

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

In the Matter of)
)
 K L. B)
_____)

OAH No. 14-1488-ADQ
DPA/FCU No.
Agency No.

DECISION and ORDER

I. Introduction

K L. B applied for Supplemental Nutrition Assistance Program (SNAP or Food Stamps) and Alaska Temporary Assistance (ATAP) benefits in July 2014. On September 3, 2014, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed first Intentional Program Violations (IPVs) of the ATAP and Food Stamps programs.¹

A hearing convened in this case on October 7, 2014, with Mr. B participating by telephone. DPA was represented at the hearing by Wynn Jennings, an investigator employed by DPA's Fraud Control Unit. Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. DPA Exhibits 1-11 and B Exhibit A were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. B committed first Intentional Program Violations of both programs. He must be barred from ATAP benefits for six months and from Food Stamps benefits for 12 months.

II. Facts

Mr. B filed a new application for ATAP and Food Stamps benefits on July 21, 2014.² On the application, he listed two children, J and L, as living with him.³ He signed the form under penalty of perjury.⁴

Both children had actually been in state custody, in a foster home, since January of 2014.⁵ They remained in the foster home at least until late October of 2014.⁶

¹ Ex. 3.
² Ex. 8.
³ Ex. 8, pp. 2-4.
⁴ Ex. 7, p. 5.
⁵ Ex. 11.
⁶ Ex. 11; B testimony.

Mr. B attended an eligibility interview on July 21, 2014 in connection with the same application. He continued to maintain that his daughters lived with him until the eligibility technician who conducted the interview confronted him with the fact that they were in state custody.⁷

Mr. B was quite frank during the hearing, and he deserves respect for his honesty at that time. He explained at the hearing that he “jumped the gun” because, when he applied, he was very close to regaining custody of his daughters.⁸ He said he thought he “was doing the smart thing” by getting ready for their return.⁹ However, he did not deny that he expected to begin receiving benefits before the girls returned to his home.¹⁰ The clear and convincing implication of Mr. B’s straightforward testimony at the hearing was that Mr. B was over-eager to receive benefits and knew he was fudging on the issue of who was living with him.

DPA approved Food Stamps for Mr. B, but only after removing the two daughters as household members.¹¹ ATAP benefits were denied.¹² No excessive benefits were issued in either program.

III. Discussion

A. Food Stamps

Federal law prohibits a person from seeking Food Stamps benefits by making false or misleading statements or by concealing or withholding facts.¹³ In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ No evidence has been offered that Mr. B has ever been found to have committed a prior IPV, and therefore this alleged IPV will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV’s in his or her record, and other exceptions not relevant here, federal Food Stamps law provides that a twelve-month disqualification must be

⁷ Ex. 2; Ex. 9; Holton testimony.

⁸ B testimony (hearing recording at minutes 40-41).

⁹ B testimony (hearing recording at minute 45).

¹⁰ B testimony (hearing recording at minutes 48-49).

¹¹ Ex. 9; Holton testimony.

¹² Ex. 10.

¹³ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6).

imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁵

It is clear, and essentially undisputed, that Mr. B claimed that his daughters were living with him at a time when they were in fact in foster care. He did this multiple times: first by saying that he “live[d] with” a child on page 2 of his application, again by listing each child as a household member on pages 3 and 4 of the application, and again by saying they lived with him in the follow-up interview. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional. As discussed in the facts section above, the clear and convincing import of Mr. B’s testimony was that he did know he was misstating facts, hoping that the facts would *become* true in the fairly near future. This is enough to constitute an IPV.

B. ATAP

It is illegal to seek ATAP benefits by making false or misleading statements or by concealing or withholding facts.¹⁶ In seeking to establish an IPV in the ATAP program, DPA must prove the elements of that IPV by clear and convincing evidence,¹⁷ *i.e.*, that Mr. B intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”¹⁸ No evidence has been offered that Mr. B has ever been found to have committed a prior ATAP IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation. A first-time IPV in the ATAP program results in a six-month disqualification.¹⁹

As discussed in the previous section, it is clear that Mr. B claimed that his daughters were living with him at a time when the daughters were in fact living in state custody, that he did so to receive benefits, and that he did so knowing the facts he was stating were not true at the time he stated them. Whether there is a dependent child living in the home is a material fact for the purpose of determining ATAP eligibility. Mr. B has therefore committed a first IPV of the ATAP program.

¹⁵ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

¹⁶ 7 AAC 45.580(n).

¹⁷ 7 AAC 45.585(e).

¹⁸ 7 AAC 45.580(n).

¹⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

IV. Conclusion and Order

A. Food Stamps

Mr. B has committed a first time Intentional Program Violation of the Food Stamps program. He is disqualified from receiving Food Stamps benefits for a twelve-month period.²⁰ The Food Stamps disqualification period shall begin February 1, 2015.²¹ This disqualification applies only to Mr. B, and not to any other individuals who may be included in his household.²² For the duration of the disqualification period, Mr. B's needs will not be considered when determining Food Stamps eligibility and benefit amounts for his household. However, he must report his income and resources so that they can be used in these determinations.²³

DPA shall provide written notice to Mr. B 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.²⁴

B. ATAP

Mr. B has committed a first time ATAP Intentional Program Violation. He is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.²⁵ If Mr. B is currently receiving ATAP benefits, his disqualification period shall begin as provided in 7 AAC 45.580(f)(1). If Mr. B is not currently an ATAP recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, ATAP benefits.²⁶ This disqualification applies only to Mr. B, and not to any other individuals who may be included in his household.²⁷ For the duration of the disqualification period, Mr. B's needs will not be considered when determining ATAP eligibility and benefit amounts for his household. However, Mr. B must report his income and resources, as they may be used in these determinations.²⁸

²⁰ 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).

²¹ 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 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).

²² 7 C.F.R. § 273.16(b)(11).

²³ 7 C.F.R. § 273.11(c)(1).

²⁴ 7 C.F.R. § 273.16(e)(9)(ii).

²⁵ AS 47.27.015(e)(1); 7 AAC 45.580(d).

²⁶ 7 AAC 45.580(g).

²⁷ 7 AAC 45.580(e)(1).

²⁸ 7 AAC 45.580(e)(3).

The Division shall provide written notice to Mr. B and the caretaker relative, if other than Mr. B, of the ATAP benefits they will receive during the period of disqualification.²⁹

Because no ATAP benefits were issued, nor any excess Food Stamps benefits issued, no order relating to repayment will be entered.

Dated this 26th day of November, 2014.

Signed

Andrew M. Lebo

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 16th day of December, 2014.

By: *Signed*

Name: Andrew M. Lebo

Title: Administrative Law Judge

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

²⁹ 7 AAC 45.580(k).