

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

In the Matter of )  
 )  
U E ) OAH No. 18-1121-CMB  
 ) Agency No. 05665620  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

U E was a Temporary Assistance recipient. Her February 2018 Temporary Assistance cash benefit was erroneously deposited by the Division of Public Assistance’s financial servicer into the wrong bank account. The bank that received the funds kept those funds to help pay off an overdraft of Ms. E’s and refused to refund them. Ms. E requested that the Division reissue the February 2018 payment to her, which the Division refused to do. Ms. E requested a hearing.

Ms. E’s hearing was held on December 6 and 13, 2018. Ms. E represented herself. Sally Dial, a fair hearing representative employed by the Division, represented the Division. H W, an electronic benefits specialist employed by the Division, testified for the Division.

The evidence shows that the Division deposited the February payment, which was \$754, into the wrong bank account, and Ms. E did not receive the funds. Because the Division’s action resulted in a loss to Ms. E, the Division is required to make her whole by reissuing her the \$754 Temporary Assistance payment.

**II. Facts<sup>1</sup>**

Ms. E was receiving Temporary Assistance benefits in February 2018. Her February benefit amount was \$754. Ms. E had an old bank account at No Name Bank, which she had previously authorized as her depository for Temporary Assistance benefits. That account, however, was overdrawn. Ms. E changed banks and notified the Division that her benefits should be deposited in the new bank account instead.

The Division does not handle its own bank deposits for public assistance recipients. Instead, it contracts those out to different financial companies. The Division had just switched to a new financial

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<sup>1</sup> The facts are undisputed. They are derived from the exhibits attached to the Division’s hearing position statement and the testimony presented at hearing.

servicer. The new financial servicer erroneously deposited Ms. E's February benefit into the old No Name Bank account, instead of the new bank account. No Name Bank then kept the funds to satisfy a prior overdraft of Ms. E's, and refused to refund them.

### **III. Discussion**

#### *A. Did this case present a hearable issue?*

The Division initially moved that this case should be dismissed as not presenting a hearable issue. The Division argued that Ms. E's benefits had not been denied, reduced, suspended, or terminated, and that therefore she was not entitled to a hearing.<sup>2</sup> The evidence, however, shows the Ms. E did not get her February 2018 Temporary Assistance payments due to the Division's action. This could be interpreted as either a suspension of benefits or a denial of benefits for February (one definition of "deny" is "to not allow someone to have something,"<sup>3</sup> and the Division's error prevented Ms. E from having her benefit). Accordingly, this case presents a hearable issue.

#### *B. Is the Division responsible for the misdeposit of Ms. E's February benefits?*

The salient issue is whether the Division is liable to Ms. E for the misdirection of her February Temporary Assistance payment. The Division's financial servicer was clearly acting on the Division's behalf with the Division's authority, because it was making payments to public assistance recipients on the Division's behalf. As a result, the Division is responsible for the financial servicer's authorized acts. The Division's financial servicer erroneously deposited Ms. E's February payment into the wrong account. This meant that it took Ms. E's money and gave it to the wrong person, No Name Bank. This error, however inadvertent, resulted in Ms. E not receiving her money.

In effect, the Division paid one of Ms. E's creditors instead of Ms. E. This might be permissible if the creditor had served a garnishment on the Division, but in the absence of such a legal process, it was simply something the Division had no right to do. It is as though a person bought your car and agreed to pay by check for it, but instead of sending the check to you, they sent it to your ex-husband who claimed to be owed child support. The misdirected payment would not satisfy the obligation to pay for the car.

The Division argued that Ms. E indirectly received the payment because it was used to satisfy Ms. E's debt to No Name Bank. However, the Division does not have authority to direct the disposition of Ms. E's funds. Accordingly, the Division has failed to make a payment to Ms. E for her \$754

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<sup>2</sup> See 7 AAC 49.020.

<sup>3</sup> MacMillan Dictionary (<https://www.macmillandictionary.com/us/dictionary/american/deny>).

February 2018 Temporary Assistance benefit, and its obligation to do so remains unsatisfied. It must do so now.

**IV. Conclusion**

The Division’s decision to not pay Ms. E \$754, the amount of her misdirected February 2018 Temporary Assistance payment, is reversed. The Division is required to pay her that amount.

Dated: January 14, 2019.

By: Signed  
Signature  
Lawrence A. Pederson  
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 15<sup>th</sup> day of February, 2019.

By: Signed  
Signature  
Laura Russell  
Name  
Policy Advisor, DHSS  
Title

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