

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

In the Matter of)
)
N D) OAH No. 19-0575-PFE
) Agency No.

DECISION

This case involves the Alaska Department of Health and Social Services, Division of Public Assistance (Division) seeking to garnish N D’ 2019 permanent fund dividend (PFD) in order to recover overpaid Food Stamps benefits.¹ Mr. D’ appealed the Division’s garnishment action. His appeal was scheduled for hearing on July 17, 2019. On that day, Sally Dial appeared telephonically and represented the Division. Mr. D did not appear or accept telephone calls made to include him in the hearing. The proceedings went forward in Mr. D’ absence. Ms. Dial’s testimony and the Division’s documentary evidence were admitted into the record as permitted by AS 44.62.530. Exhibits 1-5 were admitted.

The Division has shown that it is entitled to execute the garnishment on Mr. D’ PFD, and its action is upheld.

I. Facts

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

On August 23, 2018, the Division notified Mr. D that he had received a total of \$2,532.00 in Food Stamps from February 2018 to July 2018, when he should have only received \$1,552.00, which resulted in an overpayment of \$980.00.² In the letter from the Division, Mr. D was advised that although this was an Inadvertent Household Error, he “may be held liable for the overpayment.”³ Further, he was advised the Division has “the right to intercept your future Permanent Fund Dividend...”⁴ The Division advised Mr. D of his right to a Fair Hearing, and enclosed a Fair Hearing Request information, which explained how to request a hearing.⁵ Mr. D did not appeal the overpayment determination by the Division.⁶

¹ The Food Stamp program was renamed the Supplemental Nutrition Assistance Program (SNAP) in 2008. It is still commonly referenced as Food Stamps.

² Exhibit 2; Ms. Dial testimony.

³ Exhibit 2; Ms. Dial testimony; an Inadvertent Household Error (IHE) is defined by 7 CFR 273.18 (b) as “any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.”

⁴ *Id.*

⁵ Exhibits 2, 2.12.

⁶ Ms. Dial testimony.

On June 13, 2019 the Division notified Mr. D of its intent to garnish his 2019 PFD to satisfy his Food Stamps overpayment by mailing it to him.⁷ The notice informed Mr. D he owed \$918.00 in overpaid benefits, and the Department would garnish his PFD up to that amount.⁸ It also informed him that he had 30 days from the date of the notice to request a hearing to contest the garnishment.⁹

On June 20, 2019, Mr. D responded to the notice and filed a written request for a hearing; he did not indicate the basis for his appeal.¹⁰

II. Discussion

State agencies are required to seek recovery of overpaid public assistance benefits, including Food Stamps benefits.¹¹ Alaska Statute 47.05.080(b) specifically authorizes the Division to garnish a Food Stamps recipient's PFD to satisfy the balance due in cases of default on public assistance overpayment claims. However, to do so, the Division must show that it notified the individual that future PFDs will be garnished, and the individual was advised of the right to request a hearing within 30 days of the notice.¹² The notice also must show either that the claim of overpaid public assistance benefits was not contested, or, if contested, it was resolved in favor of the Division, and no appeal is pending or available due to the passage of time.¹³

If a hearing is requested in response to the notice, it is governed by the Administrative Procedure Act, AS 44.62.330 – 44.62.630, placing the burden on the Division to show by a preponderance of the evidence that it is entitled to the proposed garnishment.¹⁴

The record here shows the Division has taken the necessary procedural steps to garnish Mr. D' PFD. The Division notified Mr. D in August of 2018 of his right to challenge the overpayment. He did not respond to the August notice. Because he did not request a hearing, to challenge the overpayment, as required by 7 AAC 49.30, the overpayment was established by the Division and cannot be challenged at this late date.

⁷ Exhibit 3.

⁸ Exhibit 3. This amount is different than the \$980.00 identified in Exhibit 2. It is unclear if this is a typographical error or if part of the debt had been recouped in another manner. To the extent this amount is in error, the Division is only entitled to garnish up to the \$918.00, the amount of which Mr. D was notified.

⁹ Ex. 3.

¹⁰ Ex. 4.

¹¹ 7 AAC 45.570 (ATAP/AFDC); 7 C.F.R. § 273.18(a) (Food Stamps regulation adopted by reference in 7 AAC 46.010); *see also* AS 47.05.080(b).

¹² *In re K.N.* OAH No. 15-0811-PFE (Comm'r of Health and Soc. Srvs. September 2015) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5848>. *See also* AS 43.23.068(a)(3).

¹³ *Id.*

¹⁴ AS 43.23.068(c). Because the Division, as petitioner, has filed an accusation in the form of its Notice of Garnishment, the Division bears the burden under AS 44.62.460(e)(1).

In June 2019, the Division notified Mr. D of the amount of the overpayment claim, that his PFD would be garnished up to the amount of the overpayment claim, and that he had 30 days to exercise his right to file an objection. Mr. D responded by requesting a hearing regarding the garnishment.¹⁵ While Mr. D did not appear at the July hearing and presented no evidence, the Division showed it complied with the requirements to garnish Mr. D' 2019 PFD.¹⁶

III. Conclusion

The Division sent Mr. D a notice that it would garnish his PFD because of an established debt arising from overpayment of Food Stamps. It has proved by a preponderance of the evidence that it is entitled to collect this debt from Mr. D' PFD for up to \$918.

DATED August 1, 2019

By: Signed _____
Hanna Sebold
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 28th day of August, 2019.

By: Signed _____
Name: Hanna Sebold
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.]

¹⁵ Exhibit 3.
¹⁶ AS 44.62.460 (e) (1).