

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

In the Matter of	)	OAH No. 15-0405-ADQ
	)	Division No.
B C	)	Fraud Control Case No.
_____	)	Food Stamp and Temporary Assistance

**DECISION AND ORDER**

**I. Introduction**

B C is a former recipient of Alaska Temporary Assistance Program (ATAP) and Food Stamps<sup>1</sup> benefits. On May 15, 2015, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against Ms. C, alleging she had committed an Intentional Program Violation of the Food Stamps and the Alaska Temporary Assistance programs by failing to disclose a member of her household, her child’s biological father, whose income would have disqualified her from the benefits she received.

Ms. C’s hearing was held on June 12 and 15, 2015. The hearing was conducted over the phone. Ms. C represented herself and testified on her own behalf. Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented the Division. Amanda Holton, an Eligibility Technician employed by the Division, and N T, the biological father of Ms. C’s child, testified on behalf of the Division. The hearing was recorded.

This decision concludes that the Division met its burden of proving by clear and convincing evidence that Ms. C committed first Intentional Program Violations of the Alaska Temporary Assistance Program and the Food Stamps Program.

**II. Facts**

On April 24, 2013, Ms. C completed, signed and submitted an application for Food Stamps and Alaska Temporary Assistance benefits.<sup>2</sup> Part of the application required her to include any income from employment, and to identify other members of the household and include their income in the application.<sup>3</sup> Ms. C filled out her employment history, noting that her employer’s business remodel and her own pregnancy had put her out of work two days

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

<sup>2</sup> Ex. 7.

<sup>3</sup> Ex. 7 at 3.

earlier; no other household member or income was included.<sup>4</sup> On April 25, 2013 her application for Food Stamps was approved.<sup>5</sup> On May 15, 2013 Ms. C was also approved for Temporary Assistance benefits.<sup>6</sup>

However, during that time Ms. C was actually residing with Mr. T, first in an apartment at Address 1 in No Name 1, and then in an apartment at Address 2 in No Name 2, after a flood made the first location uninhabitable. It is uncontested that between April 24, 2013 and July 24, 2013 Ms. C was living in the same apartment as Mr. T.<sup>7</sup> Mr. T's income was high enough to disqualify the household from Food Stamp and ATAP benefits.<sup>8</sup> While Mr. T's timeline is somewhat unclear,<sup>9</sup> he provided signed letters from three people and a copy of the Address 2 lease, signed by both Mr. T and Ms. C, as evidence that he and Ms. C lived together.<sup>10</sup>

Ms. C does not contest that she was living with Mr. T during the period in question. She testified that, at the time of her application, she was trying to leave their apartment, that she had been in a verbally abusive relationship with Mr. T which she feared would become physically violent, and that she was currently living essentially as his roommate - she claims to have paid half the rent and a fair portion of the utilities.<sup>11</sup> She also testified that financial independence was the necessary first step in leaving this abusive relationship. To corroborate her fears of Mr. T's abusive tendencies, Ms. C presented a "Restraining Order to Prevent Abuse" issued to Mr. T by a court in Oregon (regarding a subsequent relationship with someone other than Ms. C).<sup>12</sup>

Ms. C testified that the flood occurred the first week of May, days before her baby was due.<sup>13</sup> She testified that she would not have been allowed to live at the Address 2 apartment complex without signing the lease with Mr. T and she did not have the resources to find another

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<sup>4</sup> Ex. 7 at 3-5.

<sup>5</sup> Ex. 10.

<sup>6</sup> Ex.10.

<sup>7</sup> Testimony of B C; Testimony of N T.

<sup>8</sup> Ex. 13.

<sup>9</sup> Ex. 2 at p.2; Ex. 12 at 1; while no one disputes the sequence of residences, Mr. T writes that the flood occurred at the "end of May," then the "family unit" stayed with an acquaintance for a week, until finally moving into the Address 2 apartment. However, the lease signed for that apartment is dated 5/8/13. Mr. T also claims that Ms. C left the apartment around September 2013, but a No Name shelter letter in the record states she and her infant daughter were living there from July 24 to August 12, 2013.

<sup>10</sup> Ex.12; Ex. 11 at 1, 2.

<sup>11</sup> *Id*; see also "Written Argument" of Ms. C.

<sup>12</sup> Respondent's exhibit packet, at p. 4.

<sup>13</sup> Testimony of B C (H C was born on 00/00/2013).

place to live.<sup>14</sup> On July 24, 2013, Ms. C moved into a No Name shelter with her two-month old child.<sup>15</sup>

The Division calculated that from April to July 24th, Ms. C received \$948.00 in Food Stamps and \$3,077.00 in Alaska Temporary Assistance benefits, totaling \$4,025.00 in benefits that she was not entitled to receive.<sup>16</sup>

### **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 evidence<sup>17</sup> that Ms. C intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>18</sup> To meet this standard, the division must show that it is *highly probable* that Ms. C intended to provide or knowingly provided incorrect information.<sup>19</sup>

A review of the facts demonstrates that Mr. T was indeed living as part of Ms. C’s household during the period between April and July 2013 when she received ATAP and Food Stamp benefits, and she did not include his name or income in her application. In her testimony, Ms. C emphasized that the household was not one in which resources and income were readily shared, and that she tried to pay her fair share of household expenses.<sup>20</sup> In addition, Ms. C stressed at the hearing that her relationship with Mr. T was at that time tenuous and hostile, and that she considered herself to be a roommate rather than a romantic partner of Mr. T. It is undisputed that, at least in hindsight, Ms. C saw herself as financially and emotionally isolated from Mr. T, and not really a member of the same household. She also provided evidence that, around the time of her application for benefits, she planned on becoming the sole adult member of her household in the near future.

For purposes of this proceeding, however, Ms. C’s future plans at the time she submitted her application do not mitigate the fact that when she applied for benefits and signed the application under penalty of perjury, the information she provided was incomplete and

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<sup>14</sup> Testimony of B C.

<sup>15</sup> Letter from J N, DVSA Case Manager.

<sup>16</sup> Ex. 14.

<sup>17</sup> 7 C.F.R. § 273.16(e)(6).

<sup>18</sup> 7 C.F.R. § 273.16(c).

<sup>19</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

<sup>20</sup> *See* Testimony of B C.

inaccurate. She clearly knew that she was residing in the same household as Mr. T. Although her motivation to leave an abusive relationship and establish a more healthy environment for her child may have been commendable, it does not excuse her omission of key, required information from the application. The Division, therefore, has met its burden of proof and established that Ms. C made an intentional misrepresentation on her April 24, 2013 application for Food Stamps. As a result, she has committed a first Intentional Program Violation of the Food Stamp program.

***B.     ATAP***

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence<sup>21</sup> that Ms. C 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.”<sup>22</sup> ATAP benefits are based upon the total number of people in the household and their combined income.<sup>23</sup> Whether someone else resides in the home, and his or her income, if any, are therefore material facts 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.<sup>24</sup>

As discussed above, it is clear that Ms. C withheld a material fact that affected her eligibility for ATAP benefits. As a parent of Ms. C’s child, Mr. T was a “mandatory household [member].”<sup>25</sup> Failure to include Mr. T in her application made Ms. C eligible for benefits to which she was not legally entitled. The Division established by clear and convincing evidence that Ms. C resided with Mr. T in a household, regardless of her belief that she was more of a roommate and that they were no longer romantically involved. On the facts presented, Ms. C’s failure to include Mr. T as a member of her household constitutes an intentional misrepresentation, notwithstanding the difficult circumstances she was experiencing at the time. In addition, clearly Ms. C submitted her ATAP application for the purpose of establishing eligibility for benefits; and the omission of Mr. T from the application allowed her to achieve

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<sup>21</sup> 7 AAC 45.585(d).  
<sup>22</sup> 7 AAC 45.580(n).  
<sup>23</sup> AS 47.27.020(a); 7 AAC 45.520 and 7 AAC 45.525.  
<sup>24</sup> 7 AAC 45.580(n).  
<sup>25</sup> 7 AAC 45.195 (a)(3).

eligibility. This is sufficient to establish that the withholding of that material fact was made “for the purpose of establishing eligibility.”<sup>26</sup>

The Division, therefore, met its burden of proof of establishing by clear and convincing evidence that Ms. C intentionally misrepresented a material fact for the purpose of establishing eligibility for ATAP.

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

##### **A. Food Stamp Program**

Ms. C has committed a first time Intentional Program Violation of the Food Stamps program. She is disqualified from receiving Food Stamps benefits for a twelve-month period.<sup>27</sup> The Food Stamps disqualification period shall begin September 1, 2015.<sup>28</sup> This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.<sup>29</sup> For the duration of the disqualification period, Ms. C’s needs will not be considered when determining Food Stamps eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations.<sup>30</sup>

The Division shall provide written notice to Ms. C 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.<sup>31</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.<sup>32</sup> If Ms. C disagrees with the Division’s calculation of the amount of over-issued benefits to be repaid, she may request a separate hearing on that limited issue.<sup>33</sup>

##### **B. ATAP**

Ms. C 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

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<sup>26</sup> 7 AAC 45.580(n).

<sup>27</sup> 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).

<sup>28</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>29</sup> 7 C.F.R. § 273.16(b)(11).

<sup>30</sup> 7 C.F.R. § 273.11(c)(1).

<sup>31</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>32</sup> 7 C.F.R. §273.16(b)(12); 7 C.F.R. §273.16(e)(8)(iii).

<sup>33</sup> 7 C.F.R. §273.15.

months.<sup>34</sup> Because Ms. C is not currently an ATAP recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.<sup>35</sup> This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.<sup>36</sup> For the duration of the disqualification period, Ms. C's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, she must report her income and resources, as they may be used in these determinations.<sup>37</sup>

The Division shall provide written notice to Ms. C and the caretaker relative, if other than Ms. C, of the ATAP benefits they will receive during the period of disqualification.<sup>38</sup> If over-issued ATAP benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.<sup>39</sup> If Ms. C disagrees with the Division's calculation of the amount of over-issued benefits to be repaid, she may request a separate hearing on that limited issue.<sup>40</sup>

Dated this 8<sup>th</sup> day of July, 2015.

Signed  
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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 4<sup>th</sup> day of August, 2015.

By: Signed  
\_\_\_\_\_  
Name: Jared C. Kosin, J.D., M.B.A.  
Title: Executive Director  
Agency: Office of Rate Review, DHSS

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

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<sup>34</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).  
<sup>35</sup> 7 AAC 45.580(g).  
<sup>36</sup> 7 AAC 45.580(e)(1).  
<sup>37</sup> 7 AAC 45.580(e)(3).  
<sup>38</sup> 7 AAC 45.580(k).  
<sup>39</sup> 7 C.F.R. §273.16(b)(12); 7 C.F.R. §273.16(e)(8)(iii).  
<sup>40</sup> 7 C.F.R. §273.15.