

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of	)	
	)	
K C	)	OAH No. 18-1210-ATP
_____	)	Agency No. 05907038

**DECISION**

**I. Introduction**

K C was a recipient of Alaska Temporary Assistance Program (ATAP) benefits.<sup>1</sup> She hoped to close her ATAP case in October 2018 because she anticipated receiving child support payments in November that exceeded her ATAP benefits. By the time she submitted a written request for closure, however, the Division of Public Assistance (Division) had already issued her November benefits. It therefore retained the child support payment for that month and closed her case effective November 30, 2018. Ms. C appealed, arguing that the Division erred by failing to close her case in October.

Ms. C showed that the Division failed to timely process a change report form she submitted on October 12, 2018. However, she did not meet her burden to show it erred by closing her ATAP case in November. On October 12<sup>th</sup>, she reported that she “should be receiving” a child support payment of \$2,184 in November. She did not request closure of her ATAP case. Absent a clear, written request, the Division’s rules required it to process the information she reported within ten days, determine its impact on her benefits, and then provide a ten-day notice of any adverse action, including case closure. The Division’s deadlines for completing this process extended into November. Therefore, even if the Division had timely acted on the report Ms. C submitted, it was not required to close her case in October. On October 31, 2018, the Division received Ms. C’s written request for case closure, but by that date November benefits had already issued.

The Division’s decision to close her case in November is affirmed.

**II. Facts**

The following facts were established by a preponderance of the evidence.

Ms. C lives in a three-person household that includes herself and her two children. She applied for and began receiving ATAP benefits in March 2017.<sup>2</sup> Ms. C understood that, by receiving Temporary Assistance, she was assigning to the state any child support payments

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<sup>1</sup> The program is provided under the federal Temporary Assistance to Needy Families (TANF) block grant.  
<sup>2</sup> Exhibits 1.1, 2.1.

received for months in which ATAP benefits were paid.<sup>3</sup> She also understood the ATAP program requirements for reporting changes, and she was careful to ensure she abided by those rules.

On August 31, 2018, a Division representative interviewed Ms. C about her ATAP recertification application.<sup>4</sup> At that time, the superior court was still finalizing a child support order in Ms. C's divorce case. Ms. C explained that she could begin receiving child support in October. She stated she would know more in October and agreed to notify the Division of any changes.<sup>5</sup> The agency did not include any child support in calculating Ms. C's ATAP benefits.

After the child support order was issued, the Child Support Services Division (CSSD) took steps to enforce it by garnishing the paying parent's wages. In early October 2018, Ms. C learned that she could begin receiving child support payments shortly. On October 12, 2018, she filed a Change Report form, notifying the Division that she "should be receiving child support" of \$2,184 on November 3<sup>rd</sup>.<sup>6</sup> At that time, she was not confident she would actually receive the payment in November. She reported it both to ensure she was complying with the Division's rules and because she knew she could not receive Temporary Assistance and child support in the same month.<sup>7</sup> She also knew the child support amount exceeded her Temporary Assistance benefit, and she preferred to receive child support rather than ATAP.

When she reported the potential child support payment, Ms. C assumed her ATAP case would be closed in October. However, she did not include a request to close the case on the form. The Division's internal policies and procedures require it to process reported changes within ten days.<sup>8</sup> It did not timely review Ms. C's Change Report. Because she did not hear anything back from the Division, Ms. C assumed that all was well.

On or around October 23<sup>rd</sup>, Ms. C received information that made her more confident a child support payment was likely to be issued for November. On October 26<sup>th</sup>, she participated in a telephonic appointment with her case manager. According to that person's case note, she indicated that she wanted to close her ATAP case but not her Food Stamps case.<sup>9</sup> However, the

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<sup>3</sup> Barboza testimony; Exhibits 1.1, 1.9. 8.3.

<sup>4</sup> Exhibit 1.2.

<sup>5</sup> Exhibit 1.2, 1.5.

<sup>6</sup> Exhibit 8.1.

<sup>7</sup> Barboza testimony.

<sup>8</sup> Temporary Assistance Manual, § 790-3 (Exhibit 11).

<sup>9</sup> Exhibit 8.4.

discussion abruptly ended when Ms. C hung up on the worker and did not respond to his attempts to reconnect.<sup>10</sup> The case manager sent the Division an email summarizing this conversation.<sup>11</sup>

On October 31, 2018, Ms. C came to a Division office in person. She reported that she would receive child support of \$2,184 in November, so she wanted to be sure her ATAP case closed in October. The worker informed her that the Division had not acted on any changes and the case remained open.<sup>12</sup> During the October 31<sup>st</sup> visit, Ms. C submitted a written request to close it.<sup>13</sup>

By October 28<sup>th</sup>, the Division had already authorized and electronically issued benefits for the month of November.<sup>14</sup> Once a benefit is authorized, the Division cannot stop the payment.<sup>15</sup> In Ms. C's case, the Division's October 28<sup>th</sup> process authorized and issued ATAP benefits of \$295 for November, as well as a \$50 pass-through payment of child support.<sup>16</sup> On November 2, 2018, Ms. C used her ATAP electronic debit card, spending \$200 for food, gas, and other household necessities.<sup>17</sup>

Based on Ms. C's October 31<sup>st</sup> case closure request, the Division notified her on November 7, 2018, that it would close the case at the end of November and her benefits would end.<sup>18</sup> Ms. C requested a fair hearing, arguing that her case should have been closed in October.<sup>19</sup> The telephonic hearing took place on January 18, 2019. It was audio-recorded. Ms. C represented herself and testified. Fair Hearing Representative Jeff Miller represented the Division. K W, an electronic benefits transaction specialist for the Division, testified on behalf of the Division. The record remained open until January 25, 2019 for written submissions. All exhibits were admitted.

### **III. Discussion**

If the Division had closed the ATAP case in October, Ms. C would have received \$2,184 in child support in November. Because the case was not closed, she received \$295 in November

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<sup>10</sup> *Id.*

<sup>11</sup> *See* Exhibit 8.

<sup>12</sup> Exhibits 3-3.1, 3.5.

<sup>13</sup> Exhibit 3.5.

<sup>14</sup> Jerry Voss testimony; Exhibits 3.2, 3.3 ("batch benefit add" dated 10/28/18).

<sup>15</sup> Voss testimony.

<sup>16</sup> Exhibits 3.3, 4, 4.1. Ms. Barboza's ATAP benefits were significantly higher in prior months. The Division began applying a penalty in October 2018 because Ms. Barboza had not complied with all her case plan requirements. Exhibit 2-2.1.

<sup>17</sup> Exhibit 3.3; Barboza testimony.

<sup>18</sup> Exhibit 6.

<sup>19</sup> Exhibit 7.

ATAP benefits and a \$50 child support pass-through payment, and the Division retained the child support payment.<sup>20</sup>

When a person applies for or receives Temporary Assistance benefits, he or she assigns to the State all rights to child support payments for months in which ATAP benefits were paid.<sup>21</sup>

Alaska Statute 47.27.040 provides in relevant part:

- (a) An Alaska temporary assistance program applicant is considered to have assigned to the state . . . all rights to accrued and continuing child support, from all sources, that is due for the support of any individuals in the family from whom support is sought. The assignment takes effect upon a determination that the applicant’s family is eligible for cash assistance. . . . [T]he assignment terminates when the family ceases to receive cash assistance under the Alaska temporary assistance program.

The Division’s regulations also require applicants for ATAP benefits to assign to the state “the right to receive and retain child support payments made by an absent parent, or any other individual, on behalf of all children from whom the applicant is seeking ATAP benefits.”<sup>22</sup> The assignment is accomplished automatically when the application for ATAP benefits is completed, and it becomes effective upon a determination that the applicant is eligible for benefits.<sup>23</sup>

Ms. C does not dispute these provisions. She asserts that she diligently kept the Division informed of income changes, as she was required to do. When she informed it on October 12<sup>th</sup> of her expected child support payment, she argues it should have recognized that she was trying to close her case, and it should have provided guidance on the words she needed to use to do so. She also asserts it should have timely followed up on the change form and asked her to clarify her intentions. Given the large difference between her ATAP benefit and the child support payment, she believes her intentions should have been apparent.

It is unfortunate that Ms. C did not ask for guidance when she submitted the change report on October 12<sup>th</sup> and/or that a Division worker did not process the form in a timely way, identify the discrepancy, and then promptly contact Ms. C for more information. However, Ms. C has not shown that the Division had a legal obligation to process the form immediately, to follow up immediately with questions (or recommendations), or, given the sequence of events in October, to close her case before November 1<sup>st</sup>.

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<sup>20</sup> Exhibit 3.3. The Division did not retain a \$3,000 payment of spousal support to Ms. Barboza.

<sup>21</sup> 7 AAC 45.210(6); 7 AAC 45.240.

<sup>22</sup> 7 AAC 45.240(a).

<sup>23</sup> 7 AAC 45.240(b).

When the Division receives a report of change, it is required by its procedures manual to process the report within ten days.<sup>24</sup> It can process the change sooner, but there is no error until ten days have passed. When a caseworker processes the report, the worker is to determine how the reported change affects the family’s eligibility as well as its future benefit amount.<sup>25</sup> If the change is uncertain or the Division needs additional information to make its determination, it can pend the case and request verification. This delays its benefit determination.<sup>26</sup> Once it has adequate information and has determined that a change will result in case closure or decreased benefits, the agency is required to provide the household with ten days’ notice of adverse action before that decision becomes effective.<sup>27</sup> Changes that result in decreased benefits or case closure are effective the first day of the month after the adverse action period ends.<sup>28</sup>

In limited situations, the Division can close a case without providing the ten-day notice of adverse action.<sup>29</sup> It can provide what is known as “adequate notice” when “a recipient indicates *in writing* that [he or she] no longer desires assistance, or gives information that requests termination . . . and also indicates *in writing* that the recipient understands the consequences of reporting this information.”<sup>30</sup> Even then, the request must be processed and is not automatically effective as of the date of submission.

In this case, Ms. C’s October 12<sup>th</sup> report did not inform the Division that she wanted to close her case. The Division therefore had to process it under its normal rules, which required a review and initial action within ten days, or by October 22<sup>nd</sup>. That review could have resulted in a decision to pend the case for verification from CSSD about the child support payment, since Ms. C had no history of receiving support and her change report stated only that she “should” receive child support in November. This would have delayed the Division’s action. Alternately, the Division would have determined that Ms. C’s impending child support payment placed her household over the income eligibility limit for ATAP benefits.<sup>31</sup> The Division then would have had to provide Ms. C with ten days’ notice of adverse action, informing her that she was no longer eligible for benefits. This notice had to be mailed by October 23, 2019. Consequently, the ten-day adverse action period would not have closed until early November. Thus, based on the

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<sup>24</sup> Alaska Temporary Assistance Manual § 790-3 (Exhibit 11).

<sup>25</sup> 7 AAC 45.277; Alaska Temporary Assistance Manual § 790-3 (Exhibit 11-11.2).

<sup>26</sup> See Alaska Temporary Assistance Manual § 790-5.

<sup>27</sup> 7 AAC 49.060; Alaska Temporary Assistance Manual § 790-3.

<sup>28</sup> *Id.* at § 790-4B.

<sup>29</sup> 7 AAC 49.060.

<sup>30</sup> 7 AAC 49.060(2) (emphasis added). See also Alaska Temporary Assistance Manual § 791-3(4).

<sup>31</sup> See Exhibit 15-15.1.

information provided in the change report, the Division's rules did not require it to process and close the case by October 31<sup>st</sup>.

The Division did not receive a written closure request from Ms. C until October 31<sup>st</sup>. This was too late to close the case that month, as November benefits had already issued and could not be reversed. Ms. C's use of the funds on November 2<sup>nd</sup> also precluded reversal.

Ms. C had discussed closing her ATAP case on October 26<sup>th</sup>, but she did not submit a written closure request at that time. Even if she had, by that date the Division would not have been able to provide adequate notice and effectuate the change before benefits were electronically issued on October 28<sup>th</sup>.

Even if the Division had satisfied all its internal processing and decision deadlines, it was not required to close Ms. C's ATAP case before November. It is highly unfortunate Ms. C did not know she needed to submit a clear, written request to close the case - and in time for the Division to act on it, provide the necessary notice, and close the case the same month. However, the Division should not be held responsible for the timing of her written request or for failing to close her case in October 2018.

#### IV. Conclusion

The Division's decision to close Ms. C's ATAP case in November 2018 is affirmed.  
DATED: January 31, 2017.

By: Signed  
Signature  
Kathryn A. Swiderski  
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 14<sup>th</sup> day of February, 2019.

By: Signed  
Signature  
Kathryn A. Swiderski  
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.]