

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

In the Matter of	)	
	)	
M. D.	)	OAH No. 23-0522-PFE
_____	)	

DECISION

I. Introduction

M. D. is challenging an action by the Department of Health, Division of Public Assistance (“DPA”) to garnish her Permanent Fund Dividend (“PFD”) for a default on a public assistance overpayment. One thing DPA must show is that the overpayment was not contested or was resolved in its favor. Ms. D. contested the overpayment. DPA then understood that it resolved the matter by agreement. Ms. D. disputes that there was an agreement and recalls the circumstances differently. DPA did not offer evidence that an oral or written agreement exists or the terms of any agreement. Accordingly, DPA has not met its burden and may not garnish Ms. D.’s 2023 PFD.

II. Facts

M. D. was notified of an overpayment of Alaska Temporary Assistance Program (“ATAP”) benefits on August 21, 2017.¹ Agency records indicate an unsigned, largely blank repayment agreement was attached to the notice.² Ms. D. does not recall ever receiving this unsigned repayment agreement.³

Ms. D. appealed the notice of overpayment.⁴ DPA representative Jeff Miller later sent a “Notice of Non Referral” of Ms. D.’s appeal to OAH. In the non-referral, Mr. Miller stated that he spoke with Ms. D. about the overpayment and that she had “agreed to a payment plan” and therefore no appeal hearing was necessary.⁵ DPA has no record of a repayment agreement signed by Ms. D.⁶ Ms. D. recalls speaking with Mr. Miller, but understood that a repayment agreement would be sent to her.⁷ She did not receive or sign one.⁸ Ms. D. was also of the

¹ Ex. 1-1.9.
² Ex. 1.6; Sally Dial testimony.
³ M. D. testimony.
⁴ Ex. 2.
⁵ Ex. 2.1; Jeff Miller testimony.
⁶ Sally Dial testimony.
⁷ M. D. testimony.
⁸ *Id.*

understanding that she would not need to repay the overpayment unless she applied for ATAP in the future.⁹

DPA sent Ms. D. a notice of outstanding debt for the ATAP overpayment on June 2, 2023.¹⁰ This notice states that if DPA does not receive payment “within 30 days, we may file an Affidavit of Default in court for the balance due.”¹¹ The notice further states that “once your payment becomes delinquent, we may intercept your future Alaska Permanent Fund Dividend(s).”¹² DPA sent another notice on July 11, 2023 that it was garnishing Ms. D.’s PFD.¹³

Ms. D. appealed.¹⁴ A hearing was held September 25, 2023.

III. Discussion

PFDs are subject to levy to satisfy a debt, including by a state agency who may levy a person’s full dividend.¹⁵ The legislature has specifically identified public benefit overpayments as a type of debt that can be satisfied through levying a PFD.¹⁶

To garnish a PFD, DPA must provide the Department of Revenue with several items of information, one of which is that “the overpayment claim has not been contested, or, if contested, that the issue has been resolved in favor of the Department.”¹⁷ One way to resolve a matter in favor of the Department would be by agreement.

Here, the record shows that Ms. D. initially contested the overpayment. She then spoke with a DPA representative Miller about the matter. Mr. Miller walked away from that conversation believing that Ms. D. had agreed to a repayment such that he did not refer her hearing request to OAH. Ms. D., on the other hand, understood that agreement paperwork would be sent to her to consider and that this agreement would not require her to repay the overpayment unless she sought ATAP benefits in the future. DPA offered no record of any terms the parties agreed to during this conversation. With no record or testimony about terms of an agreement,

⁹ Id.; Ex. 5-5.1.

¹⁰ Ex. 3.1.

¹¹ *Id.*

¹² *Id.*

¹³ Ex. 4-4.1.

¹⁴ Ex. 5.2

¹⁵ AS 43.23.140(a), (b)(6).

¹⁶ AS 47.05.080(b); *see also* AS 43.23.170 (specifying procedures for levying a PFD to satisfy public assistance overpayment debt).

¹⁷ AS 43.23.170(a)(3)(C).

and with Ms. D. not understanding that she had entered an agreement, DPA has not provided evidence that an oral agreement was formed.

Nor is there any evidence of a written agreement. DPA records indicate it sent Ms. D. an unsigned agreement with blanks to fill in terms with its initial notice, though Ms. D. does not recall receiving it. DPA has no record of sending her an agreement following her conversation with Mr. Miller. Ms. D. testified that she never signed an agreement. And indeed DPA has no record of a signed agreement.

What DPA has provided here is Mr. Miller's understanding of an oral agreement, but no evidence of any terms, common understanding, or assent by Ms. D. and no evidence that an agreement was ever memorialized in writing. In addition, there is a dispute as to the terms of that agreement, if any existed. Without an agreement, DPA has not met its burden to show that Ms. D.'s overpayment dispute was resolved in DPA's favor. While DPA may consider that Ms. D.'s lack of requesting a hearing on its non-referral notice constitutes the issue being resolved in its favor, the disagreement about the terms of the agreement and the lack of any evidence other than Ms. D.'s recollection means that the Division has not met its burden of proof on the initial question of whether the matter had been resolved in its favor. Accordingly, DPA has not made the necessary showing to garnish Ms. D.'s PFD.

This does not mean DPA may not seek repayment from Ms. D. It means DPA has not complied with the procedure to garnish her 2023 PFD for repayment. Whether and how DPA may pursue repayment in the future is an issue for another day.

IV. Conclusion

Because DPA did not provide evidence to show Ms. D.'s contested overpayment matter was resolved in its favor, DPA has not met its burden and may not garnish Ms. D.'s 2023 PFD. This is limited to DPA's current garnishment request and does not preclude the Division from future garnishment attempts if it is able to fully comply with AS 43.23.170.

Dated: September 27, 2023

Signed

Rebecca Kruse
Administrative Law Judge

This is 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: November 13, 2023.

Signed

Daniel R. Phelps II
Project Coordinator
Department of Health
Final decisionmaker by Delegation
of the Commissioner of Health

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