

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

In the Matter of	)	
	)	
L.B	)	OAH No. 25-2830-PFE
_____	)	

DECISION

I. Introduction

In 2017, the Division of Public Assistance (Division) determined a Division error caused L.B to receive an overpayment of Alaska Temporary Assistance Program (ATAP) benefits in the amount of \$1606. The Division sent her a notice of that overpayment determination, informed her that her Permanent Fund Dividend (PFD) could be intercepted to recover the debt, and provided an opportunity for a fair hearing. Ms. B did not respond.

Through reducing Ms. B's ongoing monthly benefits, the Division lowered that debt to \$1032 by 2020—at which point Ms. B no longer received benefits that could be reduced. After sending reminders of that debt in 2022 and 2023, in July 2025, the Division notified Ms. B that it would be claiming her PFD to pay down the remaining balance. Ms. B requested a hearing to challenge the Division's garnishment of her PFD.

At hearing, Ms. B argued that the Division provided her with insufficient notice of her overpayment due to her illiteracy in both English and her native Somali. However, the evidence in this case shows that the Division apprised Ms. B of the garnishment in a manner reasonably calculated to provide her with notice and properly established the existence and amount of overpaid benefits. As a result, the Division's garnishment of Ms. B's PFD is AFFIRMED.

II. Facts

Between December 2016 and April 2017, Ms. B received \$4105 in ATAP benefits. On August 21, 2017, the Division notified her that these payments were in error, and she was overpaid by \$1606. The Division informed her that she needed to repay the overpayment, even though it admitted the error was due to the Division's failure to act timely on Ms. B's report of employment.¹ In its notice, the Division informed Ms. B that she could request a fair hearing if she disagreed with the overpayment determination and

¹ Ex. 1, 1.9.

that the Division could intercept her future PFDs to recover the overpayment.² The Division further informed her that it would begin reducing her ATAP benefit every month to pay back the overpayment.³ Nothing in the record suggests Ms. B responded to or contested that overpayment determination or the reduction of her ongoing benefits to repay it.

In 2022, the Division sent Ms. B a notice regarding her debt. It informed her that she had an outstanding debt due to ATAP overpayments of \$1032 and that her PFD could be garnished to recover that debt.⁴ It also notified her that a separate debt of Ms. B's—one to the food stamp program—was being reduced by collecting federal funds owed to Ms. B through the Treasury Offset Program.⁵

In 2023, a largely identical notice reminded her of those facts and further payments claimed by the Division through the Treasury Offset Program.⁶ In that notice the Division again reminded Ms. B that she needed to make further payments on a set timeline, and that, if she failed to do so, the Division could garnish her PFD.⁷ That notice included a page instructing her in Somali and numerous other languages to contact the Division if she needed an interpreter to help her understand the notice.⁸ On August 18, 2023, the Division notified Ms. B she was in default, and again reminded her that the Division could garnish future PFDs.⁹ That notice also had Somali instructions for requesting interpretation assistance.¹⁰

On July 14, 2025, the Division reminded Ms. B that she was in default for failing to respond to previous notices or being more than thirty days delinquent on her payments.¹¹ It notified her that the Division intended to claim up to \$1032 from her PFD and that she could request a hearing on the garnishment.¹² That notice again included instructions in Somali to

² Ex. 1 – 1.1.

³ *Id.*

⁴ Ex. 3.

⁵ *Id.*

⁶ Ex. 4.

⁷ *Id.*

⁸ Ex. 4.2.

⁹ Ex. 5.

¹⁰ Ex. 5.1.

¹¹ Ex. 6.

¹² *Id.*

receive assistance in understanding the notice.¹³ On August 18, 2025, Ms. B requested just such a hearing.

That hearing was held on October 16, 2025. Marie Thirlwell represented the Division at hearing. Ms. B appeared as well—with the aid of a Somali interpreter—and was assisted by D.M, her non-attorney assistant from the Health Center A, who spoke on her behalf.

At the hearing, the Division asserted that it complied with all the requirements to garnish Ms. B’s PFD. Ms. B asserted that she had not received sufficient notice to challenge the garnishment as she is illiterate and no one from the Division called her.

III. Discussion

The Division is authorized to recover overpayments from public assistance recipients.¹⁴ The PFD of a former recipient may be taken to satisfy the balance due on a public assistance overpayment claim.¹⁵ A hearing challenging a PFD garnishment to recoup an overpayment is only a hearing on the garnishment itself, not the overpayment determination.¹⁶ This is because a benefit recipient that disagrees with a Division notice only has 30 days after the date of the notice to request a hearing to challenge it.¹⁷

A. *Burden of Proof*

To garnish a PFD, the Division must certify facts showing garnishment is appropriate and establish that it has complied with the proper notice requirements.¹⁸ This means the Division has the burden to demonstrate that it is more likely than not that it complied with the applicable requirements.

B. *The Division Is Entitled to Garnish Ms. B’s PFD*

Before it can garnish a PFD, the Division is required to certify that—

- the Division has notified the recipient that
 - a. their future PFDs will be taken to satisfy the overpayment claim; and

¹³ Ex. 6.4.

¹⁴ AS 47.05.080(a).

¹⁵ AS 47.05.080(b).

¹⁶ See, e.g., *In re: B.D.* OAH No. 22-0680-PFE (Comm’r of Health, 2022) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6858>).

¹⁷ 7 AAC 49.030(a).

¹⁸ AS 44.23.170(a).

- b. they have a right to request a hearing on the overpayment claim within 30 days from the date of the notice;
- the overpayment claim either was not contested or, if contested, was resolved in the Division’s favor; and
- any disputed resolution of overpayment 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.¹⁹

The Division was also required to meet certain procedural safeguards to ensure Ms. B was properly notified of the garnishment. 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 her right to a hearing.²⁰

The exhibits attached to the Division’s Position Statement show that the Division notified Ms. B in 2017 that she received an overpayment of ATAP benefits.²¹ The Division told her in that notice that her future PFDs could be taken to satisfy that debt and that she had the right to contest the Division’s repayment demand by requesting a hearing.²² It also informed her that her ongoing benefits would be reduced by \$82 a month,²³ and over the next seven months Ms. B’s ATAP benefits were reduced by a total of \$574.²⁴ Reminders of Ms. B’s debt and how it could be repaid were provided in 2022²⁵ and 2023.²⁶ The two notices in 2023 each included a multilingual notice informing Ms. B that resources were available if she needed assistance understanding the notice.²⁷ Moreover, in the 2022 and 2023 notices Ms. B’s other debt to the Division was paid down by Treasury Offset Program payments,²⁸ meaning Ms. B had federal tax refunds or other sources of funding seized to

¹⁹ AS 43.23.170(a).

²⁰ AS 43.23.170(b).

²¹ Ex. 1.

²² Ex. 1 – 1.1

²³ Ex. 1.

²⁴ Ex. 7 – 7.1.

²⁵ Ex. 3.

²⁶ Ex. 4.

²⁷ Ex. 4.2, 5.1.

²⁸ Ex. 3, 4.

pay down her debt. These notices demonstrate the Division’s compliance with the certification requirements of AS 43.23.170(a).

Ms. B was also notified of the Division’s decision to garnish her PFD and that she had the right to appeal that decision. That notice was sent to the same address Ms. B provided in her request for hearing, identified the amount due, stated that the Division intended to garnish her PFD for up to that amount, and notified her of her hearing rights.²⁹ As Ms. B and her team participated in this hearing, there is no question this notice was received and understood. Accordingly, the Division also satisfied the statutory procedural requirements of garnishment as well.³⁰

Nothing in the record suggests Ms. B failed to receive any of these notices or attempted to timely contest the determination of her overpayment or the reduction of her benefits. Instead, Ms. M argued that Ms. B’s illiteracy in both English and her native Somali meant that she was unable to understand the notices of overpayment or appreciate their meaning or her appeal rights and the Division needed to have contacted her directly over the phone to inform her of her rights.

A notice of overpayment must be “reasonably calculated, under all the circumstances, to inform interested parties of action affecting their property rights.”³¹ Mailed notice has repeatedly been held to be sufficient when “the government attempted to provide notice and heard nothing back indicating that anything had gone awry.”³² Ms. B was sent numerous notices about her overpayment—some of which included instructions in Somali. Furthermore, she had funds withheld from her ongoing ATAP benefits and the 2022 and 2023 notices informed her that federal funds were also being claimed.

While the tribunal is sympathetic to Ms. B’s inability to read—even in Somali—those official notices should have at the very least led her to find someone who could read her notices, or to contact the Division directly. This is particularly true because Ms. B’s reduction in benefits to repay the overpayment and the Treasury Offset Program’s redirecting of her funds to pay off another debt to the Division should have given her some

²⁹ Ex. 5, 6.

³⁰ AS 43.23.170(b).

³¹ *Smart v. State, Dep't of Health and Soc. Servs.*, 237 P.3d 1010, 1015 (Alaska 2010).

³² *See, e.g., Jones v. Flowers*, 547 U.S. 220, 226 (2006).

level of constructive notice that there was a financial issue that she needed to address. She did not do so, and no evidence was presented that she asked a Division employee or anyone else what those notices were or why her benefits and federal funds were being reduced. Nor did Ms. B offer a legal basis for finding that the Division has an obligation to call overpayment recipients and directly inform them of their rights. Even if the Division might have such an obligation if they knew Ms. B was illiterate, Ms. B presented no evidence that the Division was aware or had reason to know she was illiterate and was unable to understand those notices and unable to find third-party assistance in understanding them. Accordingly, the Division's notices were reasonably calculated to inform Ms. B of the overpayment determination and the garnishment and fulfilled the notice requirements here.

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

IV. Conclusion

Ms. B has an outstanding payment obligation to the Division of \$1032 for overpaid ATAP benefits. Her obligation to repay the Division was established in 2017 when she failed to appeal the Division's determination of overpayment. Because Ms. B has not repaid the debt and was properly notified, the Division may garnish her PFD to satisfy the outstanding balance.

Dated: December 15, 2025

Signed

Garrison A. Todd

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 20th day of January, 2026.

By: Signed

Name: Daniel R. Phelps II

Title: Process Improvement Manager

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.]