

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

In the Matter of )  
 )  
N T ) OAH No. 18-0984-CCA  
 ) Agency No. 40028359  
\_\_\_\_\_ )

**CORRECTED DECISION<sup>1</sup>**

**I. Introduction**

N T was approved to receive full-time Child Care Assistance (CCA) for her two children at No Name, a child care facility, beginning in June of 2018. She notified the CCA program on August 24, 2018 that she was concerned that her child care provider had been overpaid by CCA. Upon reviewing her case, the CCA program concluded that the agency should only have approved part-time authorization for both children and determined that there had been an overpayment for June and July of 2018 in the amount of \$968. By a letter dated August 31, 2018, the Division of Public Assistance (Division) requested that Ms. T repay the \$968. Ms. T requested a hearing.

The hearing was held on October 22, 2018. Ms. T appeared in person, represented herself, and testified on her own behalf. Sally Dial represented the Division, appearing telephonically. M C, owner of No Name Day Care, also appeared telephonically and testified on Ms. T's behalf. The record was left open until October 27, 2018 at the request of the Division.

After a careful review of the testimony and other evidence, the Division's determination to require repayment from Ms. T is overturned because Ms. T never received a benefit from the agency's overpayments to her childcare provider.

**II. Facts**

Alaska Family Services ("Family Services") received Ms. T's application on April 25, 2018 for CCA benefits.<sup>2</sup> At the time she renewed her application, Ms. T stated that she and her ex-husband shared custody of the children on a one-week on/one-week off basis.<sup>3</sup> Thus, the Division was fully aware of her shared custody arrangement.

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<sup>1</sup> This Corrected Decision fixes three manifest and typographical errors contained in the original decision, dated December 13, 2018. The original proposed decision contained the following errors: (1) the inadvertent omission of a footnote at the end of the first full paragraph on page 3; (2) the inclusion of the word "paying" on page 5, a typographical error; and (3) a typographical error in the last sentence of page 5, which originally had a single hyphen rather than a double hyphen. None of the changes in the Corrected Decision affects the substance or conclusions reached in the original proposed decision.

<sup>2</sup> Ex. 2. American Family Services is funded through the Division.

<sup>3</sup> Ex. 3; *see also* Ex. 3.1(February 5, 2018 custody order).

On May 1, 2018, Family Services sent Ms. T a letter, notifying her that she was eligible to receive CCA benefits during the certification period, which ran from June 1, 2018 through May 31, 2019.<sup>4</sup> The Family Services letter explained that each month, Ms. T would only need to make a payment of \$204 to No Name, who would be providing child care to Ms. T's two children – B and M.<sup>5</sup> According to the letter, B would be a “FT enroll” while M be a “PT enroll” from September to October of 2018 and in April of 2019.<sup>6</sup> The rest of the time during the certification period, M designated as a “FT enroll.”<sup>7</sup>

The CCA Authorization, dated May 1, 2018, reflected the payment arrangement. The cost of B's pre-school full-time enrollment was \$605 a month, with Ms. T paying \$204 co-pay and the CCA program paying the remaining \$401. For M, who was of school age, the CCA program would be paying the full \$605 amount for his full-time enrollment.<sup>8</sup>

On August 28, 2018, Ms. T contacted the Division, concerned that No Name, her child care provider, was being overpaid by the Division. Ms. T told the Division that her ex-husband had been paying \$700 a month for his half portion of the children's monthly child care expenses.<sup>9</sup> However, No Name was also getting paid at the *full-time rate* through the CCA program. Specifically, the provider was receiving: (1) \$605 per month for M's care from the CCA program; (2) \$401 for B's from the CCA program; and (3) a \$204 co-pay from Ms. T for B's care. In other words, No Name in June and July had received a full-time monthly child care payment for the children based on Ms. T's CCA authorization and *also* received a half-time payment for their care from the children's father.

Ms. T also spoke to No Name about this overpayment.<sup>10</sup> However, Ms. C at No Name advised her that the CCA program had sent a letter telling the provider that it was “okay to keep the extra money.”<sup>11</sup> At the hearing, Ms. T produced the letter, dated November 30, 2017, which confirmed what Ms. C had told her. In that letter, the Child Care Program Office advised child care providers that:

You may experience situations where you receive more CCAP [Child Care Assistance Program] funding than you expected and/or more than you actually charged the family for the services

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<sup>4</sup> Ex. 2.

<sup>5</sup> Ex. 2.1-2.2; *see also* Ex. 5.2.

<sup>6</sup> Ex. 2.1

<sup>7</sup> Ex. 2.1.

<sup>8</sup> Ex. 5.

<sup>9</sup> Since Ms. T and her ex-husband shared custody on a one-week on/one-week off basis, he was paying for half of the children's care each month.

<sup>10</sup> Testimony of Ms. T; *see also* Ex. 3.

<sup>11</sup> Ex. 3; *see also* Ex. 10 (a copy of this letter, contained in a November 30, 2017 e-mail, that was provided by Ms. T at the hearing.).

provided. These are not considered an overpayment of CCAP and are not to be repaid to the Program, nor are they to be paid to the family for whom you have received CCAP payment on their behalf. Families are still required by the CCAP to pay their monthly co-pay to their child care provider each month.<sup>12</sup>

Ms. T was not the only one concerned about these overpayments which No Name was receiving. At the hearing, Ms. C testified about the steps she took to address the overpayment of CCA benefits to No Name. First, she contacted “U,” who handled CCA benefits in the Wasilla.<sup>13</sup> U told her that she was paying the benefits according to the authorization. Then, in August, Ms. T came to Ms. C about the overpayment. Together they called D B, who works for the State. Ms. B said the authorization could not be changed, and that there was nothing that Ms. C needed to do.<sup>14</sup>

On August 31, 2018, the Division sent Ms. T a letter, stating that she had received “\$968 in benefits” over what she was entitled to receive from the CCA program for the months of June and July of 2018.<sup>15</sup> Division said it had erred by authorizing full-time child care assistance for both children when Ms. T only had shared custody. The Division noted that Ms. T should only have been approved for part-time child care assistance in the amount of \$363 per child per month.<sup>16</sup>

After deducting Ms. T’s \$204 monthly co-pay for B, the Division stated that it should have only paid \$159 for B each month.<sup>17</sup> Thus, the Division had overpaid \$242 a month for B’s child care, totaling \$484 for June and July of 2018. With regard to M, the State should have only paid \$363 a month, but instead paid \$605 a month in child care assistance to No Name.<sup>18</sup> This resulted in an overpayment of \$242 each month for M, totaling \$484 for June and July. Altogether, the State overpaid No Name CCA benefits for M and B in the aggregate amount of \$968 for those two months. The Division then asked Ms. T to repay that amount.<sup>19</sup>

In her request for an appeal and at the hearing, Ms. T noted that she had not been overpaid. Rather, it was the child care provider who had been overpaid.<sup>20</sup> She stated that the bill she had received

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<sup>12</sup> Ex. 10.

<sup>13</sup> Ms. C stated that she believes U is employed by Family Services.

<sup>14</sup> Testimony of Ms. C.

<sup>15</sup> Ex. 4.

<sup>16</sup> Division’s Position Statement, p. 2.

<sup>17</sup> Division’s Position Statement, p. 2. Instead, the Division had paid \$401 a month. See Ex. 5.

<sup>18</sup> Division’s Position Statement, p. 2.

<sup>19</sup> Ex. 4.

<sup>20</sup> Ex. 6; Testimony of Ms. Sosinksi.

each month from No Name only reflected the amount she needed to pay for child care – *i.e.*, the \$204 co-pay amount. Her bill did not reflect the amount that the State was paying to the provider.<sup>21</sup>

The Division has argued that it is Ms. T -- not No Name -- who must reimburse the Division for these overpayments.<sup>22</sup> According to the Division, Ms. T received the benefit of full-time child care, which she was not entitled to receive, and thus must repay the amount overpaid to her child care provider for that benefit.

### III. Discussion

In support of its position that Ms. T must repay the monies overpaid to No Name, the Division cites a regulation, 7 AAC 41.420, stating that there is an “incorrect payment of program benefits” if a *family* or provider receives a *benefit* or *payment* to which the family or provider is not entitled to receive. The regulation further provides that if there is an overpayment of program benefits to a family or provider, the department will seek repayment of that overpayment.

The issue here is whether Ms. T received a *benefit* or *payment* which she was not entitled to receive.<sup>23</sup> Ms. T testified that she paid \$204 a month as a co-pay, had no knowledge of the money that the CCA program was paying to No Name, and had never received the monies that were overpaid.<sup>24</sup> The Division did not dispute this. Instead, the Division has argued that the payment was made on behalf of Ms. T and thus was for her benefit.<sup>25</sup>

The Division’s argument fails since Ms. T never received the *benefit* of full-time CCA benefits paid by the State. This is because Ms. T’s ex-husband already was paying No Name half of the full-time child care costs for B and M. In other words, during June and July of 2018, Ms. T was solely receiving the *benefit* of two weeks of child care each month, regardless of how much the State paid No Name.<sup>26</sup> Consequently, Ms. T never received a “*benefit*” she was not entitled to receive. At all times she was only *receiving* a half month of childcare because her children’s father was paying for the other half each month.

After the hearing but before the record closed, the Division submitted an additional statement claiming that it was entitled to collect payments from Ms. T -- rather than from the provider -- because

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<sup>21</sup> Testimony of Ms. T.

<sup>22</sup> Presentation of Ms. Dial.

<sup>23</sup> It is undisputed that Palmer Lifeways received a payment of \$968 that it was not entitled to receive. However, the Division advised Palmer Lifeways that it could keep the overpayments, thus waiving its right to collect the overpayment from the provider. *See* Ex.10; *see also* Testimony of Ms. C.

<sup>24</sup> Testimony of Ms. T; *see also* Ex. 6.

<sup>25</sup> Presentation of Ms. Dial.

<sup>26</sup> Ms. T’s ex-husband was paying for the other two weeks of child care each month. *See* Ex. 3.

the overpayment resulted from an authorization error, not a billing error.<sup>27</sup> However, this argument also fails because the applicable regulation relating to the incorrect payment of program benefits -- 7 AAC 41.420 -- makes no such distinction.<sup>28</sup>

#### IV. Conclusion

Under the particular circumstances of this case, the Division's action in demanding that Ms. T repay the \$968 that the Division erroneously overpaid to No Name is overturned.

Dated: December 17, 2018

By: Signed  
Signature  
Kathleen A. Frederick  
Name  
Administrative Law Judge  
Title

### 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 21<sup>st</sup> day of January, 2019.

By: Signed  
Signature  
Jillian Gellings  
Name  
Project Analyst, DHSS  
Title

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<sup>27</sup> Additional Information from the Division (dated October 25, 2018) & Ex. 10.

<sup>28</sup> See Ex. 9.