

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

In the Matter of	)	
	)	
Q.N	)	OAH No. 23-0511-PFE
_____	)	

DECISION

I. Introduction

Q.N 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.

Ms. N requested a hearing to challenge the Division's garnishment of her PFD. That hearing was held on September 14, 2023. Ms. N represented herself and testified on her own behalf. W.J, Ms. N's mother, testified on her daughter's behalf. Sally Dial, a Division Fair Hearing Representative, represented the Division and testified on its behalf.

Ms. N made two arguments at the hearing. She argued that she did not receive these ATAP benefits, only Supplemental Nutrition Assistance Program (SNAP)¹ benefits. She also argued that she never received the initial ATAP overpayment notice sent in 2016. However, the evidence shows that she was issued ATAP benefits and that she was sent notice of the overpayment requirement, and she did not request a hearing to challenge it. Accordingly, the Division's garnishment of her 2023 PFD in the amount of \$615 is **AFFIRMED**.

II. Facts

Division records show that Ms. N was a recipient of both SNAP benefits and ATAP benefits in 2016.² In 2016, the Division established an overpayment claim against Ms. N for ATAP benefits. The Division sent Ms. N notice on March 14, 2016 that it had determined she received ATAP benefits in February and March of 2016, in the total amount of \$615, which she should not have received, and that she was required to repay those funds. That same notice

¹ SNAP was formerly known as Food Stamps. This decision will use the current title of the program: SNAP.

² Ex. 5.

advised her that she had the right to request an administrative hearing to challenge the repayment requirement.³ Ms. N did not request a hearing to challenge the repayment requirement.⁴

The Division sent Ms. N letters on December 13, 2020 and February 3, 2022, reminding her that she owed the Division \$615 for overpaid ATAP benefits.⁵ On June 19, 2023, the Division sent Ms. N a letter reminding her of \$615 ATAP debt, which notified her that her PFD could be taken to satisfy the debt.⁶ On June 29, 2023, the Division notified Ms. N that it intended to garnish her 2023 PFD. That notice stated that Ms. N had defaulted on her obligation to repay the ATAP overpayment, that the balance owing was \$615, 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.⁷

Ms. N testified that she did not receive any of the notices, including the original March 14, 2016 notice, until she received the June 29, 2023 garnishment notice. She verified that all the notices had been sent to the correct mailing address. Ms. N stated that the only notice that she recalled receiving was a SNAP denial notice.

Ms. N testified that she hands her paperwork over to her mother for help with public assistance and child support matters. Ms. J, Ms. N's mother, testified that she was unaware that Ms. N was receiving cash assistance and thought that she was only receiving SNAP benefits. Ms. N's hearing request avers that she did not receive ATAP benefits. In that same request, she mentions that her child support payments were paid to "your office," meaning the Division.⁸ Both Ms. J and Ms. N discussed the fact that the Child Support Enforcement Division had intercepted child support funds which would have otherwise been routed to Ms. N.

III. Discussion

The Division is authorized to recover overpayments from public assistance recipients.⁹ The PFD of a former recipient may be garnished to satisfy the balance due on a public assistance overpayment claim.¹⁰

³ Exs. 1 – 1.9.

⁴ Ms. Dial's testimony.

⁵ Exs. 2 – 2.1

⁶ Ex. 2.2.

⁷ Exs. 3 – 3.4.

⁸ Ex. 4.1.

⁹ AS 47.05.080(a).

¹⁰ AS 47.05.080(b).

Before it can garnish a PFD, the Division is required to comply with certain procedural safeguards.¹¹ 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.¹²

Ms. N, through her and her mother's testimony, raised two separate arguments. First, she testified that she did not receive the original notice in 2016 advising her that the Division had an ATAP overpayment claim against her, which she could contest via a hearing. However, she verified that it was sent to the correct address. Under the "mailbox" rule, service of documents properly addressed and mailed is deemed complete upon mailing.¹³ Ms. N's testimony did not rebut this presumption of delivery for several reasons. First, she acknowledged getting other notices from the Division, such as her SNAP denial notice. Second, she stated that when she received public assistance information, she would hand it over to her mother for assistance. Given the passage of time, it is probable that she might have received an overpayment claim notice, gave it to her mother, and simply did not remember doing so. Accordingly, the weight of the evidence shows that Ms. N was mailed the 2016 repayment claim notice and received it. Because Ms. N received the Division's 2016 overpayment notice, and she did not request a hearing on it, the repayment demand became a final decision which she cannot appeal at this late date.¹⁴

Ms. N also argued that she did not receive cash benefits, only SNAP benefits. ATAP is a cash benefit program. Ms. N and her mother's testimony established that they were both aware that Ms. N's child support payments were diverted to the Child Support Enforcement Division while she was receiving assistance. This is something that only happens to ATAP recipients. An

¹¹ AS 43.23.170(a).

¹² AS 43.23.170(a)(3).

¹³ *Jefferson v. Spenard Builder's Supply, Inc.*, 366 P.2d 714, 717 (Alaska 1961).

¹⁴ If a public assistance benefit recipient disagrees with a Division notice, they only have 30 days after the date of the notice to request a hearing to challenge it. 7 AAC 49.030(a).

ATAP recipient is required to assign their child support rights to the state as part of the application process.¹⁵ Because this assignment would not have occurred unless Ms. N was receiving ATAP benefits, this argument is not persuasive. Indeed, the main concern expressed by Ms. N was not that she should not have to pay the \$615 ATAP overpayment claim, but instead was that she needed to recover child support payments that she believes were wrongly diverted. In addition, as a purely procedural matter, Ms. N cannot raise this as a defense at this late date, given that she was advised of the overpayment issue back in 2016.

The last issue to be resolved in this case is whether the Division complied with the statutory requirements for garnishing her PFD. The evidence shows that Ms. N was 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. N'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.¹⁶

As a result, because the Division has established that Ms. N still owes \$615 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.¹⁷

IV. Conclusion

Ms. N was notified of her ATAP repayment requirement in 2016. That repayment requirement was not appealed, so it became a binding decision, which cannot be challenged at this late date. Because the ATAP overpayment has not been repaid, the Division may garnish Ms. N's 2023 PFD.

Dated: September 22, 2023

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁵ 7 AAC 45.240.

¹⁶ AS 47.23.170(b).

¹⁷ 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 19th day of October, 2023.

By: Signed

Name: Daniel R. Phelps II

Title: Project Coordinator, Department of Health

Final decision maker by Delegation of the
Commissioner of Health

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