

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

In the Matter of)	
)	
T U)	OAH No. 14-1842-ADQ
_____)	FCU No.

FINAL DECISION and ORDER

I. Introduction

T U received Alaska Temporary Assistance (ATAP) and/or Food Stamp¹ benefits intermittently over the course of several years between 2010 and 2014. On October 24, 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 and Food Stamp programs in connection with some of those benefits.²

A hearing took place on November 26, 2014. Kenneth Cramer, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Ms. U attended by telephone, but she elected not to testify at that time. Exhibits 1 – 11 were admitted into evidence without objection and without restriction. By agreement, the record was kept open to December 9, 2014, with a procedure in place for Ms. U to gather and submit any documents about her work history that might contradict the division’s case, and for either party to request a second hearing session to take further testimony. Ms. U did not submit documents or ask for a supplemental hearing session.

This decision concludes that DPA proved by clear and convincing evidence that Ms. U committed a first Intentional Program Violation of both the Food Stamp and ATAP programs. She must be barred from Food Stamps for twelve months, and from ATAP for six months.

This decision varies from the proposed decision in the single respect that a typographical error regarding Ms. U’s name has been corrected on page 4. DPA pointed out the error in a proposal for action; it has been corrected pursuant to 2 AAC 64.350(a).

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program (“SNAP”).

² Ex. 3.

II. Facts

Ms. U began receiving ATAP in 2010 and Food Stamp benefits in 2011.³ As part of this process, she submitted a series of Eligibility Review Forms (ERF) to recertify her eligibility for Food Stamps and confirm her continuing eligibility for ATAP, as well as one new application form. The forms at issue in this case were submitted on December 27, 2011 (ERF seeking Food Stamps and ATAP);⁴ March 16, 2012 (ERF seeking Food Stamps);⁵ October 2, 2012 (new application seeking Food Stamps); February 25, 2013 (ERF seeking Food Stamps);⁶ October 4, 2013 (ERF seeking Food Stamps);⁷ and March 27, 2014 (ERF seeking Food Stamps).⁸ On every one of these applications and ERFs Ms. U wrote “N/A” when asked to list the employment of anyone in the household.⁹ She signed each of these forms under penalty of perjury. The written materials she was given with the forms instructed of her obligation to report any employment or changes in employment.¹⁰ In addition, these obligations were discussed in DPA interviews with her on March 20, 2012, October 16, 2012, and October 10, 2013 (“in detail”).¹¹

In contrast to these representations, Ms. U worked significantly during this period. She worked as a custodian for No Name, Inc. from November of 2011 to August of 2012 and again in November/December of 2012;¹² this employment conflicts with her December 27, 2011 and March 16, 2012 ERFs (although not with her October 2, 2012 new application). She worked for No Name Corp. from September 2013 to September 2014;¹³ this employment conflicts with her October 4, 2013 and March 27, 2014 ERFs, as well as with the October 10, 2013 eligibility interview in which disclosure requirements were covered “in detail.”

The earnings from these unreported jobs totaled well over \$20,000.¹⁴ DPA has calculated the resulting excessive benefits at \$4,547 in Food Stamps and \$821 for ATAP.¹⁵

³ Ex. 11.

⁴ Ex. 8, p. 26.

⁵ Ex. 8, p. 22.

⁶ Ex. 8, p. 10.

⁷ Ex. 8, p. 6.

⁸ Ex. 8, p. 1.

⁹ Ex. 8, pp. 3, 7, 11, 16, 24, 27.

¹⁰ Holton testimony; Ex. 7, p. 1.

¹¹ Holton testimony; Ex. 9.

¹² Ex. 10, p. 7.

¹³ Ex. 10, p. 3.

¹⁴ Ex. 10, p. 10.

¹⁵ Ex. 11; Holton testimony. Ms. U questioned the Division’s accounting with respect to one small payment in 2013; her questions appear to have been resolved by DPA’s supplemental filing of Nov. 26, 2014.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁶ Alaska law likewise prohibits securing ATAP benefits by such means.¹⁷

In this case, DPA seeks to establish an IPV in both benefit programs in which Ms. U was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁸ No evidence has been offered that Ms. U has ever been found to have committed a prior IPV, and therefore both alleged IPV's will be evaluated on the assumption that they are first-time violations.

A. Food Stamp Program

Except for someone with prior IPV's in his or her record or who has other circumstances, not applicable here, that can lead to enhanced penalties, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . concealed or withheld facts” in connection with the program.¹⁹

Ms. U had significant jobs and earnings over the course of several recertifications, which she explicitly denied having. She knew employment, income, and changes in income are a key part of Food Stamps eligibility, having discussed them with DPA representatives in several interviews and been told of the obligation to report. Because it has to be inferred that she knew she was supposed to list employment when the forms called for it, her failure to list the jobs was an intentional misrepresentation of facts. It follows that she has committed a first IPV.

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 evidence that Ms. U intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²⁰ As discussed above, Ms. U intentionally misrepresented that she was unemployed when she was not. Income is an essential component in qualifying for ATAP benefits.²¹ The existence and amount of income is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. U would have

¹⁶ See, e.g., 7 U.S.C. § 2015(b).

¹⁷ 7 AAC 45.580(n).

¹⁸ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

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

²⁰ 7 AAC 45.580(n).

²¹ AS 47.27.0025(a).

intentionally misrepresented that she was unemployed would have been to establish her eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that Ms. U intentionally misrepresented a material fact: the fact that she had a paying job. This intentional misrepresentation of a material fact was made for the purpose of establishing her eligibility for ATAP benefits. Ms. U has therefore committed a first IPV of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. U has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.²² The Food Stamp disqualification period shall begin April 1, 2015.²³ This disqualification applies only to Ms. U, and not to any other individuals who may be included in her household.²⁴ For the duration of the disqualification period, Ms. U's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, she must report her income and resources so that they can be used in these determinations.²⁵

DPA shall provide written notice to Ms. U 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.²⁶

If over-issued Food Stamp benefits have not been repaid, Ms. U or any remaining household members are now required to make restitution.²⁷ If Ms. U disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²⁸

²² 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).

²³ 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).

²⁴ 7 C.F.R. § 273.16(b)(11).

²⁵ 7 C.F.R. § 273.11(c)(1).

²⁶ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁸ 7 C.F.R. § 273.15.

B. Alaska Temporary Assistance Program

Ms. U has also 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.²⁹ If Ms. U is currently receiving Temporary Assistance benefits, her disqualification period shall begin February 1, 2015.³⁰ If Ms. U 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.³¹ This disqualification applies only to Ms. U, and not to any other individuals who may be included in her household.³² For the duration of the disqualification period, Ms. U's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. U must report her income and resources as they may be used in these determinations.³³

The Division shall provide written notice to Ms. U and the caretaker relative, if other than Ms. U, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁴

If over-issued Temporary Assistance benefits have not been repaid, Ms. U or any remaining household members are now required to make restitution.³⁵ If Ms. U disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³⁶

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²⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).
³⁰ 7 AAC 45.580(f).
³¹ 7 AAC 45.580(g).
³² 7 AAC 45.580(e)(1).
³³ 7 AAC 45.580(e)(3).
³⁴ 7 AAC 45.580(k).
³⁵ 7 AAC 45.570(b).
³⁶ 7 AAC 45.570(l).

V. 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 29th day of January, 2015.

By: Signed
Christopher Kennedy
Administrative Law Judge

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