

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

In the Matter of:)
)
 Q L) OAH No. 13-0199-SNA
) DPA Case No.
 _____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) has the right to attempt to collect certain Alaska Temporary Assistance Program ("ATAP") benefits, and certain Food Stamp¹ benefits, which were overpaid to Ms. L during December 2012 and January 2013 due to a mistake made by the Division. The parties agree that, through no fault of her own, Ms. L was paid \$904.00 more in ATAP benefits, and \$189.00 more in Food Stamp benefits, than she should have been paid during the period of December 2012 through January 2013.

This decision concludes that, pursuant to the applicable state and federal regulations, the Division is required to seek reimbursement from Ms. L for the overpaid ATAP and Food Stamp benefits. Accordingly, the Division's decision establishing claims against Ms. L for \$904.00 in overpaid ATAP benefits, and \$189.00 in overpaid Food Stamp benefits, is affirmed. However, now that these overpayments have been established, Ms. L has the right to request that the Division write-down or write-off the amounts owed based on inability to pay and / or financial hardship. If Ms. L makes such a request, and if she is not satisfied with the Division's response, she has the right to request a separate hearing on the write-down / write-off issue.

II. Facts

A. *Facts Relevant to the Overpayment and Repayment Issues*

The facts of this case are not in dispute. Prior to October 2012 Ms. L had a four-person household consisting of herself, her grandson M, and her granddaughters D and A.² Ms. L's household has received ATAP benefits since September 2009 and Food Stamp benefits since August 2010.³

¹ Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, the program is still commonly known as the Food Stamp program. Accordingly, this decision will refer to the program as the Food Stamp program.

² Exs. 1, 2.0.

³ Ex. 1.

On October 22, 2012 Ms. L submitted a household Change Report Form to the Division.⁴ Ms. L reported that her granddaughters D and A had moved out of her household on October 15, 2012.⁵ On October 25, 2012 the Division processed Ms. L's Change Report Form, but only deleted A from Ms. L's household.⁶ Accordingly, the Division proceeded to issue ATAP and Food Stamp benefits to Ms. L as if she had a three-person household instead of a two-person household.⁷

On January 10, 2013 the Division discovered that it had mistakenly failed to delete D from Ms. L's household when it received Ms. L's Change Report Form back in October 2012.⁸ As a result, the Division determined that it had issued \$904.00 more in ATAP benefits to Ms. L's household during December 2012 and January 2013 than the household should have received.⁹ Likewise, the Division determined that it had issued \$189.00 more in Food Stamp benefits to Ms. L's household during December 2012 than the household should have received.¹⁰

At the hearing Ms. L did not dispute the Division's calculation of the amount of overpaid ATAP and Food Stamp benefits.¹¹ Rather, she emphasized that she had timely reported her granddaughters' departure from her household; that she had not tried to hide anything; and that she had been unaware that her household had been receiving more than its share of benefits during the period at issue.¹² Most importantly, she asserted that requiring her to repay the benefits at issue would impose a serious financial hardship on her, especially given the significant health problems which she stated she is currently experiencing.¹³ In response, the Division asserted that state and federal regulations require that the Division seek to recover the overpaid benefits, regardless of which party is at fault.¹⁴

B. Relevant Procedural History

On January 31, 2013 the Division mailed a notice to Ms. L stating that, during the period of December 2012 through January 2013, she had been paid \$904.00 more in ATAP benefits than she should have received, and that the Division was requiring repayment of that amount.¹⁵ On February 13, 2013 the Division mailed a second notice to Ms. L stating that, during December 2012, she had

⁴ Exs. 2.0, 2.1.

⁵ Exs. 2.0, 2.1.

⁶ Ex. 2.2.

⁷ Ex. 2.2.

⁸ Ex. 2.3.

⁹ Ex. 2.32.

¹⁰ Ex. 2.14.

¹¹ Q L hearing testimony.

¹² Q L hearing testimony. Ms. L's testimony was not disputed by the Division.

¹³ Q L hearing testimony.

¹⁴ Terri Gagne hearing testimony.

¹⁵ Exs. 2.25 – 2.31.

been paid \$189.00 more in Food Stamp benefits than she should have received, and that the Division was requiring repayment of that amount.¹⁶ The notices acknowledged that the overpayments were due to errors by the Division and were not the fault of Ms. L.¹⁷

On February 19, 2013 Ms. L requested a hearing on the overpayment collection issue. Ms. L's hearing was held on March 8, 2013. Ms. L participated in the hearing by phone, represented herself, and testified on her own behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by phone, represented the Division, and testified on its behalf. The record closed at the conclusion of the hearing.

III. Discussion

The issue in this case is whether the Division has the right to attempt to collect the Alaska Temporary Assistance Program benefits and Food Stamp benefits which were overpaid to Ms. L during December 2012 and January 2013. While the ATAP and Food Stamp programs' rules regarding the recovery of overpaid benefits are similar, they are not identical. Accordingly, the Division's right to seek repayment must be analyzed separately under each of the two programs.

A. The Division's Alaska Temporary Assistance Program Repayment Claim

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal TANF program.¹⁸ See A.S. 47.05.010(1); A.S. 47.27.005 – A.S.47.27.990.¹⁹ ATAP is designed to help financially eligible families with minor children.²⁰

The regulation pertaining to the recoupment of overpaid ATAP benefits is 7 AAC § 45.570. Under 7 AAC § 45.570(a), the Division is *required to pursue collection* from a current or former recipient of ATAP benefits who received an overpayment, *regardless of the amount or cause of the overpayment*, unless collection would not be cost-effective.²¹ In this case it is not disputed that an

¹⁶ Exs. 2.14 – 2.24.

¹⁷ Exs. 2.14, 2.25.

¹⁸ On August 22, 1996 the United States Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This legislation, popularly known as the Welfare Reform Act, is codified at 42 U.S.C. § 601 et. seq. The legislation repealed the Aid to Families with Dependent Children (AFDC) program (the federal program which had long provided cash assistance to poor families) and replaced it with the Temporary Aid to Needy Families (TANF) program. Under TANF, each state receives a predetermined block of funding to distribute as the state sees fit. *Walton v. Hammons*, 192 F.3d 590, 591; (6th Cir. 1999); 42 U.S.C.A. § 601 et seq. TANF significantly increased the states' discretion to design their federally supported welfare plans.

¹⁹ The Alaska Temporary Assistance Program's governing regulations are found in the Alaska Administrative Code at 7 AAC § 45.149 – 7 AAC § 45.990.

²⁰ A.S. 47.27.010.

²¹ In cases where (as here) the overpayment was caused by the Division, collection must be pursued only if the overpayment exceeds \$100.00.

overpayment of ATAP benefits occurred. Accordingly, the Division is required to seek to recover the ATAP overpayments at issue from Ms. L; the Division has no discretion in the matter.

However, under 7 AAC § 45.570(i), if the department determines that a former recipient of ATAP benefits will suffer extreme hardship if required to repay an overpayment of ATAP benefits, the department may temporarily suspend the repayment obligation, or may allow the former recipient to repay less than the amount otherwise required. Now that Ms. L's repayment obligation has been confirmed through the hearing process, Ms. L may request that the Division suspend or write-down her repayment obligation, based on financial hardship, pursuant to 7 AAC § 45.570(i). If Ms. L makes such a request, and if she is not satisfied with the Division's response, she then has the right to request a separate hearing on the payment suspension / write-down issue.

B. The Division's Food Stamp Program Repayment Claim

The Food Stamp program is a federal program administered by the states. The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 U.S.C.A. § 2022. Subsection (b)(1) of that statute provides in relevant part that the “state agency *shall* collect any overissuance of benefits issued to a household” [Emphasis added]. This statute requires, on its face, that the Division attempt to recover overpaid Food Stamp benefits.

The federal implementing regulation pertaining to the recoupment of Food Stamp benefits is 7 C.F.R. § 273.18. Subsection (a)(2) of that regulation provides in relevant part that “the State agency *must* establish and collect any claim” (emphasis added). Subsection (e)(1) of that regulation provides in relevant part that “state agencies *must* begin collection action *on all claims*” (emphasis added). Finally, pursuant to subsection (b)(3), collection action is required even where (as here) the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, it is clear that the applicable federal statute and regulation require that the Division attempt to recover overpaid Food Stamp benefits, *even when the overpayment is the result of the Division's own error*. This was recently confirmed by the Alaska Supreme Court in the case of *Allen v. State of Alaska Department of Health & Social Services*, 203 P.3d 1155 (Alaska 2009). The federal regulations, and the *Allen* decision, are binding on the Department of Health and Social Services. Accordingly, the Division is required to seek to recover the Food Stamp overpayments at issue from Ms. L.

However, now that Ms. L's Food Stamp repayment obligation has been confirmed through the hearing process, Ms. L has the right to request that the Division compromise (write-off or

forgive) all or part of the overpaid Food Stamp benefits pursuant to 7 C.F.R. § 273.18(e)(7).²² If Ms. L makes such a request, and if she is not satisfied with the Division's response, she then has the right to request a separate hearing on the write-down / write-off issue.

IV. Conclusion

It is clear as a factual matter that the overpayments at issue were not Ms. L's fault; this was acknowledged by the Division. However, the applicable state and federal regulations make clear that the state agencies administering the ATAP and Food Stamp programs must establish and seek collection of all claims for overpaid benefits. This is the case even where (as here) the overpayments were caused by the Division's error. Accordingly, the Division's decision to seek recovery from Ms. L of the \$904.00 in overpaid ATAP benefits and the \$189.00 in overpaid Food Stamp benefits, which the Division mistakenly paid to Ms. L's household during the period of December 2012 through January 2013, is affirmed.

Dated this 13th day of March 2013.

Signed

Jay Durych

Administrative Law Judge

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 27th day of March, 2013.

By: *Signed*

Name: Jay D. Durych

Title: Administrative Law Judge

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

²² 7 C.F.R. § 273.18(e)(6-7) contemplates that the amount of overpayment, if disputed by the recipient, will be determined at hearing, and only then will the issue of compromise be ripe for consideration by the agency. *See Waters-Haskins v. New Mexico Human Services Department, Income Support Division*, 210 P.3d 817, 822 (N.M. 2009) (7 C.F.R. § 273.18 "requires that a state agency first establish a valid claim in the full amount of the overpayment, either by the notification letter or by a fair hearing, before the agency can decide whether to compromise the claim").