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

In the Matter of	)	
	)	
N. L.	)	OAH No. 23-0239-HAP
	)	Agency No. 44000

DECISION

I. Introduction

N.L. was a recipient of Heating Assistance benefits, which were paid to her heating vendor Golden Valley Electric Association (GVEA). After she left her residence and closed her account with GVEA, GVEA returned the unused amount of her benefits to the Division of Public Assistance (Division). Ms. L. subsequently requested that the funds which had been returned to the Division be remitted back to GVEA to pay for her electrical bills in a different residence. The Division denied that request because Ms. L. no longer had heating costs. Ms. L. requested a hearing to challenge the denial of her request.

The evidence shows that when Ms. L. closed her account with GVEA she had a credit balance and that GVEA properly returned those remaining funds to the Division. However, pursuant to the explicit terms of the Heating Assistance program regulations, the Division was required to then remit those funds to Ms. L., which it did not. Accordingly, the Division should have, upon Ms. L.'s request, deposited them back with GVEA because those funds belong to Ms. L., not the Division. The Division's denial of Ms. L.'s request that those funds be deposited with GVEA is therefore reversed.

II. Facts

The pertinent facts in this case are undisputed. Ms. L. was living in an apartment where she was paying for heating costs. GVEA was the heating vendor. Ms. L. applied to the Division for heating assistance in April of 2022.[1] Her application was approved on April 13, 2022, and she was awarded a one-time heating assistance grant of $825, which was sent to GVEA.[2] The State received additional funds through the federal American Rescue Plan Act,

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1 Exs. 1 – 2.11.

2 Ex. 3.

which resulted in the Division providing Ms. L. with a supplemental heating assistance grant of $2,125.[3] This was also sent to GVEA.

Ms. L. moved out of her apartment in September of 2022. When she moved out, she had a $2,555.48 credit balance with GVEA. Because she was no longer a GVEA customer, which effectively closed out her account, GVEA returned the credit balance on her account to the Division.[4] GVEA had a vendor agreement with the Division wherein it agreed that it would refund a credit balance to the Division's Heating Assistance Program "[if] a household with a prepaid [Heating Assistance Program] credit balance chooses to close its service account with the Vendor."[5]

Between the end of September 2022 and the beginning of February 2023, Ms. L. was either out of the state or staying with friends.

On February 17, 2023, Ms. L. contacted the Division to report that she had a new apartment as of February 6, 2023. In that contact, she reported that her new residence had electric heat and she requested that the funds returned by GVEA be sent back to GVEA for her electric bills.[6]

Ms. L.'s signed lease shows that her rent for the apartment is subsidized and includes heat. She, however, is responsible for electricity costs.[7] Division staff spoke with the apartment complex management on March 1, 2023, where "[t]hey confirmed client pays zero rent, primary heat system is a boiler and heat is included in the rent, client is responsible for electric."[8]

The Division notified Ms. L. on March 1, 2023 that her request that the refunded amount of her prior Heating Assistance award be returned to GVEA was denied because heat was included within her rent.[9]

III. Course of Proceedings

Ms. Keller's hearing was held on April 26, 2023. Ms. L. was represented by Rachael Delehanty with Alaska Legal Services. Jessica Hartley, a Fair Hearing Representative with the

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3 Exs. 4 – 5. The amount of the supplemental was $425 per heating point. *See* Ex. 5. Ms. L. has 5 heating points. *See* Ex. 3. 5 x $425 = $2,125.

4 Ex. 6.

5 Ex. 7.2, numbered paragraph 10.

6 Exs. 9 – 9.1

7 Ex. F, p. 3.

8 Ex. 10.

9 Ex. 11.

Division, represented the Division. All the parties' exhibits were admitted. No testimony was taken because the pertinent facts were undisputed.

After the hearing, the record was held open to provide for supplemental briefing, which was completed on May 22, 2023.

IV. Discussion

The critical facts in this case are that Ms. L. received a Heating Assistance grant in 2022 while she was living in an apartment where she had to pay for electric heat. A large portion of that grant, $2,125, was provided through a supplement funded under the federal American Rescue Plan Act. Because Ms. L. moved out of her apartment where she had to pay for heating, and had a $2,555.48 credit on her grant, that amount was refunded to the Division. She now has an apartment where she pays for electricity but not heat, and wishes the unused portion of the grant be returned to her electricity vendor, GVEA, to pay for her electricity.

The Division has a simple argument. It disbursed those funds through the Heating Assistance Program, and those funds can therefore only be disbursed for heating costs, not electric.

Ms. L. argues that because the federal American Rescue Plan Act allows use of the funds for electricity costs, the Division is required to allow Ms. L. to utilize her previous award for non-heating electrical costs.

In order to analyze the parties' arguments, it is necessary to look at both the Heating Assistance program regulations and the American Rescue Plan Act provisions.

A. American Rescue Plan

The American Rescue Plan was part of the federal response to the Covid pandemic. It provided additional federal funding to states for use for an incredible range of programs ranging from Covid testing to SNAP benefits.[10] A portion of that funding was given to states "to provide financial assistance to eligible households, not to exceed 18 month, including the payment of – (I) rent; (II) rental arrears; (III) utilities and home energy costs; (IV) utilities and home energy costs arrears; and (V) other expenses related to housing, as defined by the Secretary."[11]

This case involves American Rescue Plan Act funds that were released to states by the federal government. The US Dept. of Health & Human Services' Administration for Children &

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[10] American Rest Plan Act of 2021, Public Law 117-2. (15 USC 9001).

[11] 15 USC 9058c(d)(1)(A)(i).

Families Office of Community Services notified the states that "Grantees may use these funds for any purposes normally authorized under the federal LIHEAP statue (42 USC 8621 et seq.)."[12] The underlying purpose of LIHEAP is to provide financial assistance for "home energy costs."[13]

Alaska used the American Rescue Act funding designated for its federally funded Low-Income Home Energy Assistance Program (LIHEAP), which is the Federal Heating Assistance Program administered by the Division.[14] Each state is required to have a state "plan" that details how the LIHEAP assistance is utilized.[15] The Alaska state plan provides that it is to be used for heating assistance, crisis assistance, and weatherization assistance.[16] That plan specifically addresses the issue of subsidized housing:

> Renters who live in subsidized housing, pay for their own heat, **and** receive a utility allowance will receive a benefit equal to 50% of what they would have received if they did not get the utility allowance. If they live in subsidized housing and all utilities are included, they do not qualify for a heating assistance benefit because they have no costs.[17]

The Alaska state plan does not contain any provisions that allow LIHEAP funding for electric costs when there are no heat related electric costs.

What that means in this case is that the federal government chose to disburse American Rescue Act funding to the federal LIHEAP program, which Alaska administers through its "Federal Heating Assistance Program." The Alaska state plan for the federal LIHEAP program does not provide for payment just for electric costs when they are not related to heating. Accordingly, the fact that the American Rescue Act may allow payments to state grantees for a diverse range of uses, does not entitle eligible individual recipients to any or all of those services.[18] Rather, because these funds were funneled through the LIHEAP program, those constraints apply.

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12 Ex. 21.

13 42 USC 8621 – 8629.

14 7 AAC 44.010 090.

15 42 USC 8624(c).

16 Alaska State Plan Sec. 1.1. The Plan is available online at https://liheapch.acf.hhs.gov/sites/default/files//webfiles/docs/AK_Plan_2022.pdf (date accessed May 23, 2023).

17 Alaska State Plan Sec. 2.3 (emphasis in the original).

18 Ms. L's arguments regarding the American Rescue Plan Act could conceivably be construed as an argument that the American Rescue Plan Act requires the Division to provide electricity costs when they are not related to heating costs. This is akin to the case of *Turner v. Westfield Washington Township*, 2022 WL 1709907 (Seventh Circuit, 2022). Mr. Turner sued a township for not providing him with emergency rental assistance from a local fund created and funded by several federal Covid related legislation including the American Rescue Plan Act. In that case, the court held "Nothing in any of the Acts secures a right to benefits for individual applicants. Turner

As a result, Ms. L's argument that because the original source of her funding was the American Rescue Act, she is entitled to have her remaining funds directed to GVEA is not persuasive. It is therefore necessary to discuss whether the Alaska Heating Assistance program regulations resolve this issue.

B. Heating Assistance Program Regulations

The Alaska regulations that govern the Federal Heating Assistance program are located at 7 AAC 44.010 – 090. The regulations specifically provide:

> The purpose of the heating assistance program is to provide assistance under the federal Low-Income Home Energy Assistance Act of 1981 . . . to low income households to offset the cost of home heating.[19]

The regulations further provide:

> (b) A household is not eligible to participate in the heating assistance program, if at time eligibility determination, the household
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> * * *
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> (4) resides in subsidized rental housing and has no direct home heating costs.[20]

Another Heating Assistance program regulation, 7 AAC 44.060, provides in pertinent part:

> (5) if the vendor receives payment under 7 AAC 44.050(a), the vendor shall submit proof to the department that each payment is credited to the household; a refund of any remaining heating assistance must be made to the household or to the department for delivery to the household if
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> (A) the household closes its account with the vendor;[21]

The parties were asked to address the question of what effect, if any, 7 AAC 44.060(5)(A) has in this case.[22]

It is undisputed that the vendor, GVEA, had a credit of $2,555.48 in heating assistance funds for Ms. L., when Ms. L. closed out her account with GVEA. It is undisputed that GVEA returned those funds to the Division, and that the Division did not then return those funds to Ms. L. Ms. L. argues, as a result, that the Division is required to transmit those funds

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might have an administrative claim under state law, but the Acts do not confer individual rights or create a private enforcement mechanism."

19 7 AAC 44.010.

20 7 AAC 44.040(b).

21 7 AAC 44.060(5).

22 *See* Order for Supplemental Briefing issued on May 10, 2023.

to GVEA as she requested. The Division argues that because those funds will not be used for heating assistance, given that Ms. L. no longer has heating costs, that she no longer has a right to those funds.

This is an issue of first impression. The undersigned is unaware of any prior decisions addressing this issue, either in the Fair Hearing decisions issued by the Office of Administrative Hearings (OAH), or in the Dept. of Health Office of Hearings and Appeals, which handled Fair Hearing Heating Assistance cases prior to that caseload being transferred over to OAH in July of 2012.

The Division's *Heating Assistance Program Policy Manual* partially addresses the issue. It reads:

> **3008-6 GRANT TRANSFERS**
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> - A recipient requesting to transfer a portion of their grant balance because the household has a broken heating system is referred to their weatherization provider.
> - If a recipient moves their physical residence from one community to another or from one dwelling to another with a different heat source, the recipient may request that their remaining balance be transferred to their new heating vendor. The original vendor must send any remaining balance back to HAP. HAP will reissue to the new vendor in the new service area.
> - In special situations, a vendor may transfer a grant to another directly in their community at the request of the HAP Coordinator. The circumstances for the situation must be documented in case notes in ECOS.
> - If a recipient moves to a dwelling where the heat and electricity are included in the rent, their grant refund will be issued to them as a direct payment unless they have moved out of state.
> - If a recipient moves without closing their account or leaving a forwarding address, the vendor should refund the remaining credit balance to the state after one year.
> - If the household moves out of state, the remaining grant is refunded to HAP and is not reissued to the client or an out-of-state vendor.
> - A recipient may **not** request a transfer to a new vendor if they have not moved to a new community or switched fuel sources unless their designated vendor goes out of business or is unable to provided fuel when needed.[23]

[23] The Division's *Heating Assistance Program Policy Manual* is available online at http://dpaweb.hss.state.ak.us/manuals/HAP/hap.htm#t=3008%2F3008-6_grant_transfers.htm (emphasis in original, date accessed May 22, 2023).

The *Manual* therefore seems to read the regulation as requiring any credit balance to be remitted back to the Division, which is then to return those funds to the recipient, unless the recipient has moved out of state. For instance, it allows a refund when the recipient moves to a residence where they have both heat and electricity included in the rent. It also allows a transfer of funds from one heating vendor to another heating vendor. And it further allows for a vendor "[i]n special circumstances," to transfer a credit to another vendor, without specifying that it must be a heating vendor.

The Division's *Manual* is not a regulation. For it to be binding as a regulation, it would have to be adopted through the statutorily mandated Administrative Procedure Act process.[24] Accordingly, the regulation itself is the authoritative source from which to provide an answer in this case. The regulation clearly provides, without any conditions, that unused funds are to be returned to the recipient when the vendor heating account is closed. There is no requirement that the recipient can then only use those funds for heating purposes.[25] Indeed, the *Manual* also does not contain this requirement. Accordingly, the Division's argument that it cannot remit those funds, which pursuant to the Heating Assistance program regulations now belong to Ms. L., to GVEA for Ms. L.'s electric, non-heating, bills is not persuasive. **"**Administrative agencies are bound by their regulations just as the public is bound by them."[26]

Because these are Ms. L.'s funds, the Division is holding those funds on her behalf. Accordingly, the Division should have honored her request that it deliver those funds to GVEA on her behalf.

It is acknowledged that Ms. L. has requested, as part of its supplemental briefing, that this tribunal "should order that DPA review the cases to enforce this policy and issue refunds to anyone else in this circumstance." Ms. L.'s request far exceeds the scope of this tribunal's jurisdiction, which only allows it to address issues as they arise in a particular case:

> the scope of the administrative law judge's review is limited to ascertaining whether (1) the laws and policies have been properly applied in the case

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24 *See* AS 44.62.040 *et. seq.*

25 The Alaska Supreme Court applies a sliding scale approach for interpreting statutes (and hence to regulations). *Alyeska Pipeline Serv. Co. v. DeShong*, 77 P.3d 1227, 1239 (Alaska 2003) (" 'The plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.' ") (quoting *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 150 (Alaska 2002))

26 *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

according to the record as it existed at the time the initial decision was made, and as supplemented by evidence admitted in the hearing.[27]

This request is therefore denied.

V. Conclusion

The Division's denial of Ms. L.'s request that it remit the unused amount of her 2022 Heating Assistance program award, which was $2,555.48, to GVEA is reversed.

Dated: May 25, 2023

[signature redacted]

Lawrence A. Pederson
Administrative Law Judge

[27] 7 AAC 49.170.

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 21st day of June, 2023.

By: [redacted]
Name: Daniel Phelps
Title: Project Coordinator

Certificate of Service: The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals: Rachael Delehanty, ALSC (by mail and email); Jeff Miller, DPA (by email).

Signature: [redacted] Date: 06/21/2023