue about whether her husband had been employed during the period at issue, and the Division apparently asked her for more information.<sup>5</sup> There the matter rested for nearly three years.

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<sup>1</sup> Statement of Hearing Representative Sally Dial.  
<sup>2</sup> Agency Record, pp. 1 and 1.2.  
<sup>3</sup> *Id.*  
<sup>4</sup> *Id.*, p. 1.  
<sup>5</sup> Hearing testimony.

On July 11, 2016, the Division sent Ms. G a “Notice of Garnishment of Permanent Fund Dividend for Defaulted Overpayment,” referencing the alleged debt of \$10,210.<sup>6</sup> This appeal followed.

### III. Discussion

When a person defaults on public assistance overpayments owed to the Department of Health and Social Services, the Department may garnish the person’s PFD in order to satisfy the debt.<sup>7</sup> In order to execute the garnishment, the Division of Public Assistance must be able to certify that it has followed a prescribed set of rules, including giving a right of appeal to the original claim and giving notice that future dividends will be taken to satisfy the debt.<sup>8</sup> It also has to be able to certify that either the overpayment claim is not contested, or, if contested, that the issue was resolved (through the administrative or judicial dispute resolution process) by upholding the overpayment claim.<sup>9</sup>

A hearing on a garnishment appeal will generally address only whether the Division has complied with the rules for proper execution of a garnishment. Therefore, this hearing is not about whether the Division’s original decision in 2013 was proper.

In this case, the evidence shows that there was, in fact, a deficiency in the Division’s compliance with the rules. When the Division determines that a person has received an overpayment, it has to give the person *both* the opportunity for an administrative review under 7 AAC 41.435 and the opportunity to request a formal appeal hearing under 7 AAC 49.<sup>10</sup> The notice of the overpayment is specifically required to advise the family of both of these rights, including the right to a hearing.<sup>11</sup> And, as a prerequisite to PFD garnishment, the Division has to be able to certify that “the individual was notified of the right to request a hearing and allowed 30 days from the date of the notice . . . to request the Department . . . to hold a hearing on the overpayment claim.”<sup>12</sup>

The notice of overpayment to Ms. G is found at pages 1 and 1.2 of the record. It offers the recipient (1) 30 days to sign a repayment agreement,<sup>13</sup> or (2) 15 days to request an administrative

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<sup>6</sup> Agency Record, pp. 2-2.1.

<sup>7</sup> AS 43.23.068.

<sup>8</sup> AS 43.23.068(a)(3)(B).

<sup>9</sup> AS 43.23.068(a)(3)(C).

<sup>10</sup> 7 AAC 41.435 makes it clear that the administrative review hearing does not supersede or substitute for the right to a Fair Hearing under 7 AAC 49.

<sup>11</sup> 7 AAC 41.420(b)(4).

<sup>12</sup> AS 43.23.068(a)(3)(B).

<sup>13</sup> This offer is found in the second paragraph of page 1.

review.<sup>14</sup> Nowhere, however, is there a statement that the recipient has 30 days to request a *hearing*.

This omission has two consequences. First, it means that the Division has not fulfilled one of the prerequisites for PFD garnishment; therefore, the garnishment may not proceed. Second, it means that Ms. G, as of this date, can apparently still appeal the September 6, 2013 overpayment decision. The time limit to appeal that decision will not begin to run until the Division does send a valid notice of appeal rights, along with notice of the time limit to exercise those rights.<sup>15</sup>

#### **IV. Conclusion**

The Division's Notice of Garnishment of Permanent Fund Dividend for Defaulted Overpayment, dated July 11, 2016, is quashed. The Division may not garnish Ms. G's PFD based on her alleged overpayment of childcare assistance between June 2012 and March 2013. If the 2016 dividend was garnished pursuant to the July 11, 2016 notice, it must be returned and paid to Ms. G.

DATED this 25<sup>th</sup> day of November, 2016.

By: Signed  
Andrew M. Lebo  
Administrative Law Judge

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<sup>14</sup> This offer and its time limit are conveyed on page 1.2.

<sup>15</sup> See, e.g., *In re K.E.*, OAH No. 14-0079-MDE (Comm'r of Health & Soc. Serv. 2014), p. 3 (published at [http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE140079.pdf?\\_ga=1.259678474.1007090623.1398363649](http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE140079.pdf?_ga=1.259678474.1007090623.1398363649)) (relating to another DPA notice without appeal rights); *In re R.L.M.*, OAH No. 07-0701-CSS (Comm'r of Revenue 2007), p. 4 (published at [http://aws.state.ak.us/officeofadminhearings/Documents/CSS/CSS070701.pdf?\\_ga=1.24381882.1007090623.1398363649](http://aws.state.ak.us/officeofadminhearings/Documents/CSS/CSS070701.pdf?_ga=1.24381882.1007090623.1398363649)) (relating to a child support order without appeal rights); *Pruitt v. City of Seward*, 152 P.3d 1130, 1136 (Alaska 2007).

## Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt 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 22<sup>nd</sup> day of December, 2016.

By: *Signed* \_\_\_\_\_  
Name: Douglas Jones  
Title: Medicaid Program Integrity Manager

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