

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

In the Matter of	)	OAH No. 15-0407-ADQ
	)	Division No.
Y H-G	)	Fraud Control Case No.
	)	Alaska Temporary Assistance Program
_____	)	

**DECISION AND ORDER**

**I. Introduction**

Ms. Y H-G received Alaska Temporary Assistance benefits. On April 9, 2015, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Alaska Temporary Assistance program by falsely declaring three minor children as part of her household and failing to report that physical custody of the children had been awarded to their biological father, N G.<sup>1</sup>

The hearing took place on May 15, 2015. Ms. H-G was provided advance notice of the hearing by both certified mail and standard First Class mail. Ms. H-G appeared for the hearing in person; she represented herself and testified on her own behalf. N S also testified on Ms. H-G's behalf. Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented the Division and testified on its behalf. N G, and Amanda Holton, an Eligibility Technician employed by the Division's Fraud Control Unit, testified for the Division. The hearing was recorded.

This decision concludes that Ms. H-G did not commit an Intentional Program Violation of the Alaska Temporary Assistance program (ATAP), but that she did receive benefits to which she was not entitled.

**II. Facts**

The following facts were established by clear and convincing evidence.

On January 10, 2015, Ms. H-G separated from her husband and moved out of their house.<sup>2</sup> She applied for ATAP benefits on January 16, 2015.<sup>3</sup> Her application included her three

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<sup>1</sup> Ex. 3, p. 2.

<sup>2</sup> Testimony of N G; Ex. 2, p. 1; Ex. 10, p. 2.

<sup>3</sup> Ex. 7, p. 12.

children, B, N, and M, as part of her household.<sup>4</sup> Question 24(b) of the application asks, “Will you claim any dependents on your tax return?” to which Ms. H-G responded, “u/k pending custody.”<sup>5</sup> Ms. H-G testified that she had made clear that the custody of her children was, at that time, uncertain; “u/k” she explained, meant unknown.<sup>6</sup> As part of her application, Ms. H-G signed and affirmed the truth of her application under penalty of perjury.<sup>7</sup> The application contained a “Rights and Responsibilities” attachment notifying applicants that they must report a change in household within 5 days when a child leaves the home.<sup>8</sup>

On January 21, 2015, the Division conducted an intake interview with Ms. H-G.<sup>9</sup> The Division’s notes on the interview indicate that Ms. H-G “does not know who will claim kids until after the divorce proceedings.”<sup>10</sup> Ms. H-G’s application was approved and she received ATAP benefits for a two-child household for January and February. She then received benefits for a three-child household for March and April, once she reported that B had returned home from school.<sup>11</sup>

During the period in question, however, —from January 16 through April— two of Ms. H-G’s children were residing at their father’s house; the children slept there a vast majority of the time.<sup>12</sup> Ms. H-G agreed at the hearing that her youngest two children, N and M, slept at their father’s house most nights throughout this period, but she contended that she had custody of them during the day on weekdays when Mr. G was at work.<sup>13</sup> Except early weekday mornings and Fridays when Mrs. C, the children’s adopted grandmother,<sup>14</sup> drove N to karate and watched over M, Ms. H-G testified that the children were in her care during the daytime. B was allowed to decide which home to live in throughout this time; she agreed to a loose one-week alternating schedule between homes starting at the end of February.<sup>15</sup>

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<sup>4</sup> Ex. 7, pp. 3-5.

<sup>5</sup> Ex. 7, p. 2.

<sup>6</sup> Testimony of Ms. Y H-G.

<sup>7</sup> Ex. 7, p. 12.

<sup>8</sup> Ex. 7, p. 13.

<sup>9</sup> Ex. 8.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> Ex. 9 (“MNTN 0315, HH SZ 03, BEN TYPE SUPL.”).

<sup>12</sup> Testimony of Y H-G; Testimony of N G; Ex. 10.

<sup>13</sup> Testimony of Y H-G.

<sup>14</sup> Ex. 11, p. 19.

<sup>15</sup> Letter of Y H-G and B G; *see also* Ex. 9.

After the divorce was finalized on March 2, 2015, this schedule became the official custody schedule for the children.<sup>16</sup> The divorce also granted Mr. G primary physical custody, stating: “The children will live with this parent for over 70% of the year (256+ overnights).”<sup>17</sup> The divorce hearing was held on Saturday, February 28, 2015. Ms. H-G testified that she contacted the Division on March 2, the day the divorce was finalized and the first business day after she became aware of the change in custody.<sup>18</sup> The Division’s testimony corroborated this contact.<sup>19</sup> A note located in the Division’s records indicates that Ms. H-G called the Division and informed staff regarding the change in custody; a phone call to Mr. G verified that Ms. H-G had paid \$50 in child support.<sup>20</sup>

On March 23, 2015, Mr. G contacted the Division because he had been billed for child support during the period he had physical custody.<sup>21</sup> The Division calculated that Ms. H-G received \$2,152 in ATAP benefits from January 2015 to March 2015, which she was not entitled to receive.<sup>22</sup>

### **III. Discussion**

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence<sup>23</sup> that Ms. H-G intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”<sup>24</sup>

A household must have minor children residing in it for it to be eligible for Temporary Assistance benefits.<sup>25</sup> To be residing in a household, Public Assistance regulations require that a child must be living in the household with the applicant at least 50% of the time.<sup>26</sup> A parent who is receiving Temporary Assistance benefits for his or her children is required to notify the

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<sup>16</sup> Ex. 11, p. 19.

<sup>17</sup> Ex. 11, p. 19.

<sup>18</sup> Testimony of Ms. Y H-G; *see also* Record at 1:04:53.

<sup>19</sup> Record at 1:04:53.

<sup>20</sup> Testimony of Dean Rogers; this note was not included in the agency record for this hearing.

<sup>21</sup> Ex. 1 p. 6; Testimony of N G.

<sup>22</sup> Ex. 12.

<sup>23</sup> 7 AAC 45.585(d).

<sup>24</sup> 7 AAC 45.580(n).

<sup>25</sup> 7 AAC 45.210(a)(3) and (4); 7 AAC 45.225.

<sup>26</sup> 7 AAC 45.225.

Division within five days of the time a child leaves the home, or no longer resides there.<sup>27</sup> An unexcused failure to report such an absence is subject to an IPV determination.<sup>28</sup>

The evidence shows that Ms. H-G did not correctly report the composition of her household. No evidence disputes that the youngest two children slept at their father's house and were in his physical custody from January to April. While watching the children during the day certainly seems to blur the common-sense understanding of custody, the regulations clearly base eligibility on the primary physical custody of the children. There is no dispute that Mr. G was the primary physical custodian of the children after the couple separated in January. Since Ms. H-G did not have physical custody of both her youngest two children, she received benefits for them during those months to which she was not entitled.

Regarding B, the letters provided by Ms. H-G, one of which was signed by B, indicate that B had agreed to an informal, alternating weekly schedule beginning at the end of February.<sup>29</sup> N S testified that he lives in the same home as Ms. H-G and that B stays there more than every other week.<sup>30</sup> Nothing brought forward by the Division refutes this evidence. Because of this, Ms. H-G correctly included B as part of her household for the months of March and April.

The question then arises as to whether Ms. H-G's failure to correctly report her household composition was done with the intent to defraud to establish or maintain ATAP benefits.

Ms. H-G testified clearly and credibly that she had no such intent during the time she applied for and received ATAP benefits. She testified that she was honest about how she represented her household situation to Public Assistance employees throughout the time in question.<sup>31</sup> This testimony is corroborated by her application and the Division's notes on its interactions with her. Several admissions by Ms. H-G should have put the Division on notice that her household was not eligible for benefits, and these notes indicate her honesty with Public Assistance. First, in January she indicated on her application that her custody situation was "u/k" due to her pending divorce. Second, on March 2, 2015, the day after custody had been legally determined, Ms. H-G contacted the Division and explained the outcome of the custody hearing. This was also the first day she could notify the Division that B was back in the

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<sup>27</sup> 7 AAC 45.271(a).

<sup>28</sup> 7 AAC 45.271(b).

<sup>29</sup> Letters presented by Ms. H-G.

<sup>30</sup> Testimony of N S at 1:27:01.

<sup>31</sup> Testimony of Ms. H-G at 1:07:05.

household. Ms. H-G's call to the Division indicates that she was being candid and trying to comply with the Division's requirements. By the agency's own admission, there should have been more discussion on March 2 regarding Ms. H-G's custody situation, once it had been made clear that she was liable for child support.<sup>32</sup> Once Ms. H-G had indicated in her application that her custody situation was uncertain, the mere fact that there was no further discussion on the subject at that time or during her January 21 intake interview, does not indicate an intent to misrepresent, conceal or withhold a material fact. Based on all of these factors indicating Ms. H-G's candid and honest disclosures, the Division has not met its burden of proving by clear and convincing evidence that she intentionally misrepresented the composition of her household.

The Division, however, has shown that Ms. H-G received benefits for the months of January and February for which she was not eligible. Ms. H-G is liable for \$840 in over-issued benefits for those months. The Division has also shown that Ms. H-G received benefits for the months of March and April, when only B was living with her, for which she was not eligible. Ms. H-G is liable for \$1,108 in over-issued benefits for those months.<sup>33</sup>

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

The Division has not met its burden of proof by clear and convincing evidence that Ms. H-G committed an Intentional Program Violation by incorrectly stating her household composition for the months of January, February, March, and April. The Division, however, has shown by clear and convincing evidence that Ms. H-G was over-issued benefits for the Alaska Temporary Assistance program during January, February, March, and April.

If over-issued Temporary Assistance benefits have not been repaid, Ms. H-G or any remaining household members are now required to make restitution.<sup>34</sup> If Ms. H-G disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.<sup>35</sup>

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

*Signed*

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Andrew M. Lebo  
Administrative Law Judge

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<sup>32</sup> Record at 1:33:22.

<sup>33</sup> Reduced from \$1,312 to reflect B's residence.

<sup>34</sup> 7 AAC 45.570(b).

<sup>35</sup> 7 AAC 45.570(l).

## 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: Andrew M. Lebo  
Title: Administrative Law Judge/OAH

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