

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

In the Matter of)
)
E C) OAH No. 18-1118-ATP
) Agency No. 05587175
_____)

DECISION

I. Introduction

E C received Alaska Temporary Assistance (ATAP) benefits through September of 2018. The Division of Public Assistance (Division or DPA) notified her that she had received \$7,234 in ATAP benefits that she was not entitled to receive, and that she was required to repay that amount. Ms. C requested a hearing, contending that the overpayment was not her fault.

Ms. C's hearing was held on November 19, 2018. She attended in person, represented herself, and testified on her own behalf. Public Assistance Analyst Michelle Cranford represented the Division.

Because Ms. C did receive an overpayment, the Division's decision requiring repayment is affirmed. For purposes of the requirement to repay, the reason for the overpayment is immaterial.

II. Facts

Ms. C was receiving Food Stamps and ATAP benefits in December 2017. She applied for Medicaid benefits on December 5, 2017.¹ On that application, she requested that her son, N, be added to her case and listed her income from Employer A.² The Division used her application as a report of change to Ms. C's ongoing ATAP and Food Stamp cases.³ The Division calculated the amount of ATAP Ms. C's household should receive by using her average income from Employer A during the month of January 2018, which was \$337.87.⁴ The Division authorized a new ATAP payment in the amount of \$911 beginning in January of 2018.⁵

Ms. C began working for Employer B on December 1, 2017.⁶ She had until December 11, 2017 -- ten days after she began working at Employer B -- to report her new job to the Division.⁷ Ms. C admitted that she did not report her new job and its additional income to the Division. Instead, she

¹ Exs. 2-2.11.

² Exs. 2, 2.5

³ DPA's Position Statement, p. 2. Ms. C's household increased in size when her son came to live with her; previously the household had only included Ms. C and her daughter, P. See Ex. 2-2.1; Testimony of Ms. C.

⁴ DPA's Position Statement, p.2; Ex. 3.

⁵ Ex. 4.2.

⁶ Exs. 7, 11, 12.1-12.2.

⁷ Exs, 4.2, 12-12.2, 24, 28.

promptly reported her new job to her caseworker at NineStar, which is a work service agency that provides work development services for Division clients. She also sent her caseworker at NineStar copies of her paystubs from Employer B two times a month.⁸ She testified that she “naively” assumed that NineStar would take care of reporting her new job and her additional income to the Division.⁹ However, NineStar did not do so.¹⁰

On March 13, 2018, Ms. C dropped off a Food Stamps and ATAP recertification application at the Division, listing both the Employer B and Employer A jobs.¹¹ Although she disclosed both jobs, the Division continued to pay the same ATAP amount each month to Ms. C.¹² It was not until the Division began processing her recertification application months later, on August 28, 2018, that the Division realized Ms. C had been receiving additional income from Employer B since December of 2017.¹³ The Division requested proof of all income Ms. C had received from Employer B and obtained this information on September 5, 2018.¹⁴ The Division reviewed the paystubs provided, determined that Ms. C had exceeded the ATAP program’s income limit for a household of three beginning in February 2018, and concluded that she was not entitled to ATAP benefits.¹⁵

Ms. C began receiving ATAP benefits she was not entitled to receive beginning in February of 2018.¹⁶ Altogether, Ms. C was overpaid ATAP benefits for eight months -- from February 2018 through September 2018 – due to her gross wages being over the income limit for receiving ATAP.¹⁷ DPA determined that the February through April overpayments were caused by client error, due to Ms. C’s failure to report her employment at Employer B to the Division until March 13, 2018.¹⁸ The remaining overpayments were due to “agency error,” resulting from DPA’s failure to take timely action on the recertification.¹⁹

⁸ Testimony of Ms. C.

⁹ Testimony of Ms. C.

¹⁰ Ex. 7.

¹¹ Exs. 5-5.10.

¹² *Compare* Ex. 4.2 with Exs. 12-12.2.

¹³ Ms. C testified that when she went into the DPA office in August 2018, she was told that DPA “won’t touch it [an application] if you just drop it off.” Ms. C said that although she had waited four to six hours at the DPA office to present her application in person in the past, she had simply dropped off her recertification application in March of 2018 because she was unable to take time off from her new job. *See* Testimony of Ms. C.

¹⁴ Exs. 8.1, 9.

¹⁵ Exs. 9-12.2, 17.6.

¹⁶ Ex. 12-12.1.

¹⁷ A household of three, like Ms. C’s household, that has over \$3,006 in gross income a month is not eligible for ATAP benefits. *See* Exs. 9, 13, 17.6, 23.4, 26.

¹⁸ Ex. 12.1-12.2, 12.7, 14.1

¹⁹ Ex. 12.7.

On September 11, 2018, the Division notified Ms. C that she had received an overpayment of ATAP benefits in the aggregate amount of \$7,234 from February 2018 through September 2018 and that it was seeking repayment.²⁰ Ms. C filed her Fair Hearing Request on October 11, 2018.²¹

At the hearing, Ms. C testified about how she had been homeless when she started in the program but now was able to earn a modest living for herself and her two children. She also expressed her concerns regarding the serious impact it would have on her life if she had to repay the \$7,234 in benefits she was overpaid.²²

III. Discussion

Ms. C does not dispute that she was over the income threshold for ATAP benefits after she began working for Employer B. However, she contends that the overpayments were not her fault. She points out that she promptly reported her new job to her case manager at NineStar and forwarded her paystubs to NineStar every two weeks.²³ She also argues that had the Division promptly processed her March 2018 recertification application, the Division would have discovered she was over income for ATAP benefit many months earlier.²⁴

However, in ATAP recoupment actions, it is immaterial whose fault caused the overpayment. The Department's administration of the ATAP program is governed by the Department's regulations. Regulation 7 AAC 45.570(a) provides, in pertinent part, that:

Except as provided in (k) of this section, the department will pursue collection from . . . a former 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 \$100.²⁵

Thus, the Division must pursue the collection of ATAP benefit overpayments, regardless of *why* the overpayment occurred if the overpayment -- as here -- exceeds \$100. Even if the overpayment had resulted solely from an error of the Division, the Division would still be

²⁰ Ex. 14.1-14.8.

²¹ Ex. 15.1.

²² Testimony of Ms. C.

²³ *See* Testimony of Ms. C; Ex. 15.1. Ms. C, however, admitted that she did not report her new job to the Division, assuming instead that NineStar would report this information to the Division. *See* Testimony of Ms. C. As Ms. Cranford noted in her presentation, NineStar is not a DPA agency and thus was not *required* to report this information to DPA.

²⁴ Testimony of Ms. C; Ex. 15.1.

²⁵ Ex. 40 (emphasis added). The exception in section (k) does not apply here.

required to recoup this overpayment from Ms. C.²⁶ The regulation provides no relief, even in hardship situations, to ATAP recipients who have received an overpayment.

IV. Conclusion

The Division's decision to seek recovery of the \$7,234 in ATAP benefits which were overpaid to Ms. C from February through September 2018 is AFFIRMED.

Dated: December 31, 2018

By: Signed
Signature
Kathleen A. Frederick
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

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 16th day of January, 2019.

By: Signed
Signature
Cheryl Mandala
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.]

²⁶ See OAH No. 16-0610(stating that the regulation requires the Division to pursue collection even if the recipient is not at fault and the overpayment was caused by the Division's error. As Ms. Cranford noted in her presentation, both parties her made errors that resulted in this significant overpayment. Ms. C was required to notify the Division by December 11, 2017 that she had begun a new job with Gray Chiropractic but failed to do so. According to Ms. Cranford, NineStar also had "dropped the ball" and "should have" reported Ms. C's new employment, even though it was not *required* to report this information to DPA. In addition, Ms. Cranford acknowledged that it was the Division's failure to timely process Ms. C's recertification which resulted in such a large recoupment amount. See Presentation of Ms. Cranford.