

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

In the Matter of)
)
U S) OAH No. 21-1743-PFE
) Agency No.
_____)

DECISION

I. Introduction

U S is a former Alaska Temporary Assistance Program (ATAP) benefit recipient. The Division of Public Assistance (Division) notified her that it was intending to garnish her 2021 Permanent Fund Dividend (PFD) to satisfy a past due obligation that she owed the Division arising out of her previous receipt of ATAP benefits.

Although Ms. S took issue with the Division's requirement that she must repay overpaid ATAP benefits, that debt has already been established and cannot be contested in this proceeding. The Division properly established the existence and amount of overpaid ATAP benefits, the remaining balance owing of \$1,125, and it provided Ms. S with appropriate notice of the garnishment. As a result, the Division's garnishment of her 2021 PFD in the amount of \$1,125.00 is AFFIRMED.

II. Facts¹

Ms. S received ATAP benefits in 2010 and 2011. On February 16, 2011, the Division notified Ms. S that she received \$1,518 more in ATAP benefits than she should have and was required to repay the Division in that amount. That same notice informed her that her PFD could be garnished to pay this obligation.² Ms. S initially challenged the repayment requirement but then withdrew her challenge.³

Ms. S entered into a very short-lived repayment plan, which resulted in several small payments being made in 2011 and 2012. In 2017, when she was once again an ATAP recipient, the Division was able to recover a portion of those ATAP benefits against the outstanding obligation, which left an outstanding balance of \$1,125 on the debt.⁴

¹ These facts are proven by a preponderance of the evidence. Unless otherwise noted, they are based upon the hearing testimony of Ms. S and Ms. Dial.

² Ex. 2.

³ See Division casenote dated March 21, 2011, filed on August 9, 2021.

⁴ Ex. 3.

The Division did not again attempt to collect on the debt until 2021, when it notified Ms. S that it was intending to garnish her 2021 PFD. In its notice, the Division notified Ms. S that she had defaulted on her obligation to repay the ATAP overpayment, that the balance owing was \$1,125 in overpaid benefits, and the Department of Health & Social Services would garnish her PFD up to that amount. It also informed her of her right to a hearing to contest the garnishment.⁵

Ms. S responded to the Division's notice and requested a hearing.⁶ Her hearing was held on August 9, 2021. Ms. S represented herself and testified on her own behalf. Sally Dial, a Fair Hearing Representative with the Division, represented the Division and testified on its behalf.

III. Discussion

The Division is authorized to recover overpayments from public assistance recipients.⁷ The PFD of a former recipient may be garnished to satisfy the balance due on a public assistance overpayment claim.⁸

Before it can garnish a PFD, the Division is required to comply with certain procedural safeguards.⁹ Among them are rules requiring the Division to certify that: (1) the Division has notified the recipient that his or her future PFDs will be taken to satisfy the overpayment claim; (2) the Division notified the recipient of his or her right to request a hearing on the overpayment claim, allowing 30 days from the date of the notice to request that hearing; (3) the overpayment claim either was not contested or, if contested, the issue was resolved in the Division's favor; and (4) if the overpayment claim was contested and resolved in the Division's favor, the matter is final - that is, no appeal is pending, the time limit for filing an appeal has expired, or the appeal was resolved in the Division's favor.¹⁰

Ms. S was notified in 2011 of the Division's position that she had received an overpayment of ATAP benefits. She was told at the time that her PFD could be garnished and that she had the right to contest the Division's repayment demand by requesting a hearing.¹¹ It is undisputed that although Ms. S initially challenged the repayment requirement, she withdrew her challenge. As a result, the Division's repayment demand became a final decision.

⁵ Ex. 4 – 4.3 and Supplemental Notice dated July 27, 2021.

⁶ Exhibit 4.

⁷ AS 47.05.080(a).

⁸ AS 47.05.080(b).

⁹ AS 43.23.170(a).

¹⁰ AS 43.23.170(a)(3).

¹¹ Ex. 2.

Ms. S was subsequently notified of the Division’s decision to garnish her 2021 PFD and that she had the right to appeal that decision. That notice was sent to Ms. S’s correct address, identified the amount due, stated that the Division intended to garnish her PFD, and notified her of her hearing rights. This satisfied the statutory procedural requirements.¹²

Ms. S then requested a hearing to challenge the garnishment. At hearing, Ms. S argued that she did not owe the underlying obligation. However, Ms. S cannot challenge the Division’s repayment requirement at this late date. When she withdrew her challenge to the repayment requirement in 2011, she lost her ability to later dispute it. Ms. S did not dispute that \$1,125 was the remaining balance on the obligation.

There is a legal issue in this case. That issue is whether the Division can legally seek to garnish Ms. S’s PFD because so much time has passed since it was incurred. This question is answered by the Alaska case of *State, Dep’t of Revenue ex rel. Gerke v. Gerke*.¹³ In that case, the Alaska Supreme Court held that the standard statutory rule and court rules regarding garnishments on older child support obligations did not apply to or prevent administrative garnishments. Because this is an administrative garnishment, similar to child support administrative garnishments, *Gerke* would apply. As a result, even though Ms. S’s repayment obligation dates back to 2011, and there has been no garnishment attempt since 2017, the Division may still garnish Ms. S’s PFD to satisfy this debt.

As a result, since Ms. S still owes \$1,125 on this obligation and because the Division has satisfied its procedural requirements, the Division is entitled to garnish her PFD to satisfy her repayment obligation for the overpaid ATAP benefits.¹⁴

As discussed at hearing, Ms. S may enter into a repayment agreement with the Division in lieu of garnishment. However, if she does not, the Division may enforce this decision by garnishing her PFD.

IV. Conclusion

Ms. S was notified of her ATAP repayment requirement in 2011. That repayment requirement was not appealed, so it became a binding decision. Because the ATAP overpayment

¹² AS 47.23.170(b).

¹³ 942 P.2d 423 (Alaska 1997).

¹⁴ See AS 47.23.170(b).

has not yet been fully repaid, the Division may garnish Ms. S's 2021 PFD.

Dated: September 10, 2021

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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 27th day of September, 2021.

By: Signed
Name: Christine R. Marasigan
Title: Program Coordinator II
Agency: Alaska Department of Health and Social Services

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