

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)	
)	
G C)	OAH No. 17-1159-TRS
<hr style="width: 80%; margin-left: 0;"/>)	Agency No. 2017-017

DECISION

I. Introduction

G C retired in 2009. She began receiving retirement benefits including an Alaska cost-of-living allowance from the teachers retirement system. She moved to Wyoming in 2013 and notified the division of the change in her address. However, the division did not modify her benefit amount to remove the cost-of-living allowance until 2016. In 2016, the division noticed that it had overpaid Ms. C’s retirement benefits between December 2013 and August 2016, and informed Ms. C that she would need to repay the overpayment with interest, a total of \$5,136. Ms. C requested a hearing.

Although the overpayment of the cost-of-living allowance was apparently due to a communication failure within the division, Ms. C had reasonable grounds to know that the division had erroneously failed to stop the cost-of-living allowance payments. Thus, the division’s decision to recoup the overpayment was not barred. Furthermore, the division’s decision not to waive the repayment requirement was a proper exercise of discretion. The criteria for estopping the division from requiring repayment are not met in this case. Accordingly, the division’s decision to require repayment is affirmed.

II. Facts

G C applied for retirement benefits from the Teachers Retirement System (TRS) in April 2009. She resided in City A at the time. She named her husband K P as survivor. She requested inclusion of a cost-of-living allowance in her retirement benefits.¹

Ms. C’s life changed in a number of ways after retirement. She and Mr. P divorced in May 2013. For a time, Ms. C, Mr. P, and Ms. C’s daughter H T shared a mailing address, but Mr. P had control of the post office box and did not always forward Ms. C’s mail to her.² Following her divorce, Ms. C requested that her former spouse be removed from her insurance coverage, and

¹ Record at 72 - 77.
² Testimony of C, T.

named Ms. T as primary beneficiary of her retirement system benefits.³ Ms. C called the division several times in 2013 and 2014 to follow up with the division on these requested changes.⁴

In 2013 Ms. C moved to City B, Wyoming.⁵ She called the division's member services contact center on December 5, 2013 to inform the division of the change in her address.⁶ The division changed Ms. C's address.⁷ However, the division did not remove the COLA from Ms. C's monthly retirement benefits.⁸ In 2015, Ms. C moved to Wisconsin, where she lives now.⁹ The division kept paying Ms. C COLA through August 2016, resulting in an overpayment of benefits of \$4,678. In 2016, the division noticed the error, and sought to recover the amount of the overpayment plus interest.¹⁰

Ms. C requested that the division waive the overpayment.¹¹ The division's Benefits Processing Manager denied the request.¹² Ms. C again requested relief.¹³ This time, the Benefits Processing Manager forwarded the request to the Acting Commissioner of the Department of Administration, who again rejected the waiver request.¹⁴ Ms. C then requested a hearing.¹⁵

The hearing in this matter was held on March 14 and 15, 2018. Ms. C represented herself, with assistance from Ms. T. Both Ms. C and Ms. T testified. Assistant Attorney General Rachel Witty represented the division. Benefits Processing Manager Marla Christenson and Appeals and Risk Manager Larry Davis testified for the division.

III. Discussion

Ms. C acknowledges that her retirement benefits were overpaid. However, she argues that she should not be held responsible for the division's failure to remove the COLA from her benefit after she notified the division of her change of address.

Ms. C called the division in 2013 with notice of her move to Wyoming. The division's benefit processing manager testified that the person in the member services section who took Ms. C's call should have forwarded the information to the COLA section, but that the information was

³ Record at 57; Record at 66.

⁴ Testimony of C.

⁵ Testimony of C.

⁶ Record at 12; 68.

⁷ Record at 49 - 53.

⁸ Record at 49 - 50; Testimony of Christenson.

⁹ Record at 54 - 55.

¹⁰ Record at 47.

¹¹ Record at 46.

¹² Record at 40 - 44.

¹³ Record at 15.

¹⁴ Record at 8 - 13.

¹⁵ Record at 3.

not forwarded.¹⁶ Thus, the division admitted that it erred in not removing the COLA portion of Ms. C's retirement benefit when it received notice that she had moved out of state. However, that admission does not resolve this appeal.

At issue is whether the division was barred from adjusting Ms. C's account to reflect the overpayment, whether denial of Ms. C's request for waiver of the overpayment was erroneous, and whether the division should be estopped from recouping the amount of the overpayment. Each of these issues will be addressed below.

A. *Was adjustment of Ms. C's retirement account barred by statute?*

When a change or error is made in the TRS plan records, and a plan member's retirement benefits are overpaid as a result, the TRS is generally required to adjust future payments so that the "the actuarial equivalent of the pension or benefit to which the teacher or member or beneficiary was correctly entitled will be paid."¹⁷

The administrator is prohibited from making an adjustment that requires the recovery of benefits if the incorrect benefit was first paid two years or more before the beneficiary was notified of the error, the error was not the result of erroneous information supplied by the member or beneficiary, and the member or beneficiary "did not have reasonable grounds to believe that the amount of the benefit was in error."¹⁸ In this case, the incorrect benefit was paid for 31 months before the division notified Ms. C of the error -- more than the requisite two years.¹⁹ At the hearing, the division did not argue that Ms. C supplied erroneous information. Thus, the only point in dispute relating to the administrator's authority to adjust Ms. C's account is whether Ms. C had reasonable grounds to believe that the amount of her monthly benefit was in error after she moved out of Alaska.

When she applied for COLA benefits, Ms. C acknowledged that she had to be domiciled and physically present in Alaska in order to receive those benefits.²⁰ Ms. C testified that she understood this requirement, but relied on the division to adjust her benefit when she provided notice of her new address.²¹

The division provides beneficiaries with monthly direct deposit confirmations. The confirmations for Ms. C's account specifically identified a monthly COLA payment in

¹⁶ Testimony of Christenson.

¹⁷ AS 14.25.173(a).

¹⁸ AS 14.25.173(b).

¹⁹ Record at 47.

²⁰ Record at 73.

²¹ Testimony of C.

addition to her base benefit.²² However, after Ms. C moved out of state, she did not routinely review her direct deposit confirmations.

Ms. C testified that she remembered getting letters from the division when she lived in Alaska stating what her COLA benefits would be, but that she never got one of those letters after she moved out of state. In 2012, the division stopped mailing direct deposit confirmations to beneficiaries and instead made the confirmations available to members online. The division notified members of the change and provided instructions for accessing the confirmations online in its June 2012 TRS newsletter.²³

Ms. C testified that she had difficulty getting mail from Mr. P when she was sharing a post office box with him, suggesting that she may not have received the June 2012 newsletter explaining the shift from paper to online direct deposit confirmations. Also, Ms. C had no internet access and no printer when she first moved to Wyoming. So, Ms. C was not receiving all of her mail before she left Alaska, and her internet access was limited for a period of time after she left Alaska. However, once she and Ms. T found a place to rent, they did have internet access again.²⁴ Also, Ms. C testified that after she moved, she saw that her benefits were being automatically deposited into her checking account. If she could see that the deposits were being made, she could presumably also verify the amount of the deposits on her bank statements.

Ms. C argues that she did not know of the division's failure to remove the COLA from her monthly benefit because she trusted the division to calculate her benefit correctly, and because she relied on the paper direct deposit confirmations the division stopped routinely sending in 2012. She argues that she provided the change of address to the division, the division erred in not discontinuing her COLA, and that she therefore should not now be held responsible for repaying the overpayment.

Despite its intuitive appeal, Ms. C's argument is not consistent with the law. When an error in calculating a benefit is made, AS 14.25.173 clearly requires the division to adjust future payments so that the actuarial equivalent of the benefit the beneficiary was actually entitled to will be paid.²⁵ This applies even if the division made the error, as in this case. The division is barred from making an adjustment only if all three criteria in AS

²² Record at 49 - 50.

²³ Division Exhibit 2.

²⁴ Testimony of C.

²⁵ AS 14.25.173(a).

14.25.173(b) are met, including that the beneficiary “did not have reasonable grounds to believe that the amount of the benefit was in error.”²⁶

A previous decision described the issue as whether the beneficiary “should have known” the benefit amount was in error.²⁷ Ms. C seeks to place the full responsibility for ensuring that her benefits were correctly calculated on the division; however, the “reasonable grounds” language of the statute suggests that beneficiaries also have a role in identifying benefit errors.²⁸

Ms. C may have simply failed to notice the division’s failure to remove the COLA from her benefit after she moved to Wyoming. However, Ms. C understood that she was not entitled to COLA after she moved away from Alaska. She had access to the information that her benefit amount did not drop as it should have after her move to Wyoming, through her own bank records as well as the division’s direct deposit confirmations available to her online. Although the division’s error caused the overpayment, because she was receiving the monthly payments Ms. C was in a position to recognize the problem and bring it to the division’s attention. She did not. She had reasonable grounds to believe that the amount of her benefit was in error when it did not decrease after her move to Wyoming. Therefore, the division is not barred under AS 14.25.175(b) from adjusting Ms. C’s benefits.

B. Was the decision not to waive the adjustment to Ms. C’s retirement account erroneous or an abuse of discretion?

The administrator has discretion to waive an adjustment if, in the opinion of the commissioner of administration, four criteria are met:

- (1) the adjustment or portion of the adjustment will cause undue hardship to the member or beneficiary;
- (2) the adjustment was not the result of erroneous information supplied by the member or beneficiary;
- (3) before the adjustment was made, the member or beneficiary received confirmation from the administrator that the member’s or beneficiary’s records were correct; and
- (4) the member or beneficiary had no reasonable grounds to believe the records were incorrect before the adjustment was made.²⁹

²⁶ AS 14.25.173(b).

²⁷ *In re M.W.*, OAH No. 16-1236-TRS at 5 (Office of Administrative Hearings 2017).

²⁸ *See In re K.H.*, OAH No. 07-0306-PER at 9, n. 49 (Office of Administrative Hearings 2009) (“A member contributes to the error if the member ... should have known the amount of benefits being paid was in error and yet continued to collect excess benefits instead of calling the error to the division’s attention.”)

²⁹ AS 14.25.175(a).

These criteria incorporate a “reasonable grounds” standard very similar to that in the test to that used for determining whether the division is barred from making an adjustment to a retiree’s account. As discussed above, Ms. C’s argument that she had no reasonable grounds to believe that the division’s records were incorrect is not persuasive, given her access to information about the actual amount of benefits being paid and the lack of change in her benefit after she moved to Wyoming.

Furthermore, the waiver test requires a finding that failure to grant the waiver will result in hardship to the retiree. In evaluating Ms. C’s request for a waiver of adjustment, the division’s Benefit Processing Manager reviewed financial information provided by Ms. C, and compared her income to the federal poverty guidelines to determine whether adjustment of her account would cause undue hardship.³⁰ Ms. C’s tax return for 2015 showed \$11,452 in wage income, in addition to her TRS and Social Security benefits, for total income of \$37,419.³¹ According to the division, the federal poverty guidelines for 2017 set the poverty level for a one-person household at \$12,060. Based on this, the Benefit Processing Manager concluded that the adjustment would not cause undue hardship.³² The division used a reasonable method to determine that the hardship criteria was not met in this case.

Finally, the decision whether to waive an adjustment is at the discretion of the administrator. Here, the conclusion that the criteria of the test were not all met was reasonable. The denial of Ms. C’s request for a waiver of adjustment was not an abuse of discretion.

C. Should the division be estopped from recouping the overpayment?

Although Ms. C did not expressly raise the equitable estoppel argument, the Alaska Supreme Court has held that the pleadings of self-represented litigants should be considered liberally “in an effort to determine what legal claims have been raised.”³³ Also, the division specifically addressed estoppel in its prehearing brief. For these reasons, the applicability of equitable estoppel must be considered here. However, the burden of proof by a preponderance of the evidence is on Ms. C, since she requested the hearing.³⁴

³⁰ Testimony of Christenson; Record at 19 - 38.

³¹ Ms. C testified that she works at Walmart.

³² Record at 11; Testimony of Christenson.

³³ *Briggs v. City of Palmer*, 333 P.3d 746, 747 (Alaska 2014).

³⁴ 2 AAC 64.290(e).

Previous decisions have considered the application of Alaska’s doctrine of equitable estoppel in the context of the public employees’ and teachers’ retirement systems.³⁵ To successfully assert equitable estoppel as a defense to the division’s adjustment, Ms. C would need to prove four elements:

- (1) the division, as TRS administrator, asserted a position by conduct or words;
- (2) Ms. C acted in reasonable reliance on the TRS-asserted position;
- (3) Ms. C suffered prejudice resulting from her reliance on that position;
- (4) applying estoppel serves the interest of justice, so as to limit public injury.³⁶

Arguably, the division asserted the position that Ms. C was entitled to COLA by continuing to include the COLA in her benefit payments after Ms. C moved to Wyoming. The division maintains that an affirmative statement is required. Ms. C did not offer any evidence indicating that the division told her it would adjust her COLA. However, this point does not need to be decided in this context, because other elements of the test are not met.

Ms. C argues that she relied on the division to calculate her benefits correctly. However, the equitable estoppel test requires not just reliance, but “reasonable reliance.” Ms. C testified that she understood that she was not entitled to COLA after she moved out of Alaska, and signed a statement to that effect when she applied for the COLA benefit.³⁷ The division sent newsletters to plan members explaining the COLA in 1998, 1999, 2001, and in 2009, the year Ms. C retired.³⁸ In January 2013, the division noticed that Ms. C’s COLA had been underpaid by \$150.96, and paid her that plus interest. The letter explaining the underpayment also cited the statutory requirements for receiving COLA.³⁹

Ms. C said that she did not know the division had failed to discontinue her COLA because she was not receiving paper deposit confirmations. However, she could have checked those online, or looked for change in the amount of the deposit on her bank statements.

Ms. C understood that she was no longer entitled to COLA after she moved out of Alaska. She knew she had an obligation to notify the division when she left the state, and she fulfilled that obligation. Ms. C was in a position to know that the division had not discontinued the COLA benefit. Whether she failed to notice that she was still receiving COLA after she was no longer entitled to it, or simply failed to alert the division to the problem, it was not reasonable for her to

³⁵ *In re M.W.*, OAH No. 16-1236-TRS at 6 - 7 (Office of Administrative Hearings 2017); *In re K.H.*, OAH No. 07-0306-PER at 12 - 15 (Office of Administrative Hearings 2009)

³⁶ OAH No. 07-0306-PER at 12; *Crum v. Stalaker*, 936 P.2d 1254, 1256 (Alaska 1997).

³⁷ Record at 73.

³⁸ Record at 79 - 97.

³⁹ Record at 70.

rely on continued receipt of the COLA benefits as assurance that the division had correctly calculated her benefits. Failure to notice or report the problem to DRB is understandable, but it does not entitle Ms. C to retain the COLA overpayment.

Furthermore, in this case, the fourth requirement -- that applying estoppel would serve the interest of justice and limit public injury -- is not met. Ms. Christenson testified that the TRS is a tax-qualified plan under federal law. According to the division, in order for TRS to maintain its tax-qualified status, when an overpayment is made, TRS must make the plan whole. Allowing Ms. C to retain the overpayment would be considered a plan qualification failure, unless the plan was made whole using other funds.⁴⁰ Ms. C took issue with various communication failures on the part of the division. However, Ms. C failed to explain why she should keep the benefit of the overpayment while others make the fund whole. The injury to the TRS system and other beneficiaries in the form of the reduction of available resources if the overpayment is not adjusted is real.

IV. Conclusion

The division erred in not notifying the COLA division when it received Ms. C's change of address, and not discontinuing her COLA even after Ms. C was out of state for a period of years. However, given the amount of information TRS provides to all retirees about COLA, and the information in the form of bank deposits and monthly benefit statements available to Ms. C about the specific amount of her benefit and the lack of change in that benefit following her move to Wyoming, Ms. C had reasonable grounds to know that her benefit was being overpaid and that the division's records were incorrect.

The division is not barred from adjusting Ms. C's account, and the commissioner did not err in declining to exercise the discretion to waive the adjustment. The division should not be estopped from adjusting Ms. C's account.

DATED: May 4, 2018.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

⁴⁰ Division's Prehearing Brief at 20 - 22; Testimony of Christenson.

Adoption

I adopt 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 31st day of May, 2018.

By: Signed
Signature
Kathryn L. Kurtz
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]