



### APPEAL TRIBUNAL DECISION

**Docket Number:** P23 0005    **Hearing Date:** April 18, 2023

**CLAIMANT:**

BYREL RAY PERIN  
[REDACTED]

NATHANIEL CURRALL  
[REDACTED]

**DETS:**

BENEFIT PAYMENT CONTROL  
[REDACTED]

**CLAIMANT APPEARANCES:**

Nathaniel Currall  
Ray Perin  
Leann Duevarra

**DETS APPEARANCES:**

Steve Kinzie

### CASE HISTORY

The claimant timely appealed a March 3, 2023 determination which denied the claimant a waiver of overpayment under Alaska Statute 23.20.390. The issue before the Appeal Tribunal is whether the claimant is eligible for a waiver of overpaid benefits.

### FINDINGS OF FACT

A claim was established for pandemic unemployment assistance (PUA) using the appellant's Social Security number effective March 22, 2020. The appellant was not aware of the PUA claim had been filed. PUA benefits were initially paid on the claim. The claim was denied June 10, 2021. This created an overpayment of the previously paid benefits.

The appellant's permanent fund dividend (PFD) was garnisheed by the Department to repay the Fund under AS 23.20.390. The appellant contacted

the PFD office to determine the reason he did not receive his dividend. He was advised that the Department of Labor and Workforce Development garnisheed his dividend. The appellant contacted the Department to learn why a garnishment had been placed on his dividend.

The representative to whom he spoke advised that a PUA claim had been filed using his Social Security number and information. He had been paid PUA benefits, and then it had been determined that he was not eligible for those benefits and was required to repay the benefits. The appellant advised the representative that he had not filed for PUA and had not filed for any unemployment benefits since 1972.

The representative advised that he should file a complaint with the local law enforcement agency. He attempted to file a complaint but was advised that he would need additional information. He contacted the Division for more information to file his complaint. He was aided by the Benefit Payment Control office that supplied him with paperwork and evidence of the filing for benefits.

The appellant determined that his estranged daughter had filed the PUA claim using information she had obtained while caring for him following a stroke in 2018. The appellant also determined that the daughter had bought an appliance using his information to receive a loan for the appliance. The appellant had on previous occasions found the daughter to have committed fraud to obtain money from the appellant. The appellant believed the daughter was addicted to drugs and committing fraud to support her addiction to drugs.

The claimant has file charges against the daughter. He has obtained a long term protection order from financial abuse by the daughter.

## **PROVISIONS OF LAW**

### **AS 23.20.390. Recovery Of improper payments; Penalty.**

- (a) An individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual.
- (b) The department shall promptly prepare and deliver or mail to the individual at the individual's last address of record a notice of determination of liability declaring that the individual has been determined liable to refund the amount of benefits to which the individual is not entitled. The amount, if not previously collected, shall be deducted from future benefits payable to the individual. However, the department may absolve liability to the fund for

repayment of all or a portion of those benefits if the department determines that an individual has died or has acted in good faith in claiming and receiving benefits to which the individual was not entitled, and recovery of those benefits would be against equity and good conscience.

**8 AAC 8.85.220. Recovery of overpayments.**

- (a) A determination of overpayment liability issued under AS 23.20.390 will include a statement of the right to request a waiver of repayment of the overpayment. An individual may request a waiver within 30 days after the date on which the determination of liability becomes final. The director may extend this period if the request is delayed by circumstances beyond the individual's control.
- (b) The director shall waive repayment of an overpayment of benefits to an individual under AS 23.20.390 if
  - (1) the individual has died or received the benefits in good faith;
  - (2) repayment would be against equity and good conscience; and
  - (3) the request for a waiver meets the requirements of this section.
- (c) Benefits have been received in good faith if the overpayment was received without fault by the individual, and the individual did not have the capacity to recognize that he or she was incorrectly overpaid. Benefits have not been received in good faith if the individual
  - (1) negligently reports or fails to report information, which results in the overpayment; or
  - (2) knew or should have known that the individual was not lawfully entitled to receive the benefits.
- (d) Repayment of an overpayment is against equity and good conscience if
  - (1) repayment in 12 consecutive monthly installments would cause great hardship to the individual, considering the current and potential income and other financial resources available to the individual and the individual's family;
  - (2) the overpayment resulted from a decision of the department or a court overturning a determination of eligibility made at any level of appeal, and the individual did not withhold or conceal pertinent information on any claim for benefits or in any investigation or proceeding;
  - (3) the individual received the overpaid benefits by relying on clearly incorrect advice, given to the individual by the division or an employment security agency of another state, which the individual could not recognize as incorrect; or

- (4) the overpayment cannot be waived under (1) - (3) of this subsection, but the department determines that recovery would be injurious to the individual after consideration of the standards in (1) - (3) of this subsection, and any extraordinary circumstances.
- (e) A waiver of repayment of the overpayment will not be granted if the overpayment is the result of a false statement or misrepresentation of a material fact, or failure to report a material fact.
- (f) The director may waive a portion of an overpayment if recovery of the full amount would be against equity and good conscience under (d) of this section.
- (g) The director shall not waive an overpayment if waiving the overpayment would cause the individual to receive more than the individual's maximum weekly benefit amount or maximum entitlement of benefits.
- (j) If the director is unable under (h) of this section to recover an overpayment owed by an individual, the director may pursue recovery of the overpayment through a
  - (1) claim against the individual's permanent fund dividend under 8 AAC 85.225; and
  - (2) civil action against the individual.
- (k) For the purposes of this section,
  - (1) "family" includes all persons living in a single residence who are related to each other by blood, marriage, or adoption, including stepchildren and stepparents; however, it does not include an individual aged 18 or older who receives less than 50 percent of support from the family and who is not the principal earner or the spouse of the principal earner of the family;
  - (2) "financial resources" includes assets, such as stocks, bonds, interest in mutual funds, cash, and credit union or savings accounts; "financial resources" does not include an individual's home or furnishings, automobiles needed for transportation, clothing, or tools of the trade;
  - (3) "great hardship" means an individual's inability to obtain minimal necessities of food, medical care, and shelter for the individual or the individual's family for at least 30 days within a period of 90 days after the date of the waiver request;

### **CONCLUSION**

Under 8 AAC 85.220(a) the director shall waive repayment of an overpayment of benefits under AS 23.20.390 if the claimant received the benefits through no fault of his own and if repayment would be against *equity and good conscience*. Equity and good conscience is described as causing "*great hardship*." Great

hardship is defined as an individual's inability to obtain *minimal necessities* of food, medical care and shelter for the individual or the individual's family for at least 30 days within a period of 90 days after the date of the waiver request. Furthermore, under subsection (g), the director shall not waive an overpayment if waiving the overpayment would cause the claimant to receive more than the claimant's maximum weekly benefit amount or his maximum benefit entitlement.

The appellant's testimony is credible that he was not aware of the PUA claim being filed, that his estranged daughter had the information required to fraudulently file a claim using his Social Security number and other information, and that she has a history of fraudulently getting money from the appellant.

In Vorderbruggen Comm. Dec. 15 1672, June 7, 2016 the Commissioner of Labor found in part that

*... the former girlfriend was in possession of quite a bit of the claimant's information, having grown up together in a small town, having lived together as a couple, having worked together, and having helped him with online finances.*

The Commissioner also concluded; "the evidence of an agency relation between the claimant and the former girlfriend that would be needed to establish the claimant's liability for the repayment of the benefits in question has not been established."

As in Vorderbruggen, the Tribunal holds that the Division has insufficient evidence to establish that the appellant, in this matter, is liable for the repayment of benefits in question.

## **DECISION**

The determination issued on March 3, 2023 is **REVERSED**. The appellant is not liable to the Fund for the benefits fraudulently claimed by his estranged daughter.

**APPEAL RIGHTS**

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within **30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on April 19, 2023.

*Tom Mize*

Tom Mize  
Appeals Officer



## **Alaska Department of Labor and Workforce Development Instructions for Appeals to the Commissioner And Reopen Requests**

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Please read carefully the enclosed Appeal Tribunal decision. Any Interested party (claimant, employer, or the Division of Employment and Training Services [DETS]) may request that the **Commissioner accept an appeal** against the decision (AS 23.20.430-435 and 8 AAC 85.154-155). Interested parties who failed to attend a hearing may request that the Appeal Tribunal **reopen** the hearing (AS 23.20.420 and 8 AAC 85.153(f)).

A **Commissioner appeal must be filed within 30 days** after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A **Commissioner appeal must be in writing and must fully explain your reason for the appeal.** You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner Appeals to the Commissioner's Hearing Officer at the mailing address or email address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present written argument to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an oral argument. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

A party who failed to participate in a hearing may **request reopening** of the Appeal Tribunal hearing. The reopening request **must be made in writing**. The request must be delivered or mailed to the assigned hearing officer **within ten days after the close of the hearing**. Reopening may be granted if circumstances beyond the party's control prevented the party from participating in the hearing. Send reopening requests to the Appeal Tribunal address shown on the hearing officer's decision or to the email address listed below.

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**ALASKA DEPARTMENT OF LABOR  
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