

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

In the Matter of)	
)	OAH No. 14-1766-ADQ
D N. T)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

D N. T received Alaska Temporary Assistance (ATAP) benefits from 2012 through September of 2014. On October 8, 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.¹

A hearing convened in this case on November 14, 2014, with Ms. T having been provided advance notice of the hearing by both certified mail and standard First Class mail.² Ms. T did not attend the hearing and could not be reached at any of the telephone numbers she had provided to the program.³ The hearing went forward in her absence.⁴

DPA was represented at the hearing by Dean Rogers, an investigator employed by DPA's Fraud Control Unit. Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. Exhibits 1-11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. T committed a first Intentional Program Violation of the ATAP program. She must be barred from ATAP benefits for six months.

II. Facts

Ms. T received ATAP benefits continuously from November 2012 through the events at issue in this case.⁵ As part of a routine eligibility review, she completed and signed an eligibility

¹ Ex. 3.

² Ex. 1, p. 3; Ex. 3; Ex. 4; Ex. 6. Ms. T signed for the certified mail.

³ Numbers attempted were: XXX-XXXX; XXX-XXXX; XXX-XXXX; XXX-XXXX. Where possible, the administrative law judge left a message for Ms. T to call the Office of Administrative Hearings as soon as possible.

⁴ 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). 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.

⁵ Ex. 9, pp. 1-2; Holton testimony.

review form, dating it July 28, 2014.⁶ On the form, she listed a daughter, U D. T, as living with her.⁷ She signed the form under penalty of perjury.⁸ She turned in the form to DPA on the same date she completed it.⁹

Ms. T had attended an eligibility interview in March 2014 in connection with ATAP eligibility, during which the composition of her household was discussed.¹⁰ This interview, as well as written materials distributed with the July eligibility review form, covered the illegality of giving false or incomplete information to get benefits.¹¹

Ten days prior to the date Ms. T submitted the eligibility review form, U had been removed from her custody and taken into state custody. She remained in state custody through at least October 1, 2014.¹²

DPA paid ATAP benefits to Ms. T in August 2014 based on a household size that included U, and she redeemed those benefits.¹³ Ms. T should have received a lower ATAP benefit for August, since U was in fact not present in the household.¹⁴ DPA has calculated the excessive benefits as \$185.¹⁵

U's absence was discovered by a DPA eligibility technician conducting a routine check in late August.¹⁶ A fraud investigation, and this proceeding, ensued.

III. Discussion

It is illegal to obtain ATAP benefits by making false or misleading statements or by concealing or withholding facts.¹⁷ In this case, DPA seeks to establish an IPV on the basis of such conduct by Ms. T. To do so, DPA must prove the elements of that IPV by clear and convincing evidence,¹⁸ *i.e.*, 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.”¹⁹ No evidence has been offered that Ms. T has ever been found to have committed a

⁶ Ex. 7.
⁷ Ex. 7, p. 1.
⁸ Ex. 7, p. 5.
⁹ Ex. 7, p. 1.
¹⁰ Holton testimony; Ex. 8.
¹¹ Holton testimony; Ex. 7, p. 9.
¹² Ex. 10.
¹³ Ex. 9; Holton testimony.
¹⁴ Holton testimony.
¹⁵ Ex. 11.
¹⁶ Ex. 2.
¹⁷ 7 AAC 45.580(n).
¹⁸ 7 AAC 45.585(e).
¹⁹ 7 AAC 45.580(n).

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. T claimed that her daughter was living with her at a time when the daughter was in fact living in state custody. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional and was for the purpose of maintaining benefits.

Ms. T failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. It simply cannot have slipped Ms. T's mind that her daughter had been taken away and that the household composition she was describing was fictional. In order to qualify for ATAP benefits, an applicant must have a dependent child living in her home.²⁰ Whether there is a dependent child living in the home is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. T would have misrepresented the presence of children in her home would have been to maintain the level of her eligibility for ATAP benefits.

The Division has therefore met its burden of proof and established that Ms. T intentionally misrepresented a material fact: the fact her daughter was not living with her. This intentional misrepresentation of a material fact was made for the purpose of maintaining her eligibility for ATAP benefits. Ms. T has therefore committed a first IPV of the ATAP program.

IV. Conclusion and Order

Ms. T has committed a first time ATAP Intentional Program Violation. She is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.²¹ If Ms. T is currently receiving ATAP benefits, her disqualification period shall begin as provided in 7 AAC 45.580(f)(1). If Ms. T is not currently an ATAP recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.²² This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.²³ 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.²⁴

²⁰ AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

²¹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

²² 7 AAC 45.580(g).

²³ 7 AAC 45.580(e)(1).

²⁴ 7 AAC 45.580(e)(3).

The Division shall provide written notice to Ms. T and the caretaker relative, if other than Ms. T, of the ATAP benefits they will receive during the period of disqualification.²⁵

If over-issued ATAP benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.²⁶ If Ms. T disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.²⁷

Dated this 25th day of November, 2014.

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 16th day of December, 2014.

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

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

²⁵ 7 AAC 45.580(k).
²⁶ 7 AAC 45.570(b).
²⁷ 7 AAC 45.570(l).