

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

In the Matter of)	
)	OAH No. 14-1223-ADQ
E Q)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

E Q received Food Stamp¹ and Temporary Assistance benefits from the Department of Health and Social Services, Division of Public Assistance (DPA). DPA initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of these programs.² This decision concludes that DPA proved by clear and convincing evidence that Ms. Q committed her first Intentional Program Violation of the Food Stamp and Temporary Assistance programs. She must pay \$5,423³ in restitution, is barred from receiving Food Stamps for 12 months, and is barred from receiving Temporary Assistance for six months.

A hearing convened in this case on August 21, 2014. DPA sent Ms. Q advance notice of the hearing by both certified mail and standard first class mail to her address of record.⁴ The first class mail notice was not returned to DPA and is presumed delivered.⁵ The certified mail notice has been available for pick up since July 30, 2014.⁶ DPA also sent a letter and package containing the evidence DPA planned to present at hearing.⁷ A certified copy of the letter and copy of the evidence was delivered to Ms. Q's residence on August 14, 2014.⁸ Ms. Q did not attend the hearing and could not be reached at the telephone.⁹ The hearing went forward in her absence.¹⁰

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). The program is still commonly referred to as the Food Stamp program.

² Ex. 2.

³ Ms. Q received \$940 in Food Stamp overpayments, \$4,403 in ATAP overpayments, and \$80 in supportive services she was not entitled to. *See* Ex. 14.

⁴ Ex. 4; Ex. 5.

⁵ DPA affidavit; Schwenke testimony.

⁶ Ex. 4; Ex. 5.

⁷ DPA affidavit.

⁸ Ex. 6.

⁹ The phone number listed for Ms. Q belonged to her father. He did not have another contact number for her and stated she frequently moves around.

¹⁰ Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4). The same

William Schwenke, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Mr. Schwenke, Melanie Moats, Nancy Shafer, and Bradley Ray testified on behalf of DPA.

II. Facts

Ms. Q submitted a public assistance application on June 11, 2013. The next day, Ms. Q participated in eligibility interview on the application.¹¹ Her rights and responsibilities were reviewed.¹² The rights and responsibilities include notice that a recipient must report within 5 days if a child moves out of the household.¹³ On the application and during the interview, Ms. Q claimed herself and her son, L D as household members.¹⁴

On September 4, 2013, L D flew to Anchorage to live with his father, K D.¹⁵ L enrolled in school and did not return to live with his mother.¹⁶ On January 27, 2014, Ms. Q submitted an application for Food Stamps and Temporary Assistance.¹⁷ She once again listed L as living in the household.¹⁸ On February 18, 2014, Ms. Q participated in an eligibility interview with Nancy Shafer and stated that L lived in her household.¹⁹

On February 24, 2014, K D informed DPA eligibility technician Bradley Ray that L had been living with him since September 4, 2013.²⁰ Mr. Ray submitted this information to the Fraud Control Unit.²¹ DPA investigated and confirmed, through interviews and school records, that L had been living with Mr. D since September 2013.²²

Because Ms. Q inaccurately reported her household size, DPA issued Ms. Q excessive Food Stamps and Temporary Assistance benefits from October 2013 through May 2014.²³ The

regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

¹¹ Ex. 10, p. 18.

¹² Ex. 10, p. 18.

¹³ Ex. 7, p. 38.

¹⁴ Ex. 7, p. 23.; Ex. 10. P. 18.

¹⁵ Ex. 13.

¹⁶ Ex. 12.

¹⁷ Ex. 7, p. 1-21.

¹⁸ Ex. 7, p. 2.

¹⁹ Ex. 10, p. 5-6; Shafer testimony.

²⁰ Ray testimony.

²¹ Ex. 2.

²² Ex. 12; Schwenke testimony.

²³ Ex. 14.

total overpayment amount is \$5,423: \$940 in Food Stamps, \$4,403 in Temporary Assistance, and \$80 in supportive services benefits.²⁴

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence²⁵ that Ms. Q intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”²⁶

Food Stamp eligibility and benefit amounts are based in part on a household's size.²⁷ Ms. Q's application listed L D as part of her household, despite the fact he was living in his father's household since September 4, 2014. As a result, DPA issued excessive Food Stamp benefits for the household.²⁸

Ms. Q was aware where L was living when she completed the applications. She knew L moved in with Mr. D in September 2013. She also knew L was not living with her when she completed her new application in January 2014. Consequently, Ms. Q intentionally misrepresented that L was residing in her home when he was actually residing at Mr. D's home.

The Division has therefore met its burden of proof and established that Ms. Q made an intentional misrepresentation for Food Stamp benefits. As a result, she committed a first Intentional Program Violation of the Food Stamp program and is disqualified for 12 months.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence²⁹ that Ms. Q intentionally misrepresented, concealed or withheld a material fact on her application “for the purpose of establishing or maintaining a family's eligibility for ATAP benefits.”³⁰ As discussed above, Ms. Q intentionally misrepresented that L lived with her when he did not.

²⁴ Ex. 14.

²⁵ 7 C.F.R. § 273.16(e)(6).

²⁶ 7 C.F.R. § 273.16(c).

²⁷ 7 C.F.R. § 273.10(e)(1)(i)(A).

²⁸ Ex. 14; Schwenke testimony.

²⁹ 7 AAC 45.585(d).

³⁰ 7 AAC 45.580(n).

In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child residing in his or her home for more than half the time.³¹ Whether there is a dependent child primarily residing in the home is therefore a material fact for the purpose of determining Temporary Assistance eligibility.

The Division must then prove that the intentional misrepresentation of the material fact was for the purpose of establishing or maintaining the household's eligibility for Temporary Assistance benefits. Because Ms. Q would have only been eligible for Temporary Assistance if L was primarily residing with her for more than half the time, her intentional misrepresentation regarding his presence in her home caused her to appear eligible for benefits to which she was not entitled. Ms. Q has therefore committed a first Intentional Program Violation of the Temporary Assistance program and is disqualified for six months.

IV. Conclusion and Order

A. Food Stamp Program

Ms. Q has committed a first time Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³² The Food Stamp program disqualification period shall begin November 1, 2014.³³ This disqualification applies only to Ms. Q, and not to any other individuals in the household.³⁴ For the duration of the disqualification period, Ms. Q's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.³⁵

The Division shall provide written notice to Ms. Q and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired.³⁶

³¹ AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a) and (b).

³² 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³³ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995). Insofar as 7 C.F.R. § 273.16(e)(9)(ii) is inconsistent with this result, it must be disregarded as contrary to statute, as discussed in *Garcia* and in *Devi v. Senior and Disabled Serv. Div.*, 905 P.2d 846 (Or. App. 1995).

³⁴ 7 C.F.R. § 273.16(b)(11).

³⁵ 7 C.F.R. § 273.11(c)(1).

³⁶ 7 C.F.R. § 273.16(e)(9)(ii).

If over-issued Food Stamp benefits have not been repaid, Ms. Q or any remaining household members are now required to make restitution.³⁷ If Ms. Q disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³⁸

B. The Alaska Temporary Assistance Program

Ms. Q has committed a first time Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of six months.³⁹ If Ms. Q is currently receiving Temporary Assistance benefits, her disqualification period shall begin November 1, 2014.⁴⁰ If Ms. Q 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.⁴¹ This disqualification applies only to Ms. Q, and not to any other individuals who may be included in her household.⁴² For the duration of the disqualification period, Ms. Q's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. Q must report her income and resources as they may be used in these determinations.⁴³

The Division shall provide written notice to Ms. Q and the caretaker relative, if other than Ms. Q, of the Temporary Assistance benefits they will receive during the period of disqualification.⁴⁴

If over-issued Temporary Assistance benefits have not been repaid, Ms. Q or any remaining household members are now required to make restitution.⁴⁵ If Ms. Q disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.⁴⁶

Dated this 26th day of September, 2014.

Signed _____
Bride Seifert
Administrative Law Judge

³⁷ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³⁸ 7 C.F.R. § 273.15.

³⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

⁴⁰ 7 AAC 45.580(f).

⁴¹ 7 AAC 45.580(g).

⁴² 7 AAC 45.580(e)(1).

⁴³ 7 AAC 45.580(e)(3).

⁴⁴ 7 AAC 45.580(k).

⁴⁵ 7 AAC 45.570(b).

⁴⁶ 7 AAC 45.570(l).

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 20th day of October, 2014.

By: *Signed* _____

Name: **Bride Seifert** _____

Title/Division: **ALJ/OAH** _____

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