

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

In the Matter of)
)
 T Q) OAH No. 19-0591-PFE
) Agency No.
_____)

DECISION

This case involves the Alaska Department of Health and Social Services, Division of Public Assistance (Division) and its efforts to garnish T Q’s 2019 Permanent Fund Dividend (PFD) in order to recover overpaid Food Stamps benefits.¹ Mr. Q’s appeal of the Division’s action was heard on July 23, 2019. The Division is entitled to execute the garnishment on Mr. Q’s PFD, and its action is upheld.

I. Facts

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

Mr. Q was a recipient of Food Stamps on his wife’s case.² Mr. Q and his wife received more benefits than entitled to from August 2017 through January 2018, totaling an overpayment of \$2571.³ A fraud investigation was conducted that ultimately resulted in Mr. Q’s guilty plea to misuse of Food Stamps in June 2018.⁴ As part of his probation, Mr. Q was ordered to pay \$100 per month as restitution towards the \$2571 that was owed.⁵

Following the restitution order, the Division received monthly payments of \$100 per month through December 2018.⁶ On January 11, 2019, Mr. Q’s wife contacted the Division and told them Mr. Q could not pay restitution because he was unemployed.⁷

The Division sent Mr. Q a letter on June 7, 2019, notifying him that he was in default and still owed \$1871.⁸ The letter advised him the Division has “the right to garnish your permanent fund dividend up to the amount stated above.”⁹ Mr. Q’s appeal rights and a SNAP Fair Hearing Request form, which explained how to request a hearing, were also part of the letter.¹⁰ The letter

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

² Exhibits 1-1.1.

³ Exhibit 1.2; Exhibits 2-2.3; testimony Jeff Miller.

⁴ Exhibits 1.2-1.3; Exhibits 2-2.4, 3PA-18-433CR.

⁵ Exhibit 2.4.

⁶ Exhibits 4.1, 5.1, 6-6.5.

⁷ Exhibit 7.

⁸ Exhibit 8. The Division is advised that its garnishment notice refers to AS 43.23.068. That statute was renumbered as AS 43.23.170 effective October 17, 2018.

⁹ *Id.*

¹⁰ Exhibits 8-8.2.

notified him that he had 30 days from the date of the notice to request a hearing to contest the garnishment.¹¹

Mr. Q responded to the notice and filed a written request for a hearing on June 20, 2019.¹² The hearing began on July 23, 2019. Jeff Miller appeared telephonically on behalf of the Division. Mr. Q did not appear or accept telephone calls made to include him in the hearing. The proceedings went forward in Mr. Q's absence. Mr. Miller's testimony and the Division's Exhibits 1-10 were admitted into the record.

II. Discussion

State agencies are required to seek recovery of overpaid public assistance benefits, including Food Stamps benefits.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

The Division took the necessary procedural steps to garnish Mr. Q's PFD. The amount owed in overpayments was addressed through the criminal case and judgment but went uncontested through the administrative process.¹⁷

The Division notified Mr. Q in June 2019 of the default and that his PFD would be garnished up to the amount of the overpayment claim.¹⁸ Mr. Q was advised he had 30 days to

¹¹ Exhibit 8.

¹² Exhibit 9.

¹³ 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).

¹⁴ *In re K.N.* OAH No. 15-0811-PFE (Comm'r of Health and Soc. Svcs. September 2015) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5848>. *See also* AS 43.23.068(a)(3).

¹⁵ *Id.*

¹⁶ AS 43.23.170. 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).

¹⁷ Exhibit 2.1-2.4; Mr. Miller testimony.

¹⁸ Exhibits 8- 8.3.

exercise his right to file an objection.¹⁹ In response, Mr. Q requested a hearing regarding the garnishment.²⁰ Mr. Q did not appear at the July hearing. The Division showed it satisfied its procedural requirements and is entitled to garnish Mr. Q's PFD to satisfy his repayment obligation for the overpaid benefits.

III. Conclusion

The Division proved by a preponderance of the evidence that it is entitled to collect this debt from Mr. Q's PFD for up to \$1871. The decision is affirmed.

DATED August 9, 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 6th day of September, 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.]

¹⁹ *Id.*
²⁰ Exhibit 9.