

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

In the Matter of	)	
	)	
B.G	)	OAH No. 23-0449-PFE
_____	)	

DECISION

I. Introduction

B.G is a former Alaska Temporary Assistance Program (ATAP) benefit recipient. The Division of Public Assistance (Division) notified her that it was intending to garnish her 2023 Permanent Fund Dividend (PFD) to satisfy a past due obligation that she owed the Division arising out of her previous receipt of ATAP benefits.

Although Ms. G took issue with the Division’s requirement that she must repay overpaid ATAP benefits, that debt has already been established through a decision issued after a hearing. It cannot be contested in this proceeding. The Division properly established the existence and amount of overpaid ATAP benefits, the remaining balance owing of \$903, and it provided Ms. G with appropriate notice of the garnishment. As a result, the Division’s garnishment of her 2023 PFD in the amount of \$903 is AFFIRMED.

II. Facts¹

Ms. G received ATAP benefits in 2014. On March 13, 2014, the Division notified Ms. G that she received \$903 more in ATAP benefits than she should have and was required to repay the Division in that amount. That same notice informed her that her PFD could be garnished to pay this obligation.² Ms. G requested a hearing to challenge the repayment requirement. After the hearing, a decision was issued finding that she was required to reimburse the Division for \$903.³ Ms. G did not appeal that decision.

Ms. G did not repay any part of the \$903, nor did she attempt to enter into a repayment agreement. The Division sent her a notice in January of 2021 reminding her that she still owed the Division \$903.⁴ The Division sent her an additional notice in May of 2023 notifying her that

¹ These facts are proven by a preponderance of the evidence. Unless otherwise noted, they are based upon the hearing testimony of Ms. G and Ms. Dial.

² Exs. 1 – 1.6.

³ Exs. 2 – 2.3.

⁴ Ex. 3.

she still owed a balance of \$903 on this obligation, and that if she did not make payment on the debt, “we may intercept your future Alaska Permanent Fund Dividend.”⁵

The Division notified Ms. G on June 28, 2023 that it was intending to garnish her 2023 PFD. In its notice, the Division notified Ms. G that she had defaulted on her obligation to repay the ATAP overpayment, that the balance owing was \$903 in overpaid benefits, and the Department of Health would garnish her PFD up to that amount. It also informed her of her right to a hearing to contest the garnishment.⁶

Ms. G responded to the Division’s notice and requested a hearing.⁷ Her hearing was held on September 6, 2023. Ms. G represented herself and testified on her own behalf. Sally Dial, a Fair Hearing Representative with the Division, represented the Division and testified on its behalf.

III. Discussion

The Division is authorized to recover overpayments from public assistance recipients.⁸ The PFD of a former recipient may be garnished to satisfy the balance due on a public assistance overpayment claim.⁹

Before it can garnish a PFD, the Division is required to comply with certain procedural safeguards.¹⁰ 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.¹¹

Ms. G was notified in 2014 of the Division’s position that she had received an overpayment of ATAP benefits. She was told at the time that her PFD could be garnished and

⁵ Ex. 3.1.

⁶ Ex. 4 – 4.3.

⁷ Exs. 5.1 – 5.2.

⁸ AS 47.05.080(a).

⁹ AS 47.05.080(b).

¹⁰ AS 43.23.170(a).

¹¹ AS 43.23.170(a)(3).

that she had the right to contest the Division's repayment demand by requesting a hearing. Ms. G requested a hearing and the final decision in that case found that she was required to repay the Division \$903.

Ms. G was subsequently notified of the Division's decision to garnish her 2023 PFD and that she had the right to appeal that decision. That notice was sent to Ms. G's correct address, identified the amount due, stated that the Division intended to garnish her PFD, and notified her of her hearing rights. This satisfied the statutory procedural requirements.¹²

Ms. G then requested a hearing to challenge the garnishment. At hearing, Ms. G argued that she, due to communications that she had with the Division, should not have to repay this obligation. However, Ms. G cannot challenge the Division's repayment requirement at this late date, because a decision was entered in the Division's favor, and she did not appeal it.

Ms. G raised a legal issue in this case. That issue is whether the Division can legally seek to garnish Ms. G's PFD because so much time has passed since it was incurred. This question is answered by the Alaska case of *State, Dep't of Revenue ex rel. Gerke v. Gerke*.¹³ In that case, the Alaska Supreme Court held that the standard statutory rule and court rules regarding garnishments on older child support obligations did not apply to or prevent administrative garnishments. Because this is an administrative garnishment, similar to child support administrative garnishments, *Gerke* would apply. As a result, even though Ms. G's repayment obligation dates back to 2014 and this is the Division's first garnishment attempt, the Division may still garnish Ms. G's PFD to satisfy this debt.

As a result, since Ms. G still owes \$903 on this obligation and because the Division has satisfied its procedural requirements, the Division is entitled to garnish her PFD to satisfy her repayment obligation for the overpaid ATAP benefits.¹⁴

IV. Conclusion

Ms. G was notified of her ATAP repayment requirement in 2014. After a hearing, a decision was issued finding her liable to repay the Division \$903 in ATAP benefits that she should not have received. She did not appeal that decision, so it became a binding decision

¹² AS 47.23.170(b).

¹³ 942 P.2d 423 (Alaska 1997).

¹⁴ See AS 47.23.170(b).

which she cannot challenge at this late date. Because the ATAP overpayment has not yet been fully repaid, the Division may garnish Ms. G's 2023 PFD.

Dated: September 20, 2023

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 13th day of October, 2023.

By: Signed
Name: Daniel Phelps
Title: Project Coordinator

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