

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

In the Matter of)	
)	
C K)	OAH No. 13-0748-ATP
_____)	DPA Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) has the right to attempt to collect certain Alaska Temporary Assistance Program (ATAP) benefits which were overpaid to C K's household due to a mistake made by the Division. The parties agree that, through no fault of her own, Ms. K was paid \$506.00 more in ATAP benefits than she should have been paid during the period November 2012 through March 2013. This decision concludes that, pursuant to the applicable state regulations, the Division is required to seek repayment from Ms. K for the overpaid ATAP benefits. Accordingly, the Division's decision establishing a claim against Ms. K for \$506.00 in overpaid ATAP benefits is affirmed.

II. Facts

Ms. K and her 14 year old son began receiving ATAP benefits in August 2012.¹ At or about that time Ms. K lost her home; she and her son are currently homeless.²

Ms. K's son receives Supplemental Security Income (SSI), a disability benefit provided by the Social Security Administration (SSA).³ He received \$246.00 per month in SSI in November and December 2012, and \$258.00 per month from January through March 2013.⁴

On October 24, 2012 Ms. K contacted the Division and advised that the amount of her son's monthly SSI payments would decrease from \$596.00 per month to \$246.00 per month effective November 2012.⁵ However, due to an oversight, the Division did not act on this information and, for the next five months, did not count any portion of the SSI payments as

¹ Ex. 1.
² Ex. 2.
³ Exs. 2.1, 3.
⁴ Exs. 2.1, 3.
⁵ Ex. 2.1.

income for purposes of determining the amount of Ms. K's monthly ATAP benefits.⁶ The Division did not discover its mistake until March 29, 2013.⁷

On May 3, 2013 the Division notified Ms. K that it had determined her household had received \$506.00 more in ATAP benefits than her household was entitled to during the period November 2012 through March 2013.⁸ The notice acknowledged that the overpayments were not Ms. K's fault and were caused by the Division's own error.⁹ The notice indicated, however, that the Division's regulations required it to seek recovery of the overpayment.¹⁰ The notice stated that the overpayments could be repaid by deducting \$92.00 per month from the household's monthly ATAP payments for five to six months.¹¹

Ms. K requested a hearing on the repayment issue on May 28, 2013.¹² The hearing was held on June 14, 2013. Ms. K participated in the hearing by phone, represented her household, and testified on its behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone and represented the Division. The record closed at the end of the hearing.

III. Discussion

At hearing, Ms. K did not dispute that her household had received \$506.00 more in ATAP benefits than it was entitled to during the period November 2012 through March 2013. Rather, she questioned whether the law requires the repayment of overpaid benefits when (as here) the overpayment is the Division's fault. This is a purely legal issue requiring a review of the relevant ATAP regulations.

A. Program Over-View and Relevant Regulations

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal Temporary Aid to Needy Families (TANF) program.¹³ The program provides cash assistance and work services to low income families with minor children.

⁶ Ex. 4. As will be explained in Section II, below, the Division should have counted \$172.00 of the SSI payment as income for purposes of determining Ms. K's monthly ATAP benefit amount.

⁷ Ex. 4.

⁸ Ex. 6.

⁹ Ex. 6.

¹⁰ Ex. 6.

¹¹ Ex. 6.

¹² Ex. 7.

¹³ See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990. The Alaska Temporary Assistance Program's regulations are set forth at 7 AAC 45.149 – 7 AAC 45.990.

The program's goal is to help these families with their basic needs while they work toward becoming self-sufficient.¹⁴

In ATAP cases involving children receiving SSI, the caretaker relative may either exclude the child receiving SSI from the assistance unit, or include the child in the assistance unit.¹⁵ Where (as in this case) the child receiving SSI has been included in the ATAP household / assistance unit, the child's resources are excluded, and the child's income is *partially excluded* from financial eligibility and benefit calculations for the assistance unit.¹⁶ The Division counts only that portion of the income of the child receiving SSI which exceeds "the need-standard increment for an additional child as specified in 7 AAC 45.520(a)(1)."¹⁷ In 2012 this "the need-standard increment" was \$169.00; in 2013 the "need-standard increment" increased to \$172.00.¹⁸

The ATAP regulation governing the collection of overpayments is 7 AAC 45.570. That regulation states in relevant part as follows:

(a) Except as provided in (k) of this section [which does not apply here], the department will pursue collection from a current recipient of ATAP benefits . . . who received an overpayment, regardless of the amount or cause of the overpayment, unless the overpayment was caused by the department, in which case the department will pursue collection only if the overpayment exceeds \$100

(e) A current recipient of ATAP benefits must, within 30 days after the date printed on the overpayment notice, repay the total amount of the overpayment to the department, or the department will reduce that assistance unit's future ATAP payments by withholding 10 percent of the maximum amount payable to an assistance unit of the same size with no countable income for the number of months necessary to recover the overpayment

(f) The department may suspend recoupment withholding under (e) of this section for up to three months upon receipt of evidence that the loss of assistance would result in extreme economic hardship to the assistance unit.

B. Do the Regulations Require Repayment on the Facts of this Case?

Ms. K's household received \$506.00 more in ATAP benefits than it was entitled to during the period November 2012 through March 2013. 7 AAC 45.570(a) requires the Division to seek collection of an overpayment, *even when caused by the Division*, when the amount of the

¹⁴ See Alaska Temporary Assistance Program description on the Division's website, accessed on July 30, 2013 at <http://dhss.alaska.gov/dpa/Pages/atap/default.aspx>.

¹⁵ 7 AAC 45.515(a).

¹⁶ 7 AAC 45.515(a).

¹⁷ 7 AAC 45.515.

¹⁸ Exs. 6.2 - 6.6; 6.10 - 6.14; and 19 - 19.1.

overpayment exceeds \$100.00. In this case, the amount of the overpayment exceeds \$100.00. The Division's regulation thus requires that the Division seek repayment in this case, even though the overpayment clearly resulted from the agency's own error. The regulation gives the Division no discretion to waive or ignore the repayment requirement, and administrative agencies like the Division are bound by their regulations, just as the public is bound by them.¹⁹ Accordingly, in this case the Division is required by law to seek recovery of the \$506.00 in ATAP benefits overpaid to Ms. K's household during the period November 2012 through March 2013.

Under 7 AAC 45.570(f), the Division may suspend collection of overpaid ATAP benefits for up to three months "upon receipt of evidence that the loss of assistance would result in extreme economic hardship to the assistance unit." Ms. K's hearing testimony demonstrates that a reduction in her ATAP benefits would result in such hardship. Accordingly, although the Division must seek collection of the overpaid benefits, Ms. K may, if desired, request that the Division not begin reducing her ATAP benefits for three months following the issuance of this decision.

IV. Conclusion

It is clear as a factual matter that the overpayment at issue was not Ms. K's fault; this was acknowledged by the Division. However, the Division's regulations make clear that it must pursue collection of overpaid ATAP benefits. In cases (like this one) involving overpayments in excess of \$100.00, collection must be attempted even where (as here) the overpayment was caused by the Division's own error. The Division's decision to seek recovery of the \$506.00 in ATAP benefits which the Division mistakenly overpaid to Ms. K's household during the period from November 2012 through March 2013 is therefore affirmed.

Dated this 1st day of August, 2013.

Signed _____

Jay Durych
Administrative Law Judge

¹⁹ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, 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 12th day of August, 2013.

By: Signed _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

[This document has been modified to conform to the technical standards for publication.]