

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

In the Matter of	)	
	)	
H. X.	)	OAH No. 25-2476-PFE
_____	)	

DECISION

I. Introduction

In August 2017 the Division of Public Assistance (“Division”) determined H. X. was ineligible for Alaska Temporary Assistance Program (ATAP) benefits he had received earlier that year. The Division notified him of that overpayment determination, informed him that his Permanent Fund Dividend (PFD) could be intercepted to recover that debt, and provided an opportunity for a fair hearing.

The Division seized Mr. X.’s 2023 PFD, which covered the majority of his debt, but \$169.00 remained. In June 2025, The Division notified Mr. X. that it would be claiming part of his PFD to address that remaining balance. Mr. X. requested a hearing to challenge the Division garnishing his PFD.

The evidence in this case shows that the Division provided Mr. X. with appropriate notice of the garnishment and properly established the existence and amount of overpaid benefits. As a result, the Division’s garnishment of his PFD in the amount of \$169 is AFFIRMED.

II. Facts

The evidence in this case is based on the Division’s Position Statement and exhibits 1 through 4 as Mr. X. failed to appear at hearing.

Mr. X. received \$1,479 in ATAP benefits in May, June, and July of 2017. On August 30, 2017, the Division notified him that these payments were in error and he should not have received any ATAP benefits. The Division stated that the error was caused by its failure to act timely on Mr. X.’s report of new income.¹ In its notice, the Division informed Mr. X. that he could request a fair hearing if he disagreed with the overpayment determination and that the Division could intercept his future PFDs to recover the overpayment.² Nothing in the record suggests Mr. X. responded or contested that determination.

¹ Ex. 1.
² *Id.* Ex. 1.7.

In 2023, the Division collected a PFD payment of \$1,310, leaving \$169 in debt remaining. The Division notified Mr. X. that his next payment was due on November 15, 2023, and that he would be delinquent on his payment if he failed to repay his debt or agree to a payment plan. They again reminded him that, if that occurred, future PFDs could be garnished.³

On June 2, 2025, the Division notified Mr. X. that he was in default for failing to respond to previous notices or being more than thirty days delinquent on his payments. That notice informed him the Division would be claiming \$169 from his 2025 PFD and that he could request a hearing on the garnishment.⁴ On June 26, Mr. X. requested just such a hearing.

That hearing was held on September 17, 2025. Marie Thirlwell represented the Division at hearing, but despite multiple attempts to reach him, Mr. X. did not appear.

III. Discussion

The Division is authorized to recover overpayments from public assistance recipients.⁵ The PFD of a former recipient may be taken to satisfy the balance due on a public assistance overpayment claim.⁶

A. Hearing Procedure

Mr. X. did not appear for his hearing. Hearings to contest Division executions against the PFD are Administrative Procedure Act (APA) cases.⁷ Under the APA procedural requirements, if a respondent does not appear for the hearing, the case can proceed based on the party's express admission or other evidence.⁸ When the agency has the burden, the ALJ needs to take evidence; if the burden is on the respondent, the ALJ does not.⁹

To garnish a PFD, the Division must certify facts showing garnishment is appropriate and establish that it has complied with the proper notice requirements.¹⁰ This means the Division has the burden of proof to demonstrate that it complied with the applicable requirements. Therefore, even though Mr. X. failed to appear, because the Division had the initial burden of proof this case could not simply be dismissed or affirmed. Instead, the underlying evidence in the record is

³ Ex. 2.

⁴ Ex 3 – 3.1.

⁵ AS 47.05.080(a).

⁶ AS 47.05.080(b).

⁷ AS 43.23.170(c) (“AS 44.62.330 – 44.62.630 apply to a hearing requested by an individual under (b)(3) of this section.”).

⁸ AS 44.62.530.

⁹ *Id.*

¹⁰ AS 44.23.170(a).

considered, and a decision issued based upon that evidence—regardless of Mr. X.’s non-participation.¹¹

B. Is the Division Entitled to Garnish Mr. X.’s PFD?

Before it can garnish a PFD, the Division is required to comply with certain requirements of AS 43.23.170(a).¹² These require the Division to certify that—

- the Division has notified the recipient that their future PFDs will be taken to satisfy the overpayment claim;
- the Division notified the recipient of their right to request a hearing on the overpayment claim, allowing 30 days from the date of the notice to request that hearing;
- the overpayment claim either was not contested or, if contested, the issue was resolved in the Division’s favor; and
- 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.¹³

The Division was also required to meet certain procedural safeguards to ensure Mr. X. was properly notified. These require the notice to include—

- the amount of the overpayment claim;
- a statement that the amount to be garnished does not exceed that overpayment claim; and
- details regarding the individual’s right to a hearing.¹⁴

The exhibits contained in the Division’s Position Statement show that the Division notified Mr. X. that he received an overpayment of ATAP benefits. The Division told him at the time that his future PFDs could be taken to satisfy that debt and that he had the right to contest the Division’s repayment demand by requesting a hearing.¹⁵ That occurred in 2017 and nothing in the record suggests Mr. X. ever contested it. The Division even garnished Mr. X.’s 2023 PFD

¹¹ AS 44.62.530.

¹² AS 43.23.170.

¹³ AS 43.23.170(a)(3).

¹⁴ AS 43.23.170(b).

¹⁵ Ex. 1.

to partially pay off the debt, and that garnishment was not challenged either.¹⁶ These notices demonstrate the Division's compliance with the certification requirements of AS 43.23.170(a).

Mr. X. was also notified of the Division's decision to garnish his 2025 PFD and that he had the right to appeal that decision. That notice was sent to the same address Mr. X. provided in his request for hearing, identified the amount due, stated that the Division intended to garnish his PFD for that amount, and notified him of his hearing rights.¹⁷ This satisfied the statutory procedural requirements.¹⁸

Because it demonstrated its compliance with the statutory requirements for garnishment, the Division has met its burden of proof.

IV. Conclusion

Mr. X. has an outstanding payment obligation to the Division of \$169 for overpaid ATAP benefits. His obligation to repay the Division was established in 2017 when he failed to appeal the Division's determination of overpayment. Because Mr. X. has not repaid the debt and was properly notified, the Division may garnish his PFD to satisfy the outstanding balance.

Dated: September 17, 2025

SIGNED
Garrison A. Todd
Administrative Law Judge

¹⁶ Ex. 2.
¹⁷ Ex. 3, 4.
¹⁸ AS 43.23.170(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 24th day of October, 2025.

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 standard for publication. Names may have been changed to protect privacy.]