

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

|                  |   |                     |
|------------------|---|---------------------|
| In the Matter of | ) |                     |
|                  | ) |                     |
| X. W.            | ) | OAH No. 23-0470-PFE |
| _____            | ) |                     |

**DECISION**

**I. Introduction**

X. W. is a former recipient of benefits under the Alaska Temporary Assistance Program (“ATAP”). In June 2023 the Division of Public Assistance (the “Division”) notified Ms. W. of its intent to garnish her 2023 Permanent Fund Dividend (“PFD”) to satisfy an obligation she owed the Division arising from an inadvertent overpayment of ATAP benefits she received in 2018.

According to Ms. W., she has no recollection of receiving any correspondence from the Division regarding this overpayment claim prior to receiving the garnishment notice. This is an important detail, since failure by the Division to provide proper notice of a public benefits overpayment claim is grounds for invalidating a later PFD garnishment. As will be covered below, however, the totality of the evidence shows that the Division provided the required notice. Since the Division has properly established the amount ATAP benefits that were overpaid to Ms. W., the Division’s garnishment of her 2023 PFD in the amount of \$1,733 is AFFIRMED.

**II. Facts**

In the first months of 2018, the Division found Ms. W. eligible for ATAP and Food Stamp<sup>1</sup> benefits during a period when she was unemployed and actively seeking work. When Ms. W. later secured a job with a home improvement retailer in Anchorage, she promptly reported this to the Division on March 2, 2018.

While it was unclear at that time how many hours a week Ms. W. would be working, the Division concedes her benefits should have been suspended pending a determination of her future income. Instead, however, the Division mistakenly paid full benefits to Ms. W. for two additional months. As later calculated by the Division, this resulted in Ms. W. receiving overpayments of \$1,733 in ATAP benefits,<sup>2</sup> and \$867 in Food Stamp benefits.<sup>3</sup>

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<sup>1</sup> While officially known as the “Supplemental Nutrition Assistance Program,” the more common and recognized term of “Food Stamps” will be used here.

<sup>2</sup> Exhibit 12.

<sup>3</sup> OAH No. 18-0603-SNA.

The Division's regulations do not allow the agency to forgive collection of benefit overpayments, even in circumstances where the recipient has been totally compliant with program rules and requirements.<sup>4</sup> Consistent with this, in May 2018 the Division sent Ms. W. a letter advising of her liability for the Food Stamp overpayment, and her right to request a hearing if she disputed the Division's decision. After Ms. W. requested a hearing, the matter was referred to the Office of Administrative Hearings ("OAH"), which opened a file and set a hearing date of June 20, 2018. Prior to the hearing, however, the Division filed a request to dismiss. With Ms. W.'s consent, OAH granted the Division's request and dismissed the matter.<sup>5</sup>

While this resolved the Food Stamp overpayment, it did not address the ATAP overpayment. The Division did not take action to collect the ATAP overpayment until it sent a letter on August 29, 2018, which advised Ms. W. of this liability, and the Division's right to garnish her PFD to collect the \$1,733 that she owed.<sup>6</sup> This letter, which was sent to the same mailing address that Ms. W. used in her prior and subsequent communications with the Division, advised in bolded text that, **"If you disagree with this determination, you may request a fair hearing."** The Division did not receive any type of response to this letter.

This initial overpayment letter was followed by a notice dated October 30, 2020 – which the Division sent to the same mailing address – which again advised Ms. W. that she owed \$1,733 to the Division.<sup>7</sup> Due to the COVID pandemic, the Division made no further collection efforts until it mailed another notice dated May 10, 2023, that again advised Ms. W. of this unresolved debt and the Division's ability to intercept her PFD to collect it.<sup>8</sup> The Division heard nothing back from Ms. W. in response to these notices.

The Division thereafter issued a notice of garnishment dated June 19, 2023, that Ms. W. indisputably received.<sup>9</sup> In this notice the Division advised Ms. W. that she owed \$1,733 for the 2018 ATAP overpayment, and that her 2023 PFD would be garnished up to that amount. It also informed Ms. W. of her right to a hearing to contest this garnishment.

Ms. W. responded to the Division's notice by timely requesting a hearing, which was held by the Office of Administrative Hearings ("OAH") on August 30, 2023. Ms. W. represented

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<sup>4</sup> See 7 AAC 45.570(a) (ATAP benefits) and 7 C.F.R. § 273.18(b)(3) (Food Stamp benefits).

<sup>5</sup> OAH No. 18-0603-SNA (Commissioner of Health and Social Services, 2018). The reason why the Division asked for the matter to be dismissed is not disclosed in the case record.

<sup>6</sup> Exhibit 1.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Exhibit 3.

<sup>9</sup> Exhibit 4.

herself and testified on her own behalf.<sup>10</sup> Assistant Attorney General Justin Nelson appeared on the Division's behalf and submitted 18 exhibits that were admitted into evidence.

Among the submitted exhibits was a past OAH decision where Ms. W. requested a hearing after receiving an overpayment notice for ATAP and Food Stamp benefits in 2015.<sup>11</sup> Notably, there the Division sought confirmation of Ms. W.'s liability for overpayments made under those separate benefit programs in a single administrative proceeding.

### **III. Discussion**

The Division is authorized to recover overpayments from public assistance recipients.<sup>12</sup> The PFD of a former recipient may be garnished to satisfy the balance due on a public assistance overpayment claim.<sup>13</sup>

Before garnishing a PFD, however, 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 only disputed issue here is whether the Division properly notified Ms. W. of the ATAP overpayment claim, and her right to request a hearing where she could contest that claim. The Division's records show that it provided this notice through the letter it sent to Ms. W. on August 29, 2018, with Ms. W.'s overpayment liability becoming fixed when she failed to timely request a hearing in response.<sup>16</sup> In her testimony, however, Ms. W. insisted she never received that letter, and would have promptly requested a hearing if she had seen it. In this regard Ms. W.

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<sup>10</sup> Except as otherwise noted, the facts described in this decision are drawn from Ms. W.'s testimony.

<sup>11</sup> See Exhibit 18, which is 4-page decision issued by ALJ Kathryn Kurtz in the matter OAH No. 15-1269-ATP (Commissioner of Health and Social Services, 2015). The decision confirmed Ms. W.'s liability for Food Stamp and ATAP overpayments which resulted when she delayed giving the Division notice that she and her domestic partner had found full-time employment.

<sup>12</sup> AS 47.05.080(a).

<sup>13</sup> AS 47.05.080(b).

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

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

<sup>16</sup> See *Jefferson v. Spenard Builders' Supply, Inc.*, 366 P.2d 714, 717 (Alaska 1961) ("Evidence as to the proper mailing of a letter has been held to create a presumption the letter was received by the addressee.").

points to the 2015 and 2018 matters where she requested fair hearings. This evidence supports the inference that if Ms. W. had seen the August 2018 letter, and recognized it as an ATAP overpayment claim, she would have likely responded by requesting a hearing.

However, surrounding circumstances point to the conclusion that the Division's letter was properly mailed to Ms. W., but she failed to recognize the significance of this correspondence. Two facts are key in this regard. First, Ms. W. testified that August 2018 was a particularly stressful month due to her domestic partner suffering a medical emergency serious enough to require a hospital stay. Ms. W. acknowledged that her overriding concern during that time was caring for her partner.

Second, in her testimony Ms. W. testified to her confusion at the Division using separate claim letters and administrative proceedings to collect the Food Stamp and ATAP overpayments made to her in March and April of 2018. This was a different procedure as compared to Ms. W.'s 2015 overpayment matter, where her liability for both Food Stamp and ATAP overpayments was jointly addressed in a single administrative hearing. By the time Ms. W. was mailed the letter notifying her of the ATAP overpayment in August 2018, roughly two months had passed since the Food Stamp overpayment claim had been fully resolved. This would have made it easier for Ms. W. to simply dismiss the August 2018 letter as relating to the matter that had already been resolved. The fact Ms. W. does not recall receiving the two subsequent notices the Division mailed to her further supports the inference that she was not recognizing the significance of the Division's correspondence.

Based upon these facts, it is more likely than not that the Division properly mailed the August 2018 letter addressing the overpayment of ATAP benefits and that Ms. W. failed to recognize the significance of this letter because of the distraction caused by her partner's health issues, and confusion arising from the Division's efforts to collect overpayments of Food Stamp and ATAP benefits as separate and unrelated matters.

While Ms. W.'s confusion is understandable, any concern about the Division's actions here is tempered by the fact she does not contest the Division's calculations regarding the amount ATAP benefits she was overpaid. Nor does Ms. W. dispute her ultimate obligation to repay the excess benefits she received. As Ms. W. testified during the hearing, the issue most distressing to her is the unexpected nature of this PFD garnishment, which will take away family income she was planning to spend in other ways. While appreciating the difficulties this garnishment will cause Ms. W., the simple reality is that her overpayment liability will not go away. While the

Division has the discretion to enter into a repayment plan with Ms. W. in lieu of a PFD garnishment, the Division is also within its rights to seek repayment now.<sup>17</sup>

#### **IV. Conclusion**

Based on the finding that Ms. W. was properly notified of her ATAP repayment liability in 2018, that liability became final and binding when she failed to request a hearing to challenge it. The Division may accordingly garnish Ms. W.'s 2023 PFD in the amount of \$1,733 to collect that overpayment liability.

Dated: September 13, 2023.

By: Signed  
Max Garner  
Administrative Law Judge

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<sup>17</sup> See AS 47.23.170(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 11<sup>th</sup> day of October, 2023.

By: Signed

Name: Daniel Phelps

Title: Project Coordinator

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