

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

In the Matter of:	)	
	)	
U.O.	)	OAH No. 22-0690-PFE
_____	)	Agency No. 05358699

**DECISION**

**I. Introduction**

U.O. is a former Food Stamp<sup>1</sup> benefit recipient. The Division of Public Assistance (Division) notified her that it was intending to execute on her 2022 Permanent Fund Dividend (PFD) to satisfy a past due obligation that she owed the Division arising out of her previous receipt of Food Stamp benefits. U.O. requested a hearing to challenge the Division executing on her 2022 PFD.

The evidence in this case shows that the Division properly established the existence and amount of overpaid Food Stamp benefits, the remaining balance owing of \$2,482.00, and provided U.O. with appropriate notice of the execution. As a result, the Division’s execution on her 2022 PFD in the amount of \$2,482.00 is AFFIRMED.

**II. Facts**

U.O. received Food Stamp benefits in 2020. The Division subsequently determined that she received Food Stamp benefits which she should not have and notified her that she was responsible for paying those benefits back to the Division, and that her PFD could be taken to satisfy that obligation.<sup>2</sup> U.O. requested a hearing to challenge the repayment requirement, and, after hearing, a final decision was issued on October 26, 2021, which found that she was overpaid \$2,482.00 in Food Stamp benefits and that she was required to repay that amount.<sup>3</sup>

The Division notified U.O. on June 24, 2022 that it was intending to take her 2022 PFD to help pay off her public assistance overpayment. In its notice, the Division notified U.O. that she had defaulted on her obligation to repay the public assistance overpayment, that the balance

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<sup>1</sup> The Food Stamp program was renamed by Congress as the Supplemental Nutrition Assistance Program (SNAP). However, it is still commonly referred to as Food Stamps, which is the term that will be used in this decision.

<sup>2</sup> Exs. 3 – 3.15.

<sup>3</sup> See OAH Case No. 21-1847-SNA. A copy of the decision is provided as Exs. 2 – 2.4.

owing was \$2,482, and the Department of Health & Social Services would execute on her PFD up to that amount. It also informed her of her right to a hearing to contest the execution.<sup>4</sup>

U.O. responded to the Division’s notice and requested a hearing.<sup>5</sup> Her hearing was initially scheduled for September 12, 2022. Immediately before the hearing, U.O. requested that the hearing be rescheduled. The Division did not oppose the request, and the hearing was rescheduled for September 22, 2022. U.O. did not appear for the rescheduled hearing.<sup>6</sup> A notice was sent to her providing her until October 5, 2022 to provide good cause for not being available for her scheduled hearing.

U.O. did not respond to the notice providing her an opportunity to provide good cause for missing her scheduled hearing and to have the hearing rescheduled.

### **III. Discussion**

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

#### *A. Hearing Procedure*

Hearings to contest Division executions against the PFD do not fall under the public assistance “Fair Hearing” regulations. Instead, they are Administrative Procedure Act (APA) cases: “AS 44.62.330 – 44.62.630 apply to a hearing requested by an individual under (b)(3) of this section.”<sup>9</sup> Under the APA procedural requirements, if a party does not show up for the hearing, the case can proceed in two ways depending upon which party has the burden of proof.<sup>10</sup>

In order to present its case, the Division must first establish that it has complied with the proper notice requirements, which includes the information that underlying overpayment claim has not been contested or has been resolved in the Division’s favor.<sup>11</sup> The Division therefore has the burden of proof to demonstrate that it complied with the procedural requirements. After it has done so, it is incumbent upon the party objecting to the execution to demonstrate that the

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<sup>4</sup> Exs. 7 – 7.3.

<sup>5</sup> Ex. 8.

<sup>6</sup> U.O. was telephoned twice at her number of record for the hearing. She did not answer the calls and voicemails were left for her.

<sup>7</sup> AS 47.05.080(a).

<sup>8</sup> AS 47.05.080(b).

<sup>9</sup> AS 43.23.170(c).

<sup>10</sup> AS 44.62.530.

<sup>11</sup> AS 44.23.170(a).

Division had made a mistake.<sup>12</sup> Because the Division had the initial burden of proof, this case cannot simply be dismissed or affirmed. Instead, the underlying evidence in the record can be considered, and a decision issued based upon that evidence, regardless of U.O.'s non-participation.<sup>13</sup>

*B. Is the Division Entitled to Execute Against U.O.'s PFD?*

Before it can execute on a PFD, the Division is required to comply with certain procedural safeguards.<sup>14</sup> 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.<sup>15</sup>

The evidence in this case consists of the Division's Position Statement. The exhibits contained in the Position Statement show that U.O. was notified of the Division's position that she had received an overpayment of Food Stamp benefits. She was told at the time that her PFD could be taken to satisfy that debt and that she had the right to contest the Division's repayment demand by requesting a hearing.<sup>16</sup> She did request a hearing, and that hearing resulted in a decision which found that she had been overpaid Food Stamp benefits and was required to repay those benefits to the Division.

U.O. was subsequently notified of the Division's decision to execute on her 2022 PFD and that she had the right to appeal that decision. That notice was sent to U.O.'s correct address, identified the amount due, stated that the Division intended to execute on her PFD, and notified her of her hearing rights. This satisfied the statutory procedural requirements.<sup>17</sup> As a result, given the earlier hearing decision in the Division's favor, the Division has met its burden of proof. Consequently, the Division is entitled to execute on her PFD to satisfy this debt.

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<sup>12</sup> AS 43.23.170(b)(3).

<sup>13</sup> AS 44.62.530.

<sup>14</sup> AS 43.23.170(a).

<sup>15</sup> AS 43.23.170(a)(3).

<sup>16</sup> Ex. 2.

<sup>17</sup> AS 47.23.170(b).

**IV. Conclusion**

U.O. has an outstanding payment obligation to the Division of \$2,482 for overpaid Food Stamp benefits. Her obligation to repay the Division was established in a prior administrative hearing decision. Because U.O. has not repaid the debt, the Division may execute on her 2022 PFD.

Dated: October 12, 2022

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

**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 23rd day of November, 2022.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
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.]