

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

In the Matter of	)	
	)	
K X	)	OAH No. 17-0841-GRE
_____	)	Agency No.

**DECISION**

**I. Introduction**

K X is a 26-year-old man who receives assistance from the General Relief Assisted Living Home (GRALH) program. As a condition of participation in the program, Mr. X signed agreements to pay any available income over a monthly \$100 spending allowance to his assisted living home and to reimburse the Division of Senior and Disabilities Services (the Division) for its GRALH payments if he received any retroactive benefit payments or if other sources of payment became available to him. Mr. X was subsequently approved for monthly Supplemental Security Income (SSI) benefits, including retroactive benefits to January 2014 to be paid in 3 installments totaling \$26,276. The Division sought reimbursement for its GRALH payments from Mr. X’s retroactive SSI benefits. Mr. X challenges the Division’s reimbursement decision.

Because requiring Mr. X to reimburse the Division does not violate 42 U.S.C. § 407, and because Mr. X must reimburse the Division for his cost of care under the GRALH regulations and the reimbursement agreements he signed, the Division’s April 9, 2018 reimbursement notice is **AFFIRMED**.

**II. Factual and Procedural Background**

*A. The General Relief Assisted Living Home Program*

The General Relief program is a state-funded program that provides assistance based on “the resources and needs of the person and the conditions existing in each case” to individuals who meet eligibility requirements adopted by the Department of Health and Social Services.<sup>1</sup> Among other things, the program provides payment assistance for care in an assisted living home (GRALH) for individuals who have a disability, who do not have other payment sources, and who cannot afford to pay for themselves.<sup>2</sup>

---

<sup>1</sup> AS 47.25.120; AS 47.25.130.

<sup>2</sup> AS 47.25.195(e); AS 47.24.017(d); 7 AAC 47.300 (providing financial assistance to eligible vulnerable adults who require protective oversight of an assisted living home); 7 AAC 47.330 (identifying a severe and persistent mental illness that significantly impairs adaptive behavior and includes a significant deficit in daily living skills necessary to function without supervision or support as a basis for eligibility); 7 AAC 47.370 (requiring application for assistance from other agencies, organizations, or programs that provide financial assistance and requiring reimbursement from other payment sources or benefit payments); 7 AAC 47.380 (requiring exhaustion of other payment sources or benefits); 7 AAC 47.340 (limiting income for eligibility); 7 AAC 47.350 (limiting resources for eligibility).

In general, an individual is eligible for GRALH benefits if his or her income is less than the daily reimbursement, and he or she has less than \$2,000 in resources.<sup>3</sup> GRALH is a short-term interim assistance program, requiring review of the individual’s eligibility and needs every six months.<sup>4</sup> Under the program, a recipient may keep a monthly “personal-needs allowance,” but the rest of his or her income or other assistance must go towards the cost of the assisted living home care.<sup>5</sup> The Division then pays the rest of the cost of the assisted living home, as set by the minimum daily reimbursement rate.<sup>6</sup>

A recipient of GRALH must also apply for assistance from other agencies, organizations, or programs that provide financial assistance for which he or she may be eligible, including Social Security, SSI, Medicaid, Adult Public Assistance, and the Home and Community-Based Waiver Services program.<sup>7</sup> Additionally, the Division may require a recipient to apply for other benefits that the Division believes the recipient may be eligible for, including veteran’s benefits, disability insurance, worker’s compensation, unemployment compensation, retirement system benefits, awards, and annuities.<sup>8</sup> If a recipient receives retroactive financial assistance from other sources, he or she must inform the Division and forward to the Division

any retroactive payments received, up to the amount the department has provided for that resident under [the General Relief program], if the additional assistance received is intended to cover any portion of the same care that the assistance under [the General Relief program] covered for that resident; and

. . . an amount that reimburses the department for assistance paid under [the program] for any period that the resident’s total monthly countable income exceeded the minimum daily reimbursement rate set under 7 AAC 47.470.<sup>9</sup>

*B. Mr. X’s Participation in the GRALH*

K X is a 27-year-old man, who has been diagnosed with mental illnesses that began to surface in 2011 when he was 20 years old.<sup>10</sup> He lives at an assisted living home that specializes in serving residents with mental health issues.<sup>11</sup> Mr. X has been continuously receiving monthly GRALH assistance since June 2012.<sup>12</sup>

---

<sup>3</sup> 7 AAC 47.330(6); 7 AAC 47.340(a); 7 AAC 47.350; 7 AAC 47.470.

<sup>4</sup> 7 AAC 47.400(c).

<sup>5</sup> 7 AAC 47.450.

<sup>6</sup> 7 AAC 47.460.

<sup>7</sup> 7 AAC 47.370(a).

<sup>8</sup> 7 AAC 47.370(b).

<sup>9</sup> 7 AAC 47.370(c).

<sup>10</sup> Ex. G.

<sup>11</sup> Ex. M at 1.

<sup>12</sup> Ex. F.

As a condition of participating in the GRALH program, Mr. X signed agreements on June 14, 2012, January 19, 2013, July 17, 2015, and April 12, 2016.<sup>13</sup> Those agreements contained the following text:

I agree to stay at the Assisted Living Home with the understanding that I am responsible for payment to the facility of income available to me, minus \$100.00 a month for spending allowance.

The money that is paid by the State to cover my cost of care will be reimbursed when retroactive and other sources of payment become available to me. The amount will not be more than the amount the State has paid while in assisted living facility.

The money will be forwarded to the Division of Senior and Disabilities Services.<sup>14</sup>

Mr. X applied for SSI on December 5, 2013.<sup>15</sup> He was initially denied SSI benefits, but after several years of appeals, he was approved on March 23, 2017.<sup>16</sup> In addition to monthly payments, Mr. X was awarded \$26,276 in retroactive SSI benefits for January 2014 through March 2017, to be paid in three installments.<sup>17</sup>

On September 27, 2016, the Division notified Mr. X that he was required to forward the entire \$26,276 to the Division to reimburse the Division for General Relief and Temporary Assistance benefits the Division paid for Mr. X's cost of care for the previous year (May 1, 2016 through May 31, 2017).<sup>18</sup> On June 14, 2017, the Division sent another notice to Mr. X.<sup>19</sup> This time, the Division notified Mr. X that he was required to forward \$24,276 from his retroactive SSI payments to the Division to cover "an overpayment" resulting from Mr. X's SSI benefits.<sup>20</sup> The Division calculated the total alleged overpayment by adding all of the GRALH payments paid on Mr. X's behalf for May 2016 through May 2017.<sup>21</sup> Mr. X appealed that notice.<sup>22</sup>

On April 9, 2018—while Mr. X's appeal was pending and before the parties submitted briefing in this appeal—as agreed by the parties, the Division issued a revised notice, notifying Mr. X that under 7 AAC 47.370, he is required to reimburse the Division \$23,586 for GRALH payments made on his behalf from January 2014 through May 2017—the period of time his retroactive SSI benefits are intended to cover.<sup>23</sup> Consistent with Mr. X's argument of improper computations,<sup>24</sup> the Division calculated the amount

---

<sup>13</sup> Ex. H; Ex. I; Ex. J; Ex. K.

<sup>14</sup> Ex. H; Ex. I; Ex. J; Ex. K.

<sup>15</sup> Ex. E at 14.

<sup>16</sup> Ex. E at 14.

<sup>17</sup> Ex. E at 6, 16.

<sup>18</sup> Ex. L.

<sup>19</sup> Ex. D.

<sup>20</sup> Ex. D at 1.

<sup>21</sup> Ex. D at 1.

<sup>22</sup> Ex. C.

<sup>23</sup> Ex. N.

<sup>24</sup> Ex. C at 1-2.

for reimbursement by considering the cost of care paid by the Division for GRALH care, the monthly amount of Mr. X's SSI benefits, and then determining what amount of Mr. X's SSI would have gone to cover his cost of care had Mr. X received the SSI on a monthly basis at the time.<sup>25</sup> In other words, the Division added the monthly SSI benefits for the retroactive period and subtracted Mr. X's personal-needs allowance, to determine how much Mr. X would have paid towards the assisted living home care had Mr. X received the SSI at the time.

### III. Discussion

#### A. *The Division gave Mr. X adequate notice.*

Generally, the State of Alaska Department of Health and Social Services' "Fair Hearings" regulations apply to hearings "for recipients of financial, food, or medical assistance granted by the department in the . . . General Relief Assistance (GRA) [program]."<sup>26</sup> Alaska Fair Hearings regulation 7 AAC 49.060 provides in relevant part that "[t]he department will give written notice to the recipient not later than 10 days before the date the department *intends to take action denying, reducing, suspending, or terminating assistance . . .*"<sup>27</sup> Under 7 AAC 49.070 a written notice of a department action "to deny, reduce, suspend, or terminate assistance," will state "the reasons for the proposed action, including the statute, regulation, or policy upon which that action is based."<sup>28</sup> Although this case involves the General Relief Assistance program, the Division has not denied, reduced, suspended, or terminated assistance, so it is not entirely clear whether the specific notice regulations are applicable. Nevertheless, at minimum, adequate notice must notify a party of the factual and legal basis for an agency action.

The Division sent Mr. X three different notices about its demand for reimbursement. On September 27, 2016, the Division notified Mr. X that he was required to forward the entire \$26,276 to the Division to reimburse the Division for General Relief and Temporary Assistance benefits the Division paid for Mr. X's cost of care for the previous year (May 1, 2016 through May 31, 2017).<sup>29</sup> The notice did not inform Mr. X of the legal basis for the action. Nor did it notify him of his appeal rights. No action was taken by either the Division or Mr. X on that notice.

More than eight months later, on June 14, 2017, the Division sent another notice to Mr. X.<sup>30</sup> This time, the Division notified him that he was required to forward \$24,276 from his retroactive SSI payments

---

<sup>25</sup> Ex. N at 3-4.

<sup>26</sup> 7 AAC 49.010(a).

<sup>27</sup> 7 AAC 49.060 (emphasis added).

<sup>28</sup> 7 AAC 49.070.

<sup>29</sup> Ex. L.

<sup>30</sup> Ex. D.

to the Division to cover “an overpayment” resulting from Mr. X’s SSI benefits.<sup>31</sup> The Division calculated the total alleged overpayment by adding all of the GRALH payments paid on Mr. X’s behalf for May 2016 through May 2017.<sup>32</sup> The notice did not identify any statute, regulation, or policy on which its demand was based.<sup>33</sup> The notice warned Mr. X that if he did not pay the reimbursement in full by July 14, 2017, payments to him could be withheld until payment in full was received.<sup>34</sup> The notice did not inform Mr. X of his fair hearing rights. Mr. X appealed that notice.<sup>35</sup>

By agreement, on April 9, 2018—while Mr. X’s appeal was pending and before the parties submitted briefing in this appeal—the Division issued a revised notice, notifying Mr. X that under 7 AAC 47.370, he is required to reimburse the Division \$23,586 for GRALH payments made on his behalf from January 2014 through May 2017.<sup>36</sup> Consistent with Mr. X’s argument of improper computations,<sup>37</sup> the Division calculated the amount for reimbursement by considering the cost of care paid by the Division for GRALH care, the monthly amount of Mr. X’s SSI benefits, and then determining what amount of Mr. X’s SSI would have gone to cover his cost of care had Mr. X received the SSI on a monthly basis at the time.<sup>38</sup> The new notice cites the regulation on which the Division’s reimbursement demand is based and advises Mr. X of his Fair Hearing Rights.<sup>39</sup> The notice is sufficient to put Mr. X on notice that the Division seeks reimbursement from Mr. X’s retroactive SSI benefits for the cost of Mr. X’s care from January 2014 through May 2017—the period of time his retroactive SSI benefits are intended to cover; the amount of that reimbursement; and the legal basis for the demand.

Because the parties agreed to a revised notice and the April 9, 2018 revised notice is sufficient to put Mr. X on notice of both the underlying factual basis and the regulation supporting its action, the Division met its notice requirements.

*B. Requiring Mr. X to reimburse the Division does not violate 42 U.S.C. § 407.*

In general, Mr. X argues that the Division’s reimbursement agreement is not legally enforceable—that the Division’s attempt to condition payment of GRALH on Mr. X’s acceptance of a reimbursement agreement was coercive and amounted to an attempt to execute, levy, attach, garnish, or use another legal process to collect from sums that are exempt from collection. He argues that requiring a welfare recipient

---

<sup>31</sup> Ex. D at 1.  
<sup>32</sup> Ex. D at 1.  
<sup>33</sup> Ex. D at 1.  
<sup>34</sup> Ex. D at 1.  
<sup>35</sup> Ex. C.  
<sup>36</sup> Ex. N.  
<sup>37</sup> Ex. C at 1-2.  
<sup>38</sup> Ex. N at 3-4.  
<sup>39</sup> Ex. N at 1.

to reimburse the Division when he receives retroactive SSI benefits for the cost of care paid through the GRALH violates 42 U.S.C. § 407.

That section states:

The right of any person to any future payment under this subchapter shall not be transferrable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process.<sup>40</sup>

This provision is applicable to SSI benefits.<sup>41</sup>

The United States Supreme Court interpreted 42 U.S.C. § 407 in *Philpott v. Essex County Welfare Bd.*<sup>42</sup> In *Philpott*, the petitioner had received public assistance from the State of New Jersey, and had signed an agreement to reimburse the state if he subsequently acquired real or personal property.<sup>43</sup> Under New Jersey law at the time, the mere filing of such a reimbursement agreement had the same force and effect as entry of formal judgment.<sup>44</sup> The petitioner was awarded retroactive social security benefits, and a lump-sum check was deposited for him in his bank account. New Jersey sued the petitioner to attach the petitioner’s bank account in which the social security benefits had been deposited. The Supreme Court held that § 407 and the Supremacy Clause of the United States Constitution precluded New Jersey from reaching the social security payments paid to the petitioner. The Court concluded that the suit brought was an attempt to subject the social security money to “levy, attachment . . . or other legal process.”<sup>45</sup>

On its face, the statute appears to bar the Division from reaching Mr. X’s SSI lump sum retroactive benefits checks. The first clause of 42 U.S.C. § 407 prohibits an SSI recipient from transferring or assigning any future payment. With the exception of 42 U.S.C. § 1383(g)(1)—which under very specific circumstances would allow the Division to rightfully claim direct recoupment from the Social Security Administration—it is clear that Mr. X is prohibited from agreeing to transfer or assign his SSI lump sum retroactive benefit check to any creditor, including the Division.<sup>46</sup> The second clause of 42 U.S.C. § 407 limits the remedies available to a creditor to proceed against money paid to a recipient of SSI—the Division cannot reach Mr. X’s lump sum retroactive SSI benefits checks through “execution, levy, attachment, garnishment, or other legal process.”<sup>47</sup>

---

<sup>40</sup> 42 U.S.C. § 407.

<sup>41</sup> 42 U.S.C. § 1383(d)(1).

<sup>42</sup> 409 U.S. 413 (1973).

<sup>43</sup> *Id.* at 414.

<sup>44</sup> *Id.* at 415.

<sup>45</sup> *Id.* at 416.

<sup>46</sup> *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 415-16 (1973).

<sup>47</sup> 42 U.S.C. § 407.

But 42 U.S.C. § 407 does not require the result urged by Mr. X. And *Philpott* is distinguishable from the instant case. As stated, in *Philpott*, the mere filing of the reimbursement agreement had the same effect as entry of a formal judgment, and New Jersey had begun formal, legal proceedings to attach to the bank account with the social security benefits at issue. Moreover, *Philpott* merely held that states are treated like any other creditor for purposes of § 407, and legal process cannot be used by the states to reach protected funds. Neither *Philpott* nor the statute obviates an underlying obligation for someone who remains liable for a debt. Nor do they prohibit the Division from using other means to obtain reimbursement.<sup>48</sup>

Here, the Division’s reimbursement agreement does not require Mr. X to transfer or assign his SSI payments to the Division. Rather, the agreement simply requires Mr. X to reimburse the Division to cover his cost of care “when retroactive and other sources of payment become available to [him].” Mr. X’s receipt of the retroactive SSI payment is a condition precedent to his obligation to reimburse the Division. If he never receives an SSI check, or is deemed ineligible for SSI benefits, he will have no duty to reimburse the Division. The fact that the Division tied the timing of reimbursement to Mr. X’s receipt of retroactive SSI benefits just illustrates the practicalities of recouping the GRALH benefits—it does not create a transfer or assignment of rights. And unlike the reimbursement agreement in *Philpott*, the agreement signed by Mr. X does not have the same force and effect of a judgment.

Likewise, the Division did not subject Mr. X’s retroactive SSI benefits to execution, levy, attachment, garnishment, or other legal process.<sup>49</sup> The Division has not initiated any formal or quasi-formal legal action. And applying the canons of statutory construction (i.e. the doctrine of *ejusdem generis*), the use of the general phrase “other legal process” after the list of specific legal actions (i.e. execution, levy, attachment, and garnishment) is meant to refer to things of the same general character. These legal terms of art refer to formal procedures by which a person can gain some degree of control over another person’s property. So at minimum, “other legal process” would seem to require some formal procedure or judicial or quasi-judicial mechanism by which control over property passes from one person

---

<sup>48</sup> See *French v. Director, Michigan Dept. of Social Services*, 285 N.W.2d 427, 432 (Michigan 1979) (allowing reimbursement for interim assistance); *Tunncliff v. Com., Dept. of Public Welfare*, 396 A.2d 1168, 1172 (Pennsylvania 1978) (allowing reimbursement for interim assistance); *State v. Amore*, 530 A.2d 582, 585 (Connecticut 1987) (allowing reimbursement for cost of care of institutionalized recipients); *Inman v. Dept. of Social Services*, 296 N.W.2d 232, 235 (Michigan 1980) (allowing reimbursement for interim assistance); *Poisson v. Allstate Life Ins. Co.*, 640 F.Supp. 147 (D. Maine 1986) (allowing reimbursement for disability benefits); *Kolbeson v. State, Dept. of Social and Health Services*, 118 P.3d 901, 907 (Washington 2005) (allowing reimbursement for cost of care of institutionalized recipients); *Washington State Dept. of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 392 (2003) (allowing reimbursement for cost of foster care); *Lamb v. Connecticut General Life Insurance Company*, 643 F.2d 108, 110 (3d Cir. 1981) (allowing offset for private disability benefits).

<sup>49</sup> 42 U.S.C. § 407.

to another to discharge or secure discharge of an existing or anticipated liability.<sup>50</sup> Other than sending Mr. X a letter notifying him of his obligation to reimburse his cost of care for the period of time for which he received retroactive SSI benefits, the Division made no formal attempt to collect Mr. X's SSI benefits. Whatever coercive or intimidating effect the reimbursement agreements or the letter may have had, they cannot be construed as constituting "legal process" within the meaning of 42 U.S.C. § 407.

Finally, the law allows the Division to recoup for assistance paid to meet an individual's basic needs while awaiting SSI benefits. Although not directly applicable to this case, in response to *Philpott*, Congress provided a method that allows direct reimbursement to states for providing such interim assistance.<sup>51</sup> The legislative history demonstrates Congress' intent to provide a convenient method for the states to obtain reimbursement.<sup>52</sup> Neither the reimbursement provision nor its legislative history suggest that the method provided for obtaining direct reimbursement from the Social Security Administration is the only method allowed for reimbursement.<sup>53</sup> Indeed, the legislative history confirms that Congress approved conditioning the granting of such assistance with the requirement that applicants sign agreements to reimburse the state.<sup>54</sup>

After review of the reimbursement agreements and the applicable law, there was nothing impermissible about requiring Mr. X to agree to reimburse the Division for GRALH benefits paid to cover his cost of care during the period of time he received retractive social security benefits. The Division is not precluded from seeking reimbursement. Neither the reimbursement agreement nor the Division's attempts to collect reimbursement violates 42 U.S.C. § 407.

C. *Mr. X must reimburse the Division for his cost of care under the GRALH regulations and the reimbursement agreements.*

Alaska Statute 47.05.010 grants the Department of Health and Social Services the power to adopt rules and regulations which are necessary to carry out the provisions of the General Relief program. Despite Mr. X's claim to the contrary, there is no conflict between the statute and the regulations which would require a different result in this case.

GRALH is a short-term, interim assistance program intended as a last resort for providing assisted living care while other resources are explored.<sup>55</sup> A recipient of GRALH must apply for assistance from

---

<sup>50</sup> *Keffeler II*, 537 at 384; *see also Kolbeson*, 118 P.3d at 906.

<sup>51</sup> 42 U.S.C. § 1383(g)(1).

<sup>52</sup> *See Tunnicliff*, 396 A.2d at 1172 (quoting *Wilbur Mills* (D. Ark.) 120 Cong.Rec. 26090 (1974)).

<sup>53</sup> *See Id.* at 1172.

<sup>54</sup> *Id.*

<sup>55</sup> AS 47.25.195(e); AS 47.24.017(d); 7 AAC 47.300 (providing financial assistance to eligible vulnerable adults who require protective oversight of an assisted living home); 7 AAC 47.370 (requiring application for assistance from



other agencies, organizations, or programs that provide financial assistance for which he or she may be eligible, including Social Security, SSI, Medicaid, Adult Public Assistance, the Home and Community-Based Waiver Services program, veteran’s benefits, disability insurance, worker’s compensation, unemployment compensation, and retirement system benefits.<sup>56</sup> And a recipient must exhaust all other available benefits before GRALH is used to pay for assisted living care.<sup>57</sup> If a recipient fails to apply for other benefits, the Division may deny GRALH benefits.<sup>58</sup> And if a recipient receives retroactive financial assistance from other sources, he or she must reimburse the Division for benefits provided if the retroactive benefit covers a time period when the Division paid for assisted living home care.<sup>59</sup>

Consistent with the regulation and as a condition of receiving GRALH, Mr. X signed agreements, agreeing to reimburse the Division for payments it made for his assisted living care when and if he received any retroactive payments. In return, the Division paid an assisted living home to provide Mr. X with, among other things, food, housing, protective services, personal assistance, supportive services, home and community activities, supervision, and transportation until Mr. X received an alternative source of payment.<sup>60</sup> Had Mr. X received his monthly SSI payments at the time, then those payments—minus a \$100 personal-needs allowance—would have been, as they are now, applied to his assisted living care. Although there was no error in payments at the time, the retroactive benefits have created a situation where the Division paid more than it would have paid if the SSI payments were timely. Just because Mr. X ultimately received Social Security benefits for months past rather than present does not change the nature of the GRALH program or benefits—it does not change his share of the costs of his care. The agreements Mr. X signed committed him to reimburse the Division for its interim assistance. And so, Mr. X is obliged to reimburse the Division for the cost of his care now that he has received benefits covering that period of time.

#### **IV. Conclusion**

Because requiring Mr. X to reimburse the Division does not violate 42 U.S.C. § 407, and because Mr. X must reimburse the Division for his cost of care under the GRALH regulations and the reimbursement agreements he signed, the Division’s April 9, 2018 reimbursement notice is **AFFIRMED**.

---

other agencies, organizations, or programs that provide financial assistance and requiring reimbursement from other payment sources or benefit payments); 7 AAC 47.380 (requiring exhaustion of other payment sources or benefits); 7 AAC 47.400(c) (requiring reviews of needs and eligibility every 6 months).

<sup>56</sup> 7 AAC 47.370.

<sup>57</sup> 7 AAC 47.380.

<sup>58</sup> 7 AAC 47.370.

<sup>59</sup> 7 AAC 47.370.

<sup>60</sup> See 7 AAC 47.475.

Dated: June 1, 2018

By: Signed \_\_\_\_\_

Name: Jessica L. Leeah \_\_\_\_\_

Title: Administrative Law Judge \_\_\_\_\_

[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 9<sup>th</sup> day of July, 2018.

By: Signed \_\_\_\_\_

Name: Erin Stine \_\_\_\_\_

Title: Special Assistant, DHSS \_\_\_\_\_

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