

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

In the Matter of)	OAH No. 14-0581-ADQ
)	Division No.
B T)	Fraud Control Case No.
_____)	Alaska Temporary Assistance Program

DECISION AND ORDER

I. Introduction

B T received Alaska Temporary Assistance benefits. On April 17, 2014, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed a second Intentional Program Violation (IPV) of the Alaska Temporary Assistance program by failing to timely inform the Division when her children left her home.¹

Ms. T’s hearing began on May 23, 2014. Ms. T did not appear for the hearing and it was continued to July 14 so that the Division could reattempt to provide Ms. T with advance notice of the hearing. The Division and the Office of Administrative Hearings both attempted to provide Ms. T with advance notice of the hearing by sending it to all of her addresses of record. All of those notices were returned.² Ms. T did not appear for the July 14 hearing and it was held in her absence.³ Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified on behalf of the Division. Amanda Holton, who is employed by the Division, also testified. The hearing was recorded.

This decision concludes that Ms. T committed an Intentional Program Violation of the Temporary Assistance program.

II. Facts

The following facts were established by clear and convincing evidence.

Ms. T was receiving Temporary Assistance benefits for a five person household in November 2013. Four of those persons were minor children. She applied to renew those

¹ Ex. 3.

² Ex. 1, p. 3; Exs. 4 – 5; Ex. 13. Ms. T did not apply for a 2014 PFD, so it was not possible to determine a current address from an application. Ex. 5, p. 1.

³ The Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 AAC 45.585(b). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

benefits on November 7, 2013. Her renewal application was approved. During the renewal process, she was advised that she needed to inform the Division within five days of the date a child moved in or out of her household.⁴

All of Ms. T's children stopped residing with her. One of those children was placed in the legal custody of his father on February 20, 2014. There is no indication in the record stating when the father actually took physical custody of the child.⁵ The other three children were in their father's physical custody as of February 24, 2014, with instructions from the Office of Children's Services that Ms. T should only have supervised visitation. There is again no indication in the record as to when he received physical custody.⁶ Ms. T did not report any of the four children leaving the home. The Division found out about the physical custody changes in mid-March from one of the fathers involved.⁷

Ms. T has one prior IPV involving the Temporary Assistance program, based upon her failure to disclose the fact on her July 2012 Temporary Assistance application that the father of three of her children was living with her.⁸

The Division calculated that Ms. T received \$566 in Temporary Assistance benefits in March 2014 which she was not entitled to receive.⁹

III. Discussion

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence¹⁰ that Ms. T intentionally misrepresented, concealed or withheld a material fact "for the purpose of establishing or maintaining a family's eligibility for ATAP benefits."¹¹

A household **must** have minor children residing in it for it to be eligible for Temporary Assistance benefits.¹² A parent who is receiving Temporary Assistance benefits for his or her children is required to notify the Division within five days of the time a child leaves the home, if

⁴ Exs. 6, 7.

⁵ Ex. 9.

⁶ Ex. 10.

⁷ Dean Rogers' testimony.

⁸ Ex. 12.

⁹ Amanda Holton's testimony; Ex. 11.

¹⁰ 7 AAC 45.585(d).

¹¹ 7 AAC 45.580(n).

¹² 7 AAC 45.210(a)(3) and (4); 7 AAC 45.225.

the absence is expected to last for more than one month.¹³ An unexcused failure to report such an absence is subject to an IPV determination.¹⁴

The evidence shows that Ms. T did not timely report the fact all of her children left her home. There is no evidence showing any excuse for the failure to timely report. The question then arises as to whether the failure to report was intentional. Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Ms. T failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹⁵ Ms. T had a prior IPV regarding her failure to disclose that the father of three of her children was living with her. She was therefore aware that her household composition was an issue. She had also applied to renew her Temporary Assistance benefit in November 2013, when she was advised that she had 5 days to report when her children left her home. These facts compel a finding that her failure to report was intentional. This was an intentional withholding/concealment of a material fact, because without the presence of children in her home, Ms. T would not have been eligible for Temporary Assistance benefits.

The Division must then prove that the intentional withholding/concealment of the material fact was for the purpose of establishing or maintaining the household's eligibility for Temporary Assistance benefits. Because Ms. T was only eligible for Temporary Assistance based on her minor children residing with her, her failure to report their absence was made for the purpose of maintaining her eligibility for Temporary Assistance benefits. Because she has a prior IPV, this is Ms. T's second IPV of the Temporary Assistance program.

IV. Conclusion and Order

Ms. T has committed a second Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of one year.¹⁶ If Ms. T is currently receiving Temporary Assistance benefits, her disqualification

¹³ 7 AAC 45.271(a).

¹⁴ 7 AAC 45.271(b).

¹⁵ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that "in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct"

¹⁶ AS 47.27.015(e)(2); 7 AAC 45.580(d).

period shall begin November 1, 2014.¹⁷ If Ms. T is not currently a Temporary Assistance recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, Temporary Assistance benefits.¹⁸ This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. T's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. T must report her income and resources as they may be used in these determinations.²⁰

The Division shall provide written notice to Ms. T and the caretaker relative, if other than Ms. T, of the Temporary Assistance benefits they will receive during the period of disqualification.²¹

If over-issued Temporary Assistance benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.²² If Ms. T disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.²³

Dated this 4th day of August, 2014.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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 19th day of August, 2014.

By: *Signed* _____
Name: Christopher Kennedy
Title: Administrative Law Judge

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

¹⁷ 7 AAC 45.580(f).
¹⁸ 7 AAC 45.580(g).
¹⁹ 7 AAC 45.580(e)(1).
²⁰ 7 AAC 45.580(e)(3).
²¹ 7 AAC 45.580(k).
²² 7 AAC 45.570(b).
²³ 7 AAC 45.570(l).