

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

In the Matter of)
)
K H) OAH No. 17-1205-ATP
) Agency No.
_____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (Division) has the right to attempt to collect certain Alaska Temporary Assistance Program (ATAP) benefits that were overpaid to Ms. H’s household due to a mistake made by the Division. Ms. H did not dispute that the overpayments were received, or the Division’s calculation of the amount of the overpayments. Rather, she asserted that she had fully complied with the Division’s requirements and reported her lack of employment, and that the Division’s failure to properly calculate her income, along with the significant financial difficulties she was facing, should result in some relief from the demand for repayment. Regardless of which party caused the overpayments to occur, the Division is required by the applicable regulation to seek repayment from Ms. H for the overpaid ATAP amount. Accordingly, the Division’s decision to seek repayment of \$5,125 in overpaid ATAP benefits is affirmed.

II. Facts

Ms. H’s household consists of herself and three minor children. She received ATAP benefits from February 2017 through June 2017.¹ In her application, Ms. H properly reported that her job ended on January 16, 2017. The Division processed her application on January 26, 2017, and, despite her notification that she was no longer employed, the Division failed to consider her future unemployment benefits in calculating her income qualification for the program.² When properly calculated to include her monthly unemployment benefits, Ms. H’s income was over the limit of \$1,772 for the month of February 2017.³ Ms. H’s income for the months of March through June 2017 qualified her for \$1 in benefits. However, if a household’s

¹ Exhs. 1, 10.
² Exh. 2.
³ Exh. 9, 11.

monthly benefit is less than \$10, it is not eligible for ATAP.⁴ During the months of February through June 2017, Ms. H received a total of \$5,125 in ATAP benefits.⁵

The Division did not discover its mistake until a Quality Assessment Review on Ms. H's case uncovered the Division's failure to count the unemployment benefits in Ms. H's monthly income. On October 5, 2017, the Division notified Ms. H of the overpayment.⁶ On November 11, 2017, Ms. H requested a Fair Hearing, noting the that mistake was made by the Division and she had no ability to repay the claimed overpayment amount.⁷

III. Discussion

At the hearing, Ms. H did not dispute the Division's calculation of her income or that she had received the \$5,125 in benefits paid. She also did not contest that her income did not entitle her to the benefits. Ms. H simply noted that she had reported everything correctly and that she had no possible way to pay back the amount of money owed. Ms. H testified that one of her children had an arm amputated during this time; she could barely pay her bills, and could not possibly do so and keep her children housed if money had to go to repayment of these benefits. Thus, there are no disputed facts; the legal issue is whether the Division is required to attempt to collect the overpayment.

The Alaska Temporary Assistance Program: Overview and Regulations

The Alaska Temporary Assistance Program was created by the Alaska Statutes to implement the federal Temporary Aid to Needy Families (TANF) program. It provides cash assistance and work services to low income families with minor children. The program's goal is to help these families with their basic needs while they work toward becoming self-sufficient.

7 AAC 45.570 governs the overpayment of ATAP benefits. It provides, 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 the ATAP

⁴ Exh. 17.

⁵ Exh. 10.

⁶ Exh. 4.

⁷ Exh. 5. The original date of the Fair Hearing was continued when some confusion arose about whether the Division should reduce the amount of money owed by \$2,668.17. The Child Support Services Division (CSSD) had collected and kept this amount as child support paid by the father of one of Ms. H's children. However, on further consultation, the Division learned that the amounts collected would not reduce the amount of overpayment the Division was required to collect. Upon notice of the outcome of the Fair Hearing favorable to the Division, CSSD will determine the amount of child support to provide to Ms. H. Letter of January 12, 2018, from Fair Hearing Representative to ALJ.

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...[emphasis added].

Ms. H's household received \$5,125 in ATAP benefits that she was not entitled to receive during the period from February through June 2017. 7 AAC 45.570(a) requires the Division to seek collection of an ATAP overpayment, *even when caused by the division*, when the amount of the overpayment is over \$100. Thus, the Division is required to seek repayment in this case even though the overpayment resulted from the agency's own error. The Division has no discretion to waive or ignore the repayment requirement. Administrative agencies like the Division are bound by their regulations, just as the public is bound by them.⁸

IV. Conclusion

The applicable ATAP regulations make clear that the Division must pursue collection of overpaid ATAP benefits. This is true even in cases, like this one, where the overpayment was the result of the Division's own error. The Division's decision to seek recovery of the \$5,125 in ATAP benefits mistakenly overpaid to Ms. H's household from February through June 2017 is therefore affirmed. Once this decision becomes final, the Division is ordered to notify the Child Support Services Division so CSSD may determine what child support monies are owed to Ms. H.

Dated: January 29, 2018.

Signed

Karen L. Loeffler
Administrative Law Judge

⁸ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851,868-869 (Alaska 2010).

Adoption

The undersigned, by delegation from 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 13th day of February, 2018.

By: Signed
Name: Karen L. Loeffler
Title: Administrative Law Judge

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