

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

|                  |   |                     |
|------------------|---|---------------------|
| In the Matter of | ) |                     |
|                  | ) |                     |
| K.G              | ) | OAH No. 23-0543-PFE |
| _____            | ) |                     |

**CORRECTED DECISION<sup>1</sup>**

**I. Introduction**

K.G received Alaska Temporary Assistance Program (ATAP) benefits in 2019. The Division of Public Assistance (Division) notified him that it was intending to garnish his 2023 Permanent Fund Dividend (PFD) to satisfy a past due obligation that he owed the Division arising out of his previous receipt of ATAP benefits.

Mr. G requested a hearing to challenge the Division’s garnishment of his PFD. His hearing was held on September 28, 2023. Mr. G represented himself and testified on his own behalf. Jeff Miller, a Fair Hearing Representative with the Division, represented the Division and testified on its behalf.

Mr. G took issue with the Division’s overpayment finding which underlies this PFD garnishment case. He maintained that he never received the initial notice that the Division had determined he had been overpaid ATAP benefits, and that as a result, he was not able to appeal that determination. The evidence in this case, however, shows that he was mailed the overpayment notice to the correct address by the Division, and that it was not returned to the Division as undeliverable. It is undisputed that he did not appeal the overpayment finding. Accordingly, the Division properly established the existence and amount of overpaid ATAP benefits, the balance owing of \$1,805 and it provided Mr. G with appropriate notice of the garnishment. As a result, the Division’s garnishment of Mr. G’s PFD in the amount of \$1,805 is **AFFIRMED**.

**II. Facts**

Mr. G received ATAP benefits in 2019. On October 21, 2019, the Division sent him a letter addressed to his Post Office Box that notified him that he had been overpaid ATAP benefits in the amount of \$1,805 and was required to repay those benefits. That letter advised him of his right to request a hearing to challenge the repayment requirement. It also advised him

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<sup>1</sup> This corrected decision is issued to correct a clerical error on page 2. Otherwise it is unchanged.

that the Division had “the right to intercept your future permanent fund dividend(s).”<sup>2</sup> On December 11, 2019, the Division sent Mr. G a follow up letter to the same address advising him that a “claim had been established against [him] for welfare benefits” and that he was required to pay that claim.<sup>3</sup>

Mr. G testified that he did not receive the Division’s 2019 payment letters. He verified that the letters were sent to the correct address.<sup>4</sup> Mr. Miller researched the issue, including contacting the Division’s claim division and determined that the Division’s letters were not returned to the Division.<sup>5</sup>

Mr. G did not request a hearing to challenge the Division’s repayment requirement.

The Division notified Mr. G on June 28, 2023 that it was intending to garnish his 2023 PFD. In its notice, the Division notified Mr. G that he had defaulted on his obligation to repay the ATAP overpayment, that the balance owing was \$1,805, and the Department of Health would garnish his PFD up to that amount. It also informed him of his right to a hearing to contest the garnishment. That letter was mailed to the same address as the 2019 payment notices.<sup>6</sup>

Mr. G responded to the Division’s notice and requested a hearing.<sup>7</sup>

### **III. Discussion**

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

Before it can garnish a PFD, the Division is required to comply with certain procedural safeguards.<sup>10</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

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<sup>2</sup> Exs. 2 – 2.1.

<sup>3</sup> Ex. 3.

<sup>4</sup> Mr. G’s testimony.

<sup>5</sup> Mr. Miller’s testimony.

<sup>6</sup> Exs. 5 – 5.1.

<sup>7</sup> Ex. 6.

<sup>8</sup> AS 47.05.080(a).

<sup>9</sup> AS 47.05.080(b).

<sup>10</sup> AS 43.23.170(a).

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>11</sup>

The critical factual issue here is whether the Division notified Mr. G of its overpayment claim in 2019. It is undisputed that Mr. G did not contest the overpayment claim by requesting a hearing to challenge it. If the Division notified Mr. G of its overpayment claim in 2019, because he did not appeal the overpayment claim, the Division will have satisfied the requirement that the overpayment claim either was not contested or, if contested, the issue was resolved in the Division's favor. If the Division did not notify Mr. G of its overpayment claim in 2019, then Mr. G would prevail because the Division did not provide Mr. G with an opportunity to contest the overpayment claim.

The facts of this case show that the 2019 overpayment claim notice was sent to Mr. G's correct address. It identified the amount due and notified him of his hearing rights. It is therefore presumed to have been delivered to Mr. G, i.e., he was notified of the claim. Mr. G's testimony was not sufficient to rebut this presumption, given that the notice was not returned to the Division. An ATAP recipient or former recipient is entitled to request a hearing to challenge the Division's overpayment claim.<sup>12</sup> However, the hearing request must be made no "later than 30 days after the date of the notice."<sup>13</sup> Because it is undisputed that Mr. G did not request a hearing, he therefore did not contest the overpayment claim in a timely manner. He cannot contest it at this late date.

It should be noted that Mr. G argued that the 2019 overpayment claim notice should have been sent to him by certified mail. That is not required by the applicable ATAP regulation, 7 AAC 45.570. Consequently, the fact that he was not sent the notice by certified mail does not alter the finding that he was properly sent notice of the overpayment claim and did not timely contest it.

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<sup>11</sup> AS 43.23.170(a)(3).

<sup>12</sup> 7 AAC 45.570(l).

<sup>13</sup> 7 AAC 49.030(a).2

Because the facts show that Mr. G was notified of the Division's overpayment claim back in 2019, where he was notified of his hearing rights, and because he did not contest the overpayment claim by requesting a hearing at that time to challenge it, the Division must show in this case that it sent him a notice advising him of the current claim amount, advising him that it intends to attach his PFD to satisfy its claim, and that he can challenge the attachment by requesting a hearing.<sup>14</sup> The Division complied with these requirements when it sent him notice of the garnishment on June 28, 2023, which contained the required information.

As a result, since Mr. G owes \$1,805 on the Division's ATAP overpayment claim and because the Division has satisfied its procedural requirements, the Division is entitled to garnish his PFD to satisfy his repayment obligation for the overpaid ATAP benefits.

#### **IV. Conclusion**

Mr. G was notified of his ATAP repayment requirement in 2019. He did not contest the repayment requirement by timely requesting a hearing, which means he cannot challenge the repayment requirement at this late date. Because the ATAP overpayment has not been repaid, the Division may garnish Mr. G's 2023 PFD.

Dated: November 17, 2023

*Signed*

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Lawrence A. Pederson  
Administrative Law Judge

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<sup>14</sup> AS 43.23.180(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 21<sup>st</sup> day of December, 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 for publication. Names may have been changed to protect privacy.]