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

In the Matter of	)	
	)	
C.X	)	OAH No. 24-0476-PFE
	)	

DECISION

I. Introduction

C.X is a former recipient of benefits under the Alaska Temporary Assistance Program ("ATAP"). In June 2024 the Division of Public Assistance (the "Division") notified Ms. X of its intent to garnish her 2024 Permanent Fund Dividend ("PFD"). This garnishment is intended to recover an inadvertent overpayment of ATAP benefits that Ms. X received in 2014.

Ms. X claims the Division failed to provide her with proper notice regarding this overpayment, an oversight which she attributes to bureaucratic inefficiency on the Division's part. Whether that notice was provided is an important detail, since the Division must notify beneficiaries of alleged overpayments, and their right to request an administrative hearing regarding the Division's determination, before pursuing a later PFD garnishment.

As will be covered below, the evidence shows that the Division provided proper notice to Ms. X regarding her ATAP overpayment, and her accompanying right to request a hearing regarding that determination. Since the Division has fully complied with all other procedural steps required in this context, the Division's garnishment of Ms. X's 2024 PFD in the amount of $696.00 is AFFIRMED.

II. Facts

Ms. X received ATAP benefits during a period of financial hardship that began in 2013. After securing fulltime employment in June 2014, she went to one of the Division's offices to make an in-person report of this development.[1] Recognizing that her employment income made her ineligible for future benefits, Ms. X believed she was "said and done" with the Division at that point, and that her public assistance file would be closed without need of any further action by her.[2]

Due to an error on the Division's part, however, this employment information was not timely entered into its computer system. This led to Ms. X receiving an additional $696 of benefits for which she was ineligible. The Division quickly discovered this oversight, and on July

---

1 Ms. X and Ms. Thirlwell testimony.
2 Ms. X testimony.

1, 2014, sent an overpayment notice to Ms. X at the same mailing address she had utilized in past communications with the Division.[3] With this notice was a form that Ms. X could submit to request a hearing where she could challenge the Division's overpayment determination.[4] Ms. X contends the Division never actually mailed this notice to her, and that she would have promptly requested a hearing if it had in fact been delivered.

Years would pass before the Division began taking steps to collect this overpayment.[5] The Division's efforts in this regard began with a notice mailed to Ms. X on February 21, 2021, which advised that she owed $696 to the Division and that "records for your claim show your payment is past due."[6] A substantially similar notice was mailed to her again on April 12, 2023.[7] This was followed by a notice mailed to Ms. X on June 20, 2023, advising of the Division's intent to garnish her 2023 PFD to recover this overpayment.[8] Ms. X requested a hearing in response to this notice. However, after her hearing request was referred to the Office of Administrative Hearings, the Division voluntarily withdrew its garnishment notice on account of concerns that the notices Ms. X received in 2023 were inadequate.[9]

The Division thereafter sent Ms. X another notice on September 23, 2023, which again advised that the $696 overpayment remained due and owing. This was followed by another garnishment notice on June 13, 2024. Ms. X again requested a hearing, which was held on August 29, 2024. The Division was represented by Marie Thirlwell, who offered testimony and 13 exhibits that were admitted into evidence. Ms. X participated in the hearing and offered testimony on her own behalf.

III. Discussion

The Division is authorized to recover overpayments from ATAP recipients, even if those result from errors on the Division's part.[10] The PFD of a former recipient may be garnished by the Division to satisfy an overpayment claim.[11] Before it may do so, however, the Division must certify that (1) the Division has notified the recipient that her future PFDs will be taken to satisfy

---

3 Exhibit 2.

4 Exhibit 2.5.

5 While the Division's hearing representative testified that overpayment collection efforts were largely halted during the COVID pandemic, it is unclear why the Division did not pursue collection efforts prior to that point.

6 Exhibit 3.

7 Exhibit 4.

8 Exhibit 5.

9 Ms. Thirlwell testimony.

10 AS 47.05.080(a) and 7 AAC 45.570(a) (which requires the Division to pursue collection of ATAP overpayments exceeding $100 "regardless of the amount or cause of the overpayment").

11 AS 47.05.080(b).

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; and (3) the overpayment claim either was not contested or, if contested, the issue was resolved in the Division's favor.[12] As the party who requested the hearing, Ms. X has the burden of showing by a preponderance of the evidence that the Division made a mistake here.[13]

The only disputed issue here is whether the Division properly notified Ms. X 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 correspondence it sent to Ms. X on July 1, 2014, with Ms. X's overpayment liability becoming fixed when she failed to timely request a hearing in response.[14] In her testimony, however, Ms. X insisted she never received that notice, and would have promptly requested a hearing if she had.

Ms. X presented as a credible witness who appears to have conscientiously followed the rules governing the ATAP program. However, surrounding circumstances point to the conclusion that the Division's overpayment notice was properly mailed to Ms. X and that she failed to recognize the significance of this correspondence. Several facts are key in this regard. First, there are no facts in the record suggesting that the Division departed from its standard practice and procedure by inserting a copy of the 2014 overpayment notice into Ms. X's file without actually mailing it to her. Second, Ms. X testified that in July 2014 she was in the process of vacating the home where she had been receiving her mail and was spending much of her non-working time at another residence. During this type of transition period, there is much greater probability of important correspondence going overlooked due to it being mixed in with other pieces of accumulated mail. Third, the fact Ms. X believed that she was "said and done" with the Division after reporting the successful conclusion of her job search increased the likelihood of her disregarding subsequent correspondence from the Division.

Taken together, these facts and circumstances point to the conclusion that the Division mailed the July 2014 overpayment notice to Ms. X, and that she failed to recognize the significance of this correspondence when it was received.

It should be noted that Ms. X has not challenged the Division's calculation of the overpayment amount, and she acknowledged receipt of these funds during her hearing testimony.

---

12 AS 43.23.170(a)(3).

13 2 AAC 64.290(e).

14 *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.").

Given this, there is no reason to believe that Ms. X could have avoided the eventual outcome here even if she had recognized the significance of the overpayment notice and sought a hearing back in July 2014.

IV. Conclusion

Based on the finding that Ms. X was properly notified of her ATAP overpayment in July 2014, that liability became final and binding when she failed to request a hearing to challenge it. Since the Division has fully complied with its other procedural requirements, it may accordingly recover that overpayment by garnishing Ms. X's 2024 PFD in the amount of $696.

Dated: September 26, 2024.

By: *Signed*
Max Garner
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 11th day of October, 2024.

By: *Signed*
Name: Daniel R. Phelps II
Title: Process Improvement Manager
Office of the Commissioner
Alaska Department of Health

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