

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

In the Matter of	)	
	)	OAH No. 14-1713-ADQ
M K. N	)	DPA/FCU No.
_____	)	Agency No.

**DECISION and ORDER**

**I. Introduction**

M K. N has received Alaska Temporary Assistance (ATAP) off and on for many years, including March through June of 2014. On September 29, 2014, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the ATAP program.<sup>1</sup>

A hearing convened in this case on November 14, 2014, with Ms. N having been provided advance notice of the hearing at her address of record by both certified mail and standard First Class mail.<sup>2</sup> Ms. N did not attend the hearing and could not be reached at any the telephone number she had provided to the program, which was not in service. The hearing went forward in her absence.<sup>3</sup> Ms. N subsequently learned of the hearing and asked that a new hearing be held to give her a chance to participate.<sup>4</sup> This was granted, and the record developed in the prior hearing has been disregarded in this decision. There were two more unsuccessful attempts to convene the hearing in late December and early January.<sup>5</sup> The full hearing, with Ms. N's participation, finally took place on January 16, 2015.

DPA was represented at the hearing by Dean Rogers, an investigator employed by DPA's Fraud Control Unit. Amanda Holton, a DPA Eligibility Technician, and T X, a private citizen,

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<sup>1</sup> Ex. 3.

<sup>2</sup> Ex. 1, p. 3; Ex. 3; Ex. 4. The certified mail was unclaimed, and in light of the other evidence in this case, it is likely that Ms. N was no longer at this address at the time notice was sent.

<sup>3</sup> Once proper notice has been given, the ATAP regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 AAC 45.585(c).

<sup>4</sup> The same regulation sets out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

<sup>5</sup> Other orders record the circumstances of these abortive hearings. In general, it was very difficult to get an exhibit set to Ms. N because of several changes of address and because she was not especially proactive about picking up her evidence packet from the post office. Eventually Ms. N waived her opportunity to review the exhibits and went forward without them. The significant portions of the exhibits were read to her.

testified on behalf of DPA; Ms. N testified on her own behalf. Exhibits 1 and 2 through 16 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. N committed a first Intentional Program Violation of the ATAP program. This does not mean she was consciously engaged in fraud; it is simply a finding that an IPV took place. She must be barred from ATAP for six months.

## II. Facts

Ms. N had extensive experience with the ATAP program, going back almost 15 years.<sup>6</sup> On March 21, 2014, she applied to reenter the program after a short lapse.<sup>7</sup> On the application form, she listed her son, L L. N, as living with her.<sup>8</sup>

Ms. N had attended an eligibility interview on March 21, 2014 in connection with ATAP eligibility, during which the composition of her household was discussed.<sup>9</sup> This interview, as well as written materials distributed with the application form, covered the need to report any changes in household composition to DPA.<sup>10</sup> The written materials also covered the need to report any change of residence.<sup>11</sup>

In late April, L moved into the full-time custody of his father, T X.<sup>12</sup> Early in May, Ms. N traveled to Hawaii.<sup>13</sup>

There is conflicting evidence about the nature of the travel to Hawaii. Some of the people left behind in Anchorage apparently thought the move was permanent.<sup>14</sup> On the other hand, Ms. N testified plausibly that she was *hoping* to get a job in Hawaii but thought she might be unsuccessful and that she might be returning to Alaska.<sup>15</sup> As it happened, she did not succeed in settling in Hawaii; instead, she moved on to Idaho, where she seems to have done a great job of getting on her feet.

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<sup>6</sup> Ex. 8.

<sup>7</sup> Ex. 6, p. 2.

<sup>8</sup> Ex. 7, p. 1.

<sup>9</sup> Holton testimony; Ex. 7.

<sup>10</sup> Holton testimony; Ex. 6, p. 13.

<sup>11</sup> Ex. 6, p. 13. The interview may cover this as well, but that was not established in the record for this case.

<sup>12</sup> X testimony; Ex. 9.

<sup>13</sup> *Id.*; Holton testimony; Ex. 10.

<sup>14</sup> X testimony, Ex. 9.

<sup>15</sup> N testimony.

In the end, it does not matter whether Ms. N intended to leave Alaska permanently in early May. As discussed below, the change in custody of L is the key fact that determines the outcome of this case.

DPA paid ATAP benefits to Ms. N in June of 2014 predicated on an Alaska household that included L.<sup>16</sup> Ms. N redeemed those benefits in Hawaii.<sup>17</sup> Ms. N should not have received ATAP benefit for June, since L was in fact not present in her household.<sup>18</sup> DPA has calculated the excessive benefits as \$821.<sup>19</sup>

L's change in custody and Ms. N's departure from Alaska were discovered because the Child Support Services Division required Mr. X to report them.<sup>20</sup> An investigation, and this proceeding, ensued.

### III. Discussion

It is illegal to obtain ATAP benefits by concealing or withholding facts.<sup>21</sup> In this case, DPA seeks to establish an IPV on the basis of such conduct by Ms. N. To do so, DPA must prove the elements of that IPV by clear and convincing evidence,<sup>22</sup> *i.e.*, that Ms. N intentionally withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”<sup>23</sup> No evidence has been offered that Ms. N has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation.

It is clear that Ms. N failed to report that she had turned her son over to his father’s custody in April, and then traveled out of state. It may be that the move to Hawaii was tentative, but there is no dispute that the custody of L changed. In order to qualify for ATAP benefits, an applicant must have a dependent child living in her home.<sup>24</sup> Whether there is a dependent child living in the home is therefore material facts for the purpose of determining ATAP eligibility. The remaining issue is whether the failure to report the custody change was intentional and was for the purpose of maintaining eligibility.

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<sup>16</sup> Ex. 8; Holton testimony.

<sup>17</sup> Ex. 10, p. 19; Holton testimony.

<sup>18</sup> Holton testimony.

<sup>19</sup> Ex. 11.

<sup>20</sup> Ex. 2; X testimony.

<sup>21</sup> 7 AAC 45.580(n).

<sup>22</sup> 7 AAC 45.585(e).

<sup>23</sup> 7 AAC 45.580(n).

<sup>24</sup> AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

Ms. N had been using ATAP benefits for many years, and had just completed a re-application process where the basis for eligibility—and the requirement to report changes—was discussed. It cannot have escaped Ms. N’s notice that she had lost the whole basis of her eligibility for the Alaska benefits she was receiving and cashing in Hawaii. The only plausible reason Ms. N would have failed to notify DPA of her change in circumstances was to keep receiving and using these benefits while she looked for work elsewhere, even though she knew she was not entitled to them.

Ms. N points out that ATAP benefits lapse after a time if the recipient does not submit to a redetermination of eligibility, and says that she intended to let her benefits expire in this manner. This is not good enough: it would have her continuing to receive benefits for which she no longer qualified until the next review occurred.<sup>25</sup> The implication of her testimony is that she knew that would be the result.

The Division has therefore met its burden of proof and established that Ms. N intentionally withheld a material fact: the fact her son was not living with her. This intentional withholding of a material fact was made for the purpose of maintaining her eligibility for ATAP benefits. Ms. N has therefore committed a first IPV of the Temporary Assistance program.

#### **IV. Conclusion and Order**

Ms. N 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.<sup>26</sup> Because Ms. N 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.<sup>27</sup> This disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.<sup>28</sup> For the duration of the disqualification period, Ms. N’s needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. N must report her income and resources as they may be used in these determinations.<sup>29</sup>

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<sup>25</sup> It is not clear when this would have happened. Since she was also a Food Stamps recipient, Ms. N probably would have been subject to an eligibility review every six months. Alaska Temporary Assistance Manual § 790-8 A.

<sup>26</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>27</sup> 7 AAC 45.580(g).

<sup>28</sup> 7 AAC 45.580(e)(1).

<sup>29</sup> 7 AAC 45.580(e)(3).

The Division shall provide written notice to Ms. N and the caretaker relative, if other than Ms. N, of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>30</sup>

If over-issued Temporary Assistance benefits have not been repaid, Ms. N or any remaining household members are now required to make restitution.<sup>31</sup> If Ms. N disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.<sup>32</sup>

**V. Special Provision for Service**

Ms. N provided a new, permanent address on the record: No Name Address. The OAH Clerk shall serve this document at that address, and also send it by e-mail to: No Name Email.

Dated this 20<sup>th</sup> day of January, 2015.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
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 9<sup>th</sup> day of February, 2015.

By: *Signed* \_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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

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<sup>30</sup> 7 AAC 45.580(k).  
<sup>31</sup> 7 AAC 45.570(b).  
<sup>32</sup> 7 AAC 45.570(l).