

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

In the Matter of:)	
)	
B.D.)	OAH No. 22-0680-PFE
_____)	Agency No. 40027542

DECISION

I. Introduction

The Division of Public Assistance (Division) sought to garnish B.D.’s 2022 Permanent Fund Dividend (PFD) to recoup overpaid Alaska Child Care Assistance benefits. B.D. appealed the garnishment and requested a hearing,

The hearing was held via teleconference on September 6, 2022. The Division was represented by Public Assistance Analyst Sally Dial. B.D. attended the hearing and provided sworn testimony on her own behalf.

The Division properly established the existence and amount of overpaid benefits, and it provided B.D. with appropriate notice of the garnishment. Therefore, it is entitled to execute on her PFD, and its action is upheld. B.D. took issue with the Division’s original determination regarding the overpaid benefits. However, that debt has already been established and cannot be contested in this proceeding.

II. Facts

B.D. lives in City B and is a single mom with two children. She received Alaska Child Care Assistance (CCA) program benefits in 2018 and 2019. On October 28, 2019 the Division sent her a notice informing her that she had received \$6,243 in CCA benefits in excess of the amount she was entitled to, due to her failure “to report change of income in a timely manner.”¹ The notice stated that if she failed to enter into a repayment plan, or pay the amount in full, the Division would “pursue other legal remedies, including garnishment of your Permanent Fund Dividends”² Accompanying that notice was a one-page document verifying the dates and amounts of the overpaid benefits and further explaining the basis for the overpayment determination, and a form B.D. could use to request a hearing regarding the overpayment claim.³

¹ Exh. 1.
² Exh. 1.
³ Exh. 1.2-1.3.

Division representative Sally Dial testified that the Division has no record of ever receiving a request for hearing from B.D. to dispute the overpayment claim.

On March 3, 2022 the Division sent B.D. a letter reminding her of the debt and notifying her that no payments had been credited against it.⁴ On June 24, 2022 the Division sent her a notice indicating that she still owed \$6,243 and that the Division was garnishing her PFD.⁵ B.D. then requested this hearing.

III. Discussion

When the Division has paid a recipient more Public Assistance benefits than the individual is entitled to receive, the Division is authorized to seek recovery of the overpayment.⁶ If the recipient has defaulted on repaying the amount owed, the Division may garnish his or her PFD to satisfy the balance due.⁷

Before it can garnish a PFD, the Division is required to comply with certain procedural safeguards.⁸ 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.⁹

The Division's June 24, 2022 garnishment notice satisfied these requirements.¹⁰ First, it advised B.D. that the Division had notified her of its overpayment claim and that she had a right to request a hearing to contest it. B.D. testified that she recalled submitting a request for hearing after receiving the Division's October 28, 2019 notice of the overpayment, but she never received any response from the Division. She further testified, however, that she had no documentation to show when she mailed in the request for hearing, and although she had a

⁴ Exh. 2.

⁵ Exh. 3.

⁶ AS 47.05.080.

⁷ AS 47.05.080(b).

⁸ AS 43.23.170(a).

⁹ AS 43.23.170(a)(3).

¹⁰ Exh. 3.

telephone conversation with Division staff about the basis for the overpayment claim, she never followed up with them about what had happened to her request for hearing. Ms. Dial testified that she and other Division staff conducted a diligent search of the Division's files regarding B.D., and they could find no record of ever receiving any response or request for hearing from B.D. regarding the overpayment claim. Under these circumstances, the matter of the overpayment and amount due was fully resolved in the Division's favor in late 2019, because the Division never received a request for hearing from B.D. within the 30-day time limit.

The June 2022 garnishment notice also documents the Division's compliance with other requirements, including notice of the overpayment amount owed, a statement that the Department would garnish her PFD up to the amount of the overpayment, and notice that B.D. could request a hearing within 30 days to dispute the garnishment and demonstrate that a mistake had been made.¹¹

The Division committed no errors in its notices to B.D. or in following the procedures required to garnish her PFD. Its action is therefore upheld.

IV. Conclusion

The Division showed that it is entitled to execute on B.D.'s PFD because she failed to repay an established debt arising from overpaid Child Care Assistance benefits. Its garnishment action, therefore, is upheld.

Dated: November 22, 2022

Signed

Andrew M. Lebo

Administrative Law Judge

¹¹ *Id.*; see AS 43.23.170(b).

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 22nd day of December, 2022.

By: *Signed* _____

Name: Laura O. Russell

Title: Policy Advisor, DOH

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