

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

In the Matter of	)	
	)	
F X	)	OAH No. 16-0879-PFE
_____	)	Agency No.

**DECISION AND ORDER**

The Division of Public Assistance (Division) sought to garnish F X’s 2016 Permanent Fund Dividend (PFD) to recoup overpaid public assistance benefits. Ms. X appealed the garnishment. Because the Division did not previously notify Ms. X that future PFDs could be taken to satisfy the overpayment claim, as required by AS 43.23.068(a)(3)(A), it may not garnish Ms. X’s current dividend for that purpose. Therefore, the Division’s garnishment action is overturned.

**I. Facts And Procedural History**

Ms. X received benefits under the Alaska Interim Assistance (IA) program in 2009. In 2010, the Division determined that she had failed to report having been incarcerated while she was receiving IA benefits.<sup>1</sup> The Division notified Ms. X that she had been overpaid IA benefits and engaged in settlement discussions with her in July 2010.<sup>2</sup> Although Ms. X apparently did not appeal the overpayment decision, the overpayment claim was resolved when she executed a promissory note acknowledging that she owed \$840 in overpaid benefits and agreeing to a repayment schedule.<sup>3</sup>

The promissory note, after setting out the repayment schedule, stated as follows regarding a potential default:

I understand that if I fail to make a payment on or before the date specified above, the unpaid balance of the Promissory Note will become payable in full and the State of Alaska, upon providing fifteen (15) days written notice to me, may take legal action against me. ...

If legal action is commenced to collect this note or any part thereof, I promise to pay, in addition, reasonable costs and attorneys’ fees incurred in bringing this action.

However, the promissory note did not mention Ms. X’s future PFDs or state that the Division could take them if she failed to make the payments required under the repayment schedule.

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<sup>1</sup> Division Exhibit 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Division Exhibit 2.

According to the Division's records, Ms. X made monthly payments from September 22, 2010 through October 14, 2011, reducing the amount owing on the note from \$840 to \$200.<sup>4</sup> She then stopped making the monthly payments. On July 1, 2016, the Division sent her a "notice of garnishment of permanent fund dividend for defaulted overpayment" (notice of garnishment).<sup>5</sup>

The notice of garnishment states as follows:

Pursuant to AS 43.23.068(a), the Department of Health and Social Services ... is claiming some or all of your current Alaska permanent fund dividend to satisfy a claim on a defaulted public assistance overpayment.

You were previously notified that this overpayment exists and future permanent fund dividends would be taken to satisfy the claim. ...

You have defaulted on the overpayment because you have failed to respond to our previous notices or your payment is more than 30 days delinquent.

In response to that notice of garnishment, Ms. X requested a hearing.<sup>6</sup>

The hearing was scheduled for August 24, 2016. Ms. X did not attend the hearing or respond to telephone calls from the administrative law judge (ALJ) on the scheduled date and time, so a default hearing was held in her absence.<sup>7</sup> Public Assistance Analyst II Sally Dial represented the Division and presented evidence reflecting the facts recited above. Because the promissory note signed by Ms. X did not state that a failure to make the required payments could result in garnishment of her PFDs, the ALJ inquired into whether the Division had given Ms. X prior notice through some other means. At the Division's request, the record was held open until September 9, 2016 to allow the Division time to research the question.

On August 30, 2016, the Division filed a supplemental position statement with attached copies of two earlier "notice[s] of garnishment of permanent fund dividend for defaulted overpayment" that had been sent to Ms. X on May 28, 2014 and June 10, 2015.<sup>8</sup> These notices are identical to the Division's July 1, 2016 notice of garnishment.

The Division's supplemental position statement cites the fact that the two prior notices of garnishment had been sent to Ms. X, and then asserts that "[t]he Division has met the requirements in [AS] 43.23.068(a)(A) [*sic*] based on the information provided, and at this time the agency requests its decision be upheld."

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<sup>4</sup> Division Exhibit 3.

<sup>5</sup> Division Exhibit 4.

<sup>6</sup> Division Exhibit 5.

<sup>7</sup> AS 44.62.530.

<sup>8</sup> Division Exhibits 7 – 7.7.

## II. Discussion

State agencies are required to seek recovery of overpaid public assistance benefits.<sup>9</sup> Alaska Statute 47.05.080(b) specifically authorizes the Department of Health and Social Services to garnish a PFD to satisfy the balance due in cases of default on public assistance overpayment claims.

This appeal is limited to the question of whether the Division may now take part of Ms. X's PFD to collect the amount she owes. Alaska law allows the Division to claim the Permanent Fund Dividend of a former public assistance beneficiary who has defaulted on an overpayment claim.<sup>10</sup> In order to do so, however, the Division must have "notified the individual that future permanent fund dividends of the individual will be taken to satisfy the overpayment claim."<sup>11</sup> It also must show either that the claim of overpaid public assistance benefits has not been contested, or if contested, it has been resolved in favor of the Department of Health and Social Services, and no appeal is pending or available due to the passage of time.<sup>12</sup> In addition, the Division must show that it informed the individual of his or her right to request a hearing regarding the garnishment within 30 days of the notice.<sup>13</sup> If a hearing is requested, it is governed by the Administrative Procedure Act, AS 44.62.330 – 44.62.630,<sup>14</sup> which places the burden of proof on the Division to show by a preponderance of the evidence that it is entitled to the proposed garnishment.<sup>15</sup>

The Division established through the testimony of Ms. Dial that the overpayment claim was not contested by Ms. X and that she had defaulted when she failed to make all the payments required under her repayment agreement.<sup>16</sup> The only issue to be decided here, therefore, is whether the Division met its burden of establishing that it notified Ms. X that her "future permanent fund dividends ... will be taken to satisfy the overpayment claim."

The gist of the Division's argument on this issue appears to be that by sending Ms. X the May 2014 and June 2015 notices of garnishment, the Division met its notice obligation to her

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<sup>9</sup> See, e.g., 7 AAC 45.570, AS 47.05.080(a).

<sup>10</sup> AS 47.05.080(b).

<sup>11</sup> AS 43.23.068(a)(3)(A).

<sup>12</sup> AS 43.23.068(a)(3).

<sup>13</sup> AS 43.23.068(b).

<sup>14</sup> AS 43.23.068(c).

<sup>15</sup> Because the Division, as petitioner, has filed an accusation in the form of its Notice of Garnishment, the Division bears the burden under AS 44.62.460(e)(1).

<sup>16</sup> It is unclear on this record whether the Division ever gave Ms. X the 15-day notice of default required by the promissory note. Absent such a notice, Ms. X may not have had an appropriate opportunity to contest the Division's claim that she had defaulted on the repayment agreement.

regarding the July 2016 notice of garnishment. This argument fails, however, because the May 2014 and June 2015 notices of garnishment did not speak to the possibility of future garnishments; they merely informed Ms. X that her 2014 and 2015 PFDs were being garnished.<sup>17</sup>

Although it is true that a reasonable person, upon reading the 2014 and 2015 notices of garnishment, would likely realize that future PFDs might also be taken to satisfy the overpayment claim, this is not enough. The governing statute is very specific - it requires explicit, not implicit, notice that future PFDs can be taken. This requirement does not allow the Division to rely on the debtor inferring the meaning of the notices sent to her. Moreover, the 2014 and 2015 notices of garnishment were themselves defective, in that they *incorrectly* stated that Ms. X had previously been notified “that future permanent fund dividends would be taken to satisfy the claim.” To the contrary, as established above, Ms. X had not actually been notified that failure to pay the remaining amounts owed would result in garnishment. The Division provides no support for its implicit argument that sending a series of faulty notices can cure the deficiency in those notices. Prior to garnishing Ms. X’s PFD, the Division was required to provide her with notice under AS 43.23.068 that failure to pay the amounts owing could result in garnishment of her PFD. The Division’s series of inaccurate statements that such notice was given do not, themselves, constitute the required notice. The Division did not meet its burden of proof to establish that it met the notice requirements of AS 43.23.068.

### **III. Conclusion**

The Division’s failure to notify Ms. X of the possibility of future PFD garnishments precludes it from garnishing her 2016 Permanent Fund Dividend to repay the overpayment claim. This decision is limited to the current garnishment request, and does not preclude the Division from future garnishment attempts after it has remedied the notice issue.

### **IV. Order**

The Division may not garnish Ms. X’s 2016 permanent fund dividend to repay the overpayment claim. Therefore, it is directed to withdraw its certified garnishment claim from the Department of Revenue.

DATED: September 8, 2016.

By: Signed  
Andrew M. Lebo  
Administrative Law Judge

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<sup>17</sup> There is no evidence in the record regarding the outcome of the Division’s attempted garnishment of the 2014 and 2015 PFDs.

## Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 13<sup>th</sup> day of October, 2016.

By: Signed  
Signature  
Douglas Jones  
Name  
Medicaid Program Integrity Manager  
Title

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