

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

In the Matter of:)
)
C G) OAH No. 13-1194-CMB
) 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 Food Stamp benefits which were accidentally overpaid to C G's household. Ms. G did not dispute that overpayments were received, or the Division's calculation of the amount of the overpayments. Rather, Ms. G asserted only that any overpayments resulted from miscommunications with, or a mistake by, the DPA eligibility technician with whom she was working. This decision concludes that, regardless of which party caused the overpayments to occur, the Division is required by the applicable state and federal regulations to seek repayment from Ms. G for the overpaid ATAP and Food Stamp benefits. Accordingly, the Division's decision establishing a claim against Ms. G for \$2,476.00 in overpaid ATAP benefits and \$628.00 in overpaid Food Stamp benefits is affirmed.

II. Facts

Ms. G's household consists of herself, her boyfriend K X, and her five month old daughter.¹ Her household began receiving Food Stamp benefits in February 2013 and ATAP benefits in April 2013.²

Mr. X was not originally included as a member of Ms. G's household for purposes of ATAP and Food Stamp benefits. Ms. G called the Division and asked that Mr. X be added to her household on June 11, 2013.³ Based on the addition of Mr. X, the Division issued supplemental ATAP and Food Stamp benefits to the household for June 2013.⁴

On July 24, 2013 Ms. G submitted a recertification (renewal) application for her public assistance benefits.⁵ Ms. G disclosed in this application that Mr. X was receiving \$1,350.00 per month in worker's compensation insurance payments due to a work-related hand / wrist

¹ Ex. 1.
² Ex. 1.
³ Ex. 2.2.
⁴ Exs. 2.3, 2.4.
⁵ Exs. 2.6 - 2.6g.

injury.⁶ On August 5, 2013 the Division received additional information indicating that Mr. X had received \$720.00 in May, \$1,350.00 in June, and \$1,395.00 in July 2013.⁷ This was income that the Division had not been aware of when it set the household's ATAP and Food Stamp benefit levels.⁸

On August 19, 2013 the Division notified Ms. G that it had determined her household had received \$2,481.00 more in ATAP benefits than her household was entitled to during the period June 2013 through August 2013.⁹ The notice stated that the overpayments could be repaid by deducting \$92.00 per month from the household's monthly ATAP payments, beginning in October 2013 and continuing until the overpayments were recovered.¹⁰

On August 23, 2013 the Division notified Ms. G that it had determined her household had also received \$640.00 more in Food Stamp benefits than her household was entitled to during the period June 2013 through July 2013.¹¹ The notice stated that federal Food Stamp regulations required it to seek recovery of the overpayment.¹² The notice also stated that the overpayments could be repaid by reducing her household's Food Stamp benefits by 10% or \$10.00 per month, whichever was greater.¹³ Finally, the notice advised Ms. G that she had the right to request that the Division compromise (write-down or write-off) the overpayment based on hardship.¹⁴

Ms. G subsequently requested a hearing on the Division's ATAP and Food Stamp repayment claims.¹⁵ In her hearing request, Ms. G wrote that she had disclosed the worker's compensation insurance payments to DPA employee Donald Ireland in May 2013, and that he had told her that he did not think those payments constituted countable income for purposes of the Alaska Temporary Assistance and Food Stamp programs.¹⁶

The hearing was held on September 17, 2013. Ms. G participated in the hearing by phone, represented her household, and testified on its behalf. Terri Gagne, a Public Assistance

⁶ Ex. 6; C G hearing testimony. Because these payments are associated with Mr. X's work on a fishing vessel, the payments may technically be "maintenance and cure" payments as opposed to worker's compensation payments (see Ex. 2.8a). It was not disputed, however, that regardless of how the payments are characterized, they constitute countable income for purposes of the Temporary Assistance and Food Stamp programs.

⁷ Ex. 2.8.

⁸ Terri Gagne hearing testimony; Exs. 2.9, 2.10.

⁹ Exs. 2.9 - 2.9j.

¹⁰ Ex. 2.9.

¹¹ Exs. 2.10 - 2.10j.

¹² Ex. 2.10.

¹³ Ex. 2.10.

¹⁴ Ex. 2.10.

¹⁵ Exs. 2.11, 2.11a.

¹⁶ Exs. 2.11, 2.11a.

Analyst employed by the Division, participated in the hearing by telephone and represented and testified for the Division.

At the hearing, Ms. G reiterated what she had stated in her hearing request: that she had disclosed the worker's compensation insurance payments to DPA employee Don Ireland in May 2013, and that he had told her on more than one occasion that he did not think those payments constituted countable income for purposes of the Alaska Temporary Assistance and Food Stamp programs.¹⁷ The Division reported that it had recalculated the amount of the overpayments based on the household's actual income (as opposed to its estimated income), that the recalculation had resulted in lower overpayment figures, and that it would be sending out revised overpayment notices within the next few days. At the end of the hearing the record was left open through October 7, 2013 to allow an opportunity for Ms. G to file a written response to the Division's amended notices if she wished to do so.

On September 18, 2013 the Division notified Ms. G that it had recalculated her Food Stamp program overpayments and that the overpayment amount had decreased from \$640.00 to \$628.00.¹⁸ A separate notice, also dated September 18, 2013, notified Ms. G that it had recalculated her ATAP overpayments and that the overpayment amount had decreased from \$2,481.00 to \$2,476.00.¹⁹ Ms. G did not file a response to the amended notices, and the record closed on October 7, 2013.

III. Discussion

At hearing, Ms. G did not dispute that her household had received more ATAP and Food Stamp benefits than it was entitled to during the period May 2013 through August 2013. Rather, she questioned whether the law requires the repayment of overpaid benefits when (as here) the recipient reported additional income, but the Division failed to include that income in calculating the benefit amount. This is a purely legal issue requiring a review of the relevant ATAP and Food Stamp program regulations.

A. *Alaska Temporary Assistance Program: Overview and Relevant Regulations*

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal Temporary Aid to Needy Families (TANF) program.²⁰ It provides

¹⁷ Ms. G's testimony on this point was credible and is accepted as true for purposes of this decision.

¹⁸ Exs. 50.0 - 50.10.

¹⁹ Exs. 51.0 - 51.7.

²⁰ See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990. The Alaska Temporary Assistance Program's regulations are set forth at 7 AAC 45.149 – 7 AAC 45.990.

cash assistance and work services to low income families with minor children. The program's goal is to help these families with their basic needs while they work toward becoming self-sufficient.²¹

Eligibility for the Alaska Temporary Assistance Program, and the amount of benefits paid thereunder, are based on the countable income of all the household members.²² According, the less countable income is reported, the greater will be the amount of benefits, and vice-versa.

The ATAP regulation governing the collection of overpayments is 7 AAC 45.570. That regulation states in relevant part as follows:

(a) Except as provided in (k) of this section [which does not apply here], the department will pursue collection from a current recipient of ATAP benefits . . . who received an overpayment, *regardless of the amount or cause of the overpayment*, unless the overpayment was caused by the department, in which case the department will pursue collection only if the overpayment exceeds \$100 . . . [emphasis added].

. . . .

(e) A current recipient of ATAP benefits must, within 30 days after the date printed on the overpayment notice, repay the total amount of the overpayment to the department, or the department will reduce that assistance unit's future ATAP payments by withholding 10 percent of the maximum amount payable to an assistance unit of the same size with no countable income for the number of months necessary to recover the overpayment . . .

(f) The department may suspend recoupment withholding under (e) of this section for up to three months upon receipt of evidence that the loss of assistance would result in extreme economic hardship to the assistance unit.

B. Food Stamp Program: Overview and Relevant Regulations

The Food Stamp program is a federal program administered by the states.²³ Food Stamp benefit amounts are based primarily on the number of people living in the household, and on the monthly income (after applicable deductions) received by those household members.²⁴

In general, the greater a household's income, the smaller the amount of Food Stamp benefits the household will receive each month, and vice-versa.²⁵ Further, because the amount of a household's deductions affects its countable income, the lesser the amount of a household's deductions, the greater its countable income will be, and the lower its benefit amount will be.²⁶

²¹ See Alaska Temporary Assistance Program description on the Division's website, accessed on July 30, 2013 at <http://dhss.alaska.gov/dpa/Pages/atap/default.aspx>.

²² 7 AAC 45.195.

²³ 7 CFR 271.4(a).

²⁴ 7 CFR 273.10(e)(2)(ii)(A).

²⁵ See Alaska Food Stamp Manual, Addendum 4.

²⁶ *Id.*

The federal statute pertaining to the recoupment of overpaid Food Stamp benefits is 7 USC 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 SNAP benefits.

The federal regulation pertaining to the recovery of overpaid Food Stamp benefits is 7 CFR 273.18. Subsection (a)(2) of that regulation provides in relevant part that “the State agency *must* establish and collect any claim” Subsection (e)(1) of that regulation also provides in relevant part that “state agencies *must* begin collection action *on all claims* unless [inapplicable].” Finally, pursuant to subsection (b)(3), collection action is required even where the “overpayment [is] caused by an action or failure to take action by the State agency.” Thus, it is clear that federal regulation 7 CFR 273.18 requires 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 affirmed 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 and on the Office of Administrative Hearings.

C. *Do the Regulations Require Repayment on the Facts of this Case?*

1. *The ATAP Overpayments*

Ms. G's household received \$2,476.00 more in ATAP benefits than it was entitled to during the period June 2013 through August 2013. Regulation 7 AAC 45.570(a) requires the Division to seek collection of an ATAP overpayment, *even when caused by the Division*, when the amount of the overpayment exceeds \$100.00. In this case, the amount of the overpayment exceeds \$100.00. The Division's regulation thus requires that the Division seek repayment in this case, even though the overpayment clearly resulted from the agency's own error. The regulation gives the Division no discretion to waive or ignore the repayment requirement, and administrative agencies like the Division are bound by their regulations, just as the public is bound by them.²⁷ Accordingly, in this case the Division is required by law to seek recovery of the \$2,476.00 in ATAP benefits overpaid to Ms. G's household. However, under 7 AAC 45.570(f), the Division may suspend collection of overpaid ATAP benefits for up to three months "upon receipt of evidence that the loss of assistance would result in extreme economic hardship to the assistance unit." Ms. G's hearing testimony indicates that a reduction in her ATAP benefits could result in such hardship. Accordingly, although the Division must seek collection of the overpaid benefits, Ms. G may, if desired, request

²⁷ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

that the Division not begin reducing her ATAP benefits for three months following the issuance of this decision.

2. The Food Stamp Overpayments

Ms. G did not dispute that she received \$628.00 more in Food Stamp benefits than she was entitled to during the period June 2013 through August 2013. Rather, she argued that she had done nothing wrong and that the Division's own error had caused the overpayment. However, as indicated in Section III(B), above, the federal regulations are clear that the Food Stamp agency "must establish and collect any claim" for overpaid Food Stamp benefits issued.²⁸ This is the case even where (as here) the overpayment is caused by the Division's error.²⁹ Accordingly, as a matter of law, Ms. G (an adult member of the household³⁰) is required to reimburse the Division for the \$628.00 in Food Stamp benefits which she was overpaid during June and July 2013.

However, now that an overpayment has been established, Ms. G has the right to request that the Division write-down or reduce the amount to be repaid based on inability to pay / financial hardship.³¹ If Ms. G makes such a request, and if she is not satisfied with the Division's decision, she will have the right to request a hearing on the write-down issue.

IV. Conclusion

The applicable ATAP and Food Stamp regulations make clear that the Division must pursue collection of overpaid ATAP and Food Stamp benefits. In cases (like this one) involving overpayments in excess of \$100.00, collection must be attempted even where (as here) the overpayments were caused by the Division's own error. The Division's decision to seek recovery of the \$2,476.00 in ATAP benefits and \$628.00 in Food Stamp benefits, which the Division mistakenly overpaid to Ms. G's household during the period from June 2013 through August 2013, is therefore affirmed.

Dated this 11th day of October, 2013.

Signed

Jay Durych
Administrative Law Judge

²⁸ 7 CFR 273.18(a)(1)(i); 7 CFR 273.18(a)(2).

²⁹ 7 CFR 273.18(b)(3); *Allen v. State, DHSS* 203 P.3d 1155, 1164 - 1166 (Alaska, 2009).

³⁰ 7 CFR 273.18(a)(4)(i).

³¹ *See* 7 CFR 273.18(e)(7).

Adoption

The undersigned, by delegation from of 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 25th day of October, 2013.

By: Signed _____

Signature

Jay D. Durych _____

Name

Administrative Law Judge _____

Title

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