

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

In the Matter of)	
)	
L T)	OAH No. 15-0529-ADQ
_____)	Agency No.

DECISION

I. Introduction

The State of Alaska, Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against L T, alleging that Ms. T committed a first-time Intentional Program Violation (IPV) of the Alaska Temporary Assistance and Food Stamps programs. At a hearing convened pursuant to 7 C.F.R. § 273.16(e) and 7 AAC 45.585, the Division proved by clear and convincing evidence that Ms. T committed a first Intentional Program Violation of the Alaska Temporary Assistance and Food Stamps programs by falsely reporting as a member of her household a child who did not live in the home. She is therefore disqualified from the Alaska Temporary Assistance program for a period of six months, and from the Food Stamps program for a period of twelve months, and is required to pay restitution as to benefits overpaid.

II. Facts

A. Material Facts

L T and M H are the parents of N T, age 8. Ms. T lives in Anchorage, Alaska; Mr. H lives in No Name City, Texas.¹

On September 22, 2014, Mr. H and Ms. T entered into a written custody agreement in which Mr. H assumed full physical custody of N.² The following day, September 23, 2014, Mr. H and N flew to No Name City, Texas.³ On September 25, 2014, N started school at the No Name School District in No Name City.⁴

On September 25, 2014, three days after signing the custody agreement, two days after N left for Texas, and the same day that N started school in No Name City, L T completed, signed, and submitted an Eligibility Review Form for continued receipt of Food Stamps, Alaska

¹ Ex. 12, pp. 1, 7.
² Ex. 12.
³ Ex. 10.
⁴ Ex. 11.

Temporary Assistance, and Medicaid benefits.⁵ The Eligibility Review Form requires applicants to identify each member of the applicant’s household.⁶ In response to the instruction to “list all persons who live with you,” Ms. T listed two children, one of whom was N.⁷

At the end of the application Ms. T signed a “statement of truth,” certifying under penalty of perjury that all information contained in the application was true and correct.⁸ Ms. T further certified, through her signature, that she had read and understood the “Rights and Responsibilities” document included with the application paperwork, and that she understood the rights and responsibilities, including fraud penalties, described therein.⁹

Based on the information provided in her Eligibility Review Form, Ms. T was approved for Alaska Temporary Assistance in the amount of \$923 per month, and Food Stamps benefits in the amount of \$466 per month.¹⁰ Division records reflect that Ms. T was issued and redeemed benefits in that amount for October 2014 and November 2014.¹¹

On April 7, 2015, DPA received a telephone call from M H. Mr. H informed DPA that he had custody of N and that she had been residing with him full time since September 23, 2015.¹² The Division then initiated a fraud investigation which culminated in this case.¹³ Mr. H provided the fraud investigation unit with documentation of N’s September 23 travel to No Name City and September 25 school enrollment, as well as attendance records for both school and child care in Texas throughout the fall of 2014.¹⁴

Based on the newly-received information about Ms. T’s household composition – specifically, that N did not live in the home – DPA Eligibility Technician Amanda Holton performed a Loss Analysis to determine the amount of overpayment to Ms. T. Ms. Holton prepared a Loss Statement Summary, which was admitted into evidence as Exhibit 13. The April 10, 2015 Loss Statement Summary reflects that, during the time period in question, Ms. T

⁵ Ex. 7. Although Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP) in 2008, the program is still most commonly referred to as the “Food Stamps” program. Accordingly, this decision will refer to the program as the “Food Stamps” program.

⁶ Ex. 7, p. 1.

⁷ Ex. 7, p. 1.

⁸ Ex. 7, p. 5.

⁹ Ex. 7, p. 5. That document, titled, “Your Rights and Responsibilities,” was given to Ms. T as part of her application for benefits, and specifically warns applicants against providing false information during the Food Stamp application process. Ex. 7, pp. 6-9, Amanda Holton hearing testimony.

¹⁰ Ex. 9, p. 2.

¹¹ Holton testimony.

¹² Ex. 2; H testimony.

¹³ Ex. 2; Holton testimony; Ex. 1 (Rogers Affidavit).

received \$362 more in Food Stamps benefits and \$204 more in ATAP benefits than she would have received had she not listed N as a member of her household.¹⁵

B. Procedural History

The Division notified Ms. T of its filing of this case, and of her hearing date, by certified mail delivered on May 2, 2015.¹⁶ The Division also sent Ms. T a copy of its evidence to be presented at the hearing, delivered by certified mail on May 22, 2015.¹⁷

Ms. T's hearing was held on June 5, 2013. Ms. T did not attend or otherwise participate. The Administrative Law Judge made attempts, on the record, to contact Ms. T at her known telephone numbers, but was unable to reach her. Pursuant to 7 AAC 45.585(b) and 7 CFR 273.16(e)(4), and upon a finding that Ms. T had received adequate notice of the hearing, the hearing proceeded in Ms. T's absence.

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, attended the hearing and represented the Division. Eligibility technician Amanda Holton also attended the hearing and testified on behalf of the Division. M H testified by phone. All exhibits presented were admitted.¹⁸

III. Discussion

Federal law prohibits a person from obtaining Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁹ In order to prove an Intentional Program Violation of the Food Stamps program, the Division must prove by clear and convincing evidence that Ms. T intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts" on her eligibility review form.²⁰

Alaska law likewise prohibits a person from obtaining Alaska Temporary Assistance Benefits by making false or misleading statements or by concealing or withholding material

¹⁴ Ex. 10, 11.

¹⁵ Ex. 13; Holton testimony.

¹⁶ Ex. 3, 4. The signature card indicates that it was signed by Ms. T. *See* Ex. 4.

¹⁷ Ex. 5, 6. The signature card again indicates that it was signed by Ms. T. *See* Ex. 6.

¹⁸ At the close of the hearing, the Division requested that the OAH not consider the unsworn documentation submitted by Ms. T, in light of her failure to participate in the hearing. Ms. T's failure to appear does not render her documentation inadmissible, and the undersigned has considered the material Ms. T submitted. For the reasons discussed below, however, Ms. T's submissions do not overcome the Division's showing that she committed an IPV.

¹⁹ *See, e.g.*, 7 U.S.C. § 2015(b).

²⁰ 7 C.F.R. § 273.16(c)(1); 7 C.F.R. § 273.16(e)(6).

facts.²¹ In order to prove an Intentional Program Violation of the Alaska Temporary Assistance Program, the Division must prove by clear and convincing evidence²² that Ms. T 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.”²³

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are “highly probable.”²⁴ This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

A person who is found to have committed a first IPV is disqualified from receiving Food Stamps for 12 months,²⁵ and must repay any benefits wrongfully received.²⁶ A person who is found to have committed a first IPV is disqualified from receiving ATAP benefits for six months,²⁷ and likewise must repay any benefits wrongfully received.²⁸

As noted above, Ms. T received notice of the hearing and did not attend. She did, however, submit a written statement, which the undersigned has considered. However, Ms. T’s submissions are insufficient to overcome the Division’s clear showing of an IPV. Ms. T’s written statement indicates that she listed N as a member of her household on her September application because the parties’ written custody agreement had not yet been approved by the Superior Court judge.²⁹ According to Ms. T, it was her understanding that, until the court approved the parties’ agreement, “OCS could have required N return to Alaska” “at any time.”³⁰ Ms. T further contends that, as soon as the Superior Court signed the custody agreement, she promptly notified DPA that N was not in the household.³¹ But Ms. T’s purported corrective actions in November 2014 are immaterial to whether she committed an IPV several months earlier. As to that narrow question, the Division has more than met its burden of proof.

21 AS 47.27.015(e).
22 7 AAC 45.585(d).
23 7 AAC 45.580(n).
24 *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).
25 7 C.F.R. 273.16(b)(1).
26 7 C.F.R. 273.16(b)(12).
27 AS 47.27.015(e)(1); 7 AAC 45.580(d).
28 7 AAC 45.570.
29 T letter, 5/18/15.
30 T letter, 5/18/15.
31 T letter, 5/18/15.

First, it is undisputed that Ms. T reported N as a member of her household. It appears equally undisputed that, at the time Ms. T made that representation, N did not live with Ms. T. Indeed, N did not even live in the State of Alaska. Listing N as a member of the household when she was, in fact, living in Texas plainly constitutes a “false statement.”

Next, for purposes of proving an IPV of the ATAP program, the Division must also prove that Ms. T’s misstatement about N’s residence involved a “material” fact. A fact is deemed material if proof of its existence or non-existence would affect disposition of the case under applicable law.³² In the context of the ATAP program, 7 AAC 45.271 specifically defines a child’s unreported absence from the home as a “material fact” for purposes of finding an IPV. Indeed, the materiality is obvious. ATAP (and Food Stamps) eligibility and benefit levels are determined based on the size of the household.³³ The inclusion of an additional household member was material because it had the effect of increasing the amount of benefits for which Ms. T’s household was eligible. By misrepresenting the size of her household, Ms. T falsely inflated the household’s benefits entitlement. The Division has therefore shown that the facts misrepresented by Ms. T were “material” for purposes of her application for ATAP (and Food Stamps) benefits.

The final issue as to both the ATAP and Food Stamps programs is whether the misrepresentation was “intentional.” Ms. T did not attend or participate in the hearing, so the undersigned was deprived of the benefit of her direct testimony as to these events. The record evidence, however, precludes a finding that Ms. T’s omission was the result of mere negligence. Ms. T filled out the Eligibility Review Form – and listed N as “living with” her – on September 25, 2014.³⁴ This was three days after Ms. T signed the custody agreement, two days after N left for Texas, and the same day that N started school in No Name City.³⁵ There can be no serious question that Ms. T was aware, at the time she listed N as a household member, that N was no longer “living with” her.

Ms. T’s unsworn written response acknowledges listing N as a member of her household after N had “left Alaska to reside with her father in Texas,” and appears to offer the rationale

³² *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986).

³³ See 7 CFR 273.9; 7 AAC 45.275.

³⁴ Ex. 7.

³⁵ See Ex. 10, 11, 12; H testimony.

upon which she included N as a “household member.”³⁶ Ms. T appears to argue that she did not “intentionally” violate the program rules because she believed that it was appropriate under the circumstances of her custody arrangement to list N as a member of her household until the court issued a formal order.³⁷ But Ms. T does not deny – nor could she – that she listed N as “living with” her, at a time when N was, in fact, living thousands of miles away. In short, there is no suggestion or reasonable basis for concluding that Ms. T’s identification of N as a member of her household was somehow inadvertent. While Ms. T may have misunderstood the consequences of listing N as a member of her household when she was not living in the home, there is no question that her act of listing of N as a household member was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. T committed an Intentional Program Violation as defined by the Food Stamps Program and ATAP regulations.³⁸

V. Conclusion and Order

Ms. T has committed a first-time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from participation in the Food Stamp program for a period of twelve months, beginning on August 1, 2015.³⁹ Additionally, if over-issued Food Stamp benefits have not yet been repaid, Ms. T is now required to make restitution.⁴⁰ If Ms. T 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.⁴¹

Ms. T has likewise committed a first-time Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for

³⁶ T letter, 5/18/15.

³⁷ As noted above, Ms. T signed her name directly beneath the "Statement of Truth" provision on the Eligibility Review Form, which provision advised and reminded her of the obligation to provide accurate information. Ex. 7, pp. 6-9.

³⁸ 7 CFR § 273.16(c) and (e)(4), (6); 7 AAC 45.580.

³⁹ 7 USC § 2015(b)(1); 7 CFR § 273.16(b)(1). This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household. 7 C.F.R. § 273.16(b)(11). During the period of disqualification, Ms. T’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations. 7 C.F.R. § 273.11(c)(1). The Division shall provide written notice to Ms. T and any remaining household members, if any, of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired. 7 C.F.R. § 273.16(e)(9)(ii).

⁴⁰ 7 CFR § 273.16(b)(12). If Ms. T 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. 7 C.F.R. § 273.15.

⁴¹ 7 C.F.R. § 273.15.

a period of six months.⁴² If Ms. T is currently receiving Temporary Assistance benefits, her disqualification period shall begin August 1, 2015.⁴³ If Ms. T 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.⁴⁴

The Division shall provide written notice to Ms. T of the Temporary Assistance benefits, if any, she will receive during the period of disqualification. If over-issued Temporary Assistance benefits have not been repaid, Ms. T is now required to make restitution.⁴⁵ 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.⁴⁶

Dated: June 12, 2015.

Signed _____
Kay Howard
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 19th day of August, 2015.

By: *Signed* _____
Name: Kay L. Howard
Title: Administrative Law Judge

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

⁴² AS 47.27.015(e)(1); 7 AAC 45.580(d). This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household. 7 AAC 45.580(e)(1). 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. 7 AAC 45.580(e)(1). However, Ms. T must report her income and resources as they may be used in these determinations. 7 AAC 45.580(k).

⁴³ 7 AAC 45.580(f).

⁴⁴ 7 AAC 45.580(g).

⁴⁵ 7 AAC 45.570(b).

⁴⁶ 7 AAC 45.570(l).