

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

In the Matter of)
)
 M X)
_____)

OAH No. 15-1196-ADQ
FCU No.
Agency No.

DECISION AND ORDER

I. Introduction

M X applied for Supplemental Nutrition Assistance Program (SNAP or Food Stamps) and Alaska Temporary Assistance (ATAP) benefits on July 9, 2015, claiming his two children as minor dependents and members of the household.¹ On September 4, 2015, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the ATAP and Food Stamp programs.²

A hearing convened in this case on October 9, 2015, with Mr. X failing to participate in person or by phone. The DPA's Exhibits 1-11 were admitted into evidence without objection and without restriction.

This decision concludes that the DPA proved by clear and convincing evidence that Mr. X committed a first Intentional Program Violation of both programs. By regulation he must be barred from ATAP benefits for six months and from Food Stamp benefits for 12 months.

II. Facts

On July 9, 2015, Mr. X filed a GEN 72 eligibility report for ATAP and Food Stamp benefits.³ On this form, he listed his two minor children as living with him.⁴ Mr. X signed the form under penalty of perjury.⁵

Both children had actually been in state custody, since June 10, 2015.⁶ They remained in state custody at least until August of 2015.⁷

¹ Ex. 8, p.1 (The application signatures are dated July 9, 2015. The application is stamped as received by the DPA on July 10, 2015).

² Ex. 8.

³ Ex. 8, pp. 3-7.

⁴ Ex. 8, pp. 3-7.

⁵ Ex. 7, p. 4.

⁶ Ex. 10, pp. 2-5.

⁷ Ex. 10, pp. 2-5.

Mr. X attended an eligibility interview on July 10, 2015 in connection with the same application. He continued to maintain that his daughters lived with him until the eligibility technician who conducted the interview confronted him with the fact that they were in state custody.⁸

The DPA denied Mr. X's Food Stamp request. However, because of a delay in timing Mr. X received \$1,642 in ATAP excessive benefits.⁹

III. Discussion

A. Food Stamps

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁰ In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹¹ No evidence has been offered that Mr. X has ever been found to have committed a prior IPV, and therefore both alleged IPV's will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV's in his or her record, someone who falls in the Federal ten-year exclusion provision, or someone who has used Food Stamps in a drug or weapons transaction, Federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts" in connection with the program.¹²

The unchallenged evidence established that Mr. X claimed that his daughters were living with him at a time when they were, in fact, in foster care. He did this at least twice: first by listing each child as a household member on page 1 of the eligibility review form, and again by saying they lived with him in the follow-up interview. Household composition is a central focus of an eligibility interview. It simply cannot have slipped Mr. X's mind that, a few days prior, the state had taken custody of his children. This is clear and convincing evidence that Mr. X's misrepresentation was intentional. This is enough to constitute an IPV.

⁸ Ex. 9.

⁹ Ex. 11, p. 2.

¹⁰ *See, e.g.*, 7 U.S.C. § 2015(b).

¹¹ 7 C.F.R. § 273.16(e)(6).

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

B. ATAP

It is illegal to seek ATAP benefits by making false or misleading statements or by concealing or withholding facts.¹³ In seeking to establish an IPV in the ATAP program, DPA must prove the elements of that IPV by clear and convincing evidence,¹⁴ *i.e.*, that Mr. X intentionally misrepresented, concealed, or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”¹⁵ No evidence has been offered that Mr. X has ever been found to have committed a prior ATAP IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation. A first-time IPV in the ATAP program results in a six-month disqualification.¹⁶

As discussed in the previous section, it is clear that Mr. X claimed that his daughters were living with him at a time when the daughters were living in state custody, that he did so to receive benefits, and that he did so knowing the facts he was stating were not true at the time he stated them. Whether there is a dependent child living in the home is a material fact for the purpose of determining ATAP eligibility. Mr. X has therefore committed a first IPV of the ATAP program. Because of Mr. X’s actions, he received \$1,642 in ATAP benefits that he was not eligible to receive.¹⁷

IV. Conclusion and Order

A. Food Stamps

Mr. X has committed a first-time Intentional Program Violation of the Food Stamp program. He is disqualified from receiving Food Stamp benefits for a twelve-month period.¹⁸ The Food Stamp disqualification period shall begin February 1, 2016.¹⁹ This disqualification applies only to Mr. X, and not to any other individuals who may be included in his household.²⁰ For the duration of the disqualification period, Mr. X’s needs will not be considered when

¹³ 7 AAC 45.580(n).

¹⁴ 7 AAC 45.585(e).

¹⁵ 7 AAC 45.580(n).

¹⁶ AS 47.27.015(e)(1); 7 AAC 45.580(d).

¹⁷ Ex. 11.

¹⁸ 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).

¹⁹ 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).

²⁰ 7 C.F.R. § 273.16(b)(11).

determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources so that they can be used in these determinations.²¹

DPA shall provide written notice to Mr. X 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.²²

B. ATAP

Mr. X has committed a first-time ATAP Intentional Program Violation. He is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.²³ If Mr. X is currently receiving ATAP benefits, his disqualification period shall begin as provided in 7 AAC 45.580(f)(1). If Mr. X is not currently an ATAP recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, ATAP benefits.²⁴ This disqualification applies only to Mr. X, and not to any other individuals who may be included in his household.²⁵ For the duration of the disqualification period, Mr. X's needs will not be considered when determining ATAP eligibility and benefit amounts for his household. However, Mr. X must report his income and resources as they may be used in these determinations.²⁶

The Division shall provide written notice to Mr. X and the caretaker relative, if other than Mr. X, of the ATAP benefits they will receive during the period of disqualification.²⁷

If over-issued Temporary Assistance benefits have not been repaid, Mr. X or any remaining household members are now required to make restitution.²⁸ If Mr. X disagrees with DPA's calculation of the amount of over-issuance to be repaid (\$1,642), he may request a hearing on that limited issue.²⁹

Dated this 30th day of November, 2015.

Signed _____

Rebecca L. Pauli
Administrative Law Judge

²¹ 7 C.F.R. § 273.11(c)(1).
²² 7 C.F.R. § 273.16(e)(9)(ii).
²³ AS 47.27.015(e)(1); 7 AAC 45.580(d).
²⁴ 7 AAC 45.580(g).
²⁵ 7 AAC 45.580(e)(1).
²⁶ 7 AAC 45.580(e)(3).
²⁷ 7 AAC 45.580(k).
²⁸ 7 AAC 45.570(b).
²⁹ 7 AAC 45.570(b).

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 15th day of December, 2015.

By: Signed _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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