

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

In the Matter of	)	
	)	
C T	)	OAH No. 18-1122-CCA
_____	)	Agency No. 40029087

**DECISION**

C T received benefits from the Child Care Assistance (CCA) program, which is administered by the Alaska Department of Health and Social Services, Division of Public Assistance (Division). The Division subsequently determined that it miscalculated the amount of Ms. T’s monthly co-pay for the program, and its error resulted in an overpayment of benefits. After correcting the error, the Division informed Ms. T that she had received \$334.04 in overpaid benefits, and it sought to recoup the overpayment. Ms. T appealed.

The Division met its burden to show that Ms. T received \$334.04 more in CCA benefits than she was entitled to receive. Because the Division must seek recoupment of those benefits, even when the overpayment was the result of agency error, its decision is affirmed.

**I. Facts and Proceedings**

On February 15, 2018, Ms. T applied for CCA benefits.<sup>1</sup> A question on the first page of the application asked: “Who is considered part of my family?” Ms. T identified three family members: herself, her then-husband U T, and her young daughter, B.<sup>2</sup> Elsewhere on the same page, however, she noted that she and U were separated and in the process of getting a divorce. On the last page of the application, she again wrote that she and U had been separated for a year and were not living together.<sup>3</sup>

Ms. T participated in an interview on February 19, 2018.<sup>4</sup> She repeated that U neither lived in the home nor provided any financial assistance.<sup>5</sup> The interviewer clearly understood this, since her case notes document a family size of two.<sup>6</sup> The worker pended the application for

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<sup>1</sup> Exhibit 2.7.  
<sup>2</sup> *Id.*  
<sup>3</sup> Exhibit 2.11.  
<sup>4</sup> Exhibit 2-2.6.  
<sup>5</sup> Stidston testimony; Exhibits 2, 5.  
<sup>6</sup> Exhibits 2, 2.1.

additional information, including a document showing that Ms. T and her husband had legally separated or filed for divorce.<sup>7</sup>

On February 26, 2018, the Division's contractor, Thread, notified Ms. T that her application was approved for the period from February 15, 2018 through January 31, 2019.<sup>8</sup> However, Thread inadvertently erred by calculating benefits based on a household of three, rather than two.

Based on Ms. T's income and a household size of three, Thread advised Ms. T that her normal monthly family contribution, or co-pay, would be \$112. The co-pay for February 2018 was pro-rated, resulting in a \$12 obligation.<sup>9</sup>

On September 19, 2018, the Division became aware of the household size error, and it determined that an incorrect payment had been made.<sup>10</sup> It found that, for a household of two with Ms. T's income, the regular monthly co-pay should have been \$159.<sup>11</sup> This is \$47 per month more than Ms. T paid for the months of March 2018 through September 2018. For February 2018, the Division calculated the correct pro-rated amount at \$17.04, or \$5.04 more than Ms. T paid. In total, the Division determined that because Ms. T's monthly co-pay obligation had been miscalculated, she had received \$334.04 more in CCA program benefits than she was entitled to receive between February 2018 and September 2018.<sup>12</sup>

The Division sent Ms. T a notice of overpayment on September 19, 2018 and requested repayment of \$334.04.<sup>13</sup> Ms. T appealed.<sup>14</sup> The hearing took place by telephone on December 10, 2018. Ms. T represented herself. Public Assistance Analyst Sally Dial represented the Division. Ms. T and Ms. Dial both testified. All exhibits were admitted to the record, which closed at the end of the hearing. Ms. T argued that the error was caused by the agency, and she did nothing wrong. She also noted that, even after the Division discovered the error, her caseworker told her she would not have to pay anything back. Ms. T argued that the Division inappropriately changed its position two months later, when a different Division employee informed her that she was expected to repay all of the overpaid benefits.

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<sup>7</sup> Exhibit 2.5-2.6. Adequate verification was apparently provided, though it is not in the record.

<sup>8</sup> Exhibit 4-4.2.

<sup>9</sup> Exhibit 4.1.

<sup>10</sup> Exhibit 5.

<sup>11</sup> *Id.*; Exhibit 8.

<sup>12</sup> Exhibit 5-5.1 (\$47 x 7 months, plus \$5.04 for February).

<sup>13</sup> Exhibit 6.

<sup>14</sup> Exhibit 7.

## II. Discussion

The relevant facts in this case are not disputed. The Division agrees that the overpayment of CCA benefits was caused by an agency error. However, it argues, correctly, that it is nonetheless entitled to seek repayment.

Though it is unfortunate that the Division's contractor erred in calculating Ms. T's benefits and monthly co-pay amount, CCA program applicants are advised when they apply that they may be financially responsible to repay any benefits to which they were not entitled, even if the overpayment was due to an agency error.<sup>15</sup> The CCA application includes a statement specifically advising that, "By accepting payment of benefits or services, you must understand and agree that you may have a responsibility for the repayment of benefits or services to which you were not entitled."<sup>16</sup>

More specifically, the regulation at 7 AAC 41.420 governs the Division's handling of incorrectly paid CCA program benefits. When the Division determines that a family has received overpaid benefits of \$100 or more, it is required to notify the family and seek to develop a repayment plan.<sup>17</sup> This is true regardless of the cause of the overpayment.<sup>18</sup> The repayment plan is to be developed in consultation with the affected family. However, if the family fails to develop or comply with a repayment plan, the regulation directs the Division to pursue collection in other ways.<sup>19</sup> The regulation does not provide the Division discretion to overlook an error of the size at issue in this case. The Division does have some discretion regarding the terms of the repayment plan, particularly if it determines that the affected family will suffer "extreme hardship."<sup>20</sup>

These provisions require the Division to pursue recoupment of the overpayments in this case. The evidence in the record supports the Division's determination of the amount overpaid, and Ms. T does not challenge the calculation. She also does not assert that she will suffer extreme hardship if she must repay \$334.04. If she did, however, she could discuss that concern with the Division when consulting about the terms of a repayment plan.

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<sup>15</sup> See Exhibit 11.

<sup>16</sup> *Id.*

<sup>17</sup> 7 AAC 41.420(c), (d).

<sup>18</sup> 7 AAC 41.420(c).

<sup>19</sup> 7 AAC 41.420(g). This subsection also addresses other consequences that can result from a family's failure to develop or comply with a repayment plan.

<sup>20</sup> 7 AAC 41.420(e).

In arguing that the Division’s agent initially told her she would not have to repay any benefits, Ms. T raises the issue of equitable estoppel. However, she did not meet her burden to show that all the elements of the doctrine are satisfied. Specifically, she did not show that she reasonably relied on the first worker’s assurances, that she suffered harm as a result, and that estoppel would serve the interests of justice under these circumstances.<sup>21</sup>

**III. Conclusion**

The Division is entitled to seek repayment of \$334.04 in CCA benefits to which Ms. T was not entitled, even though the overpayment occurred because of an agency error. The Division met its burden of proof, and its decision is affirmed.

DATED: February \_\_, 2019.

By: Signed  
Signature  
Andrew M. Lebo  
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.]

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, adopts 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 26<sup>th</sup> day of February, 2019.

By: Signed  
Signature  
Andrew M. Lebo  
Name  
Administrative Law Judge  
Title

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<sup>21</sup> See *Nelson v. State, Commercial Fisheries Entry Commission*, 186 P.3d 582, 585 (Alaska 2008); *Allen v. State, Department of Health and Social Services, Division of Public Assistance*, 203 P3rd 1155, 1164 (Alaska 2009).