

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

In the Matter of )  
 )  
D A. C ) OAH No. 15-1459-ADQ  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

D A. C received Alaska Temporary Assistance Program (ATAP) and Supplemental Nutrition Assistance Program (SNAP)<sup>1</sup> benefits. The Division of Public Assistance (Division) initiated this Administrative Disqualification action against her, alleging that she had committed a First Intentional Program Violation (IPV) of both programs.

A hearing was held on December 22, 2015. Ms. C represented herself and appeared in person. Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented the Division. All of the Division’s exhibits were admitted. This decision concludes the evidence shows that the Division did prove by clear and convincing evidence that Ms. C committed a first Intentional Program Violation of both programs.

**II. Allegations**

The Division alleges: 1) that Ms. C failed to timely report employment with and income earned from Facility X, Inc.<sup>2</sup> and 2) that Ms. C “failed to declare employment with and earned income from Facility Y as part of September 2015 interview...”<sup>3</sup> The Division has calculated that these misrepresentations resulted in Ms. C’s household receiving ATAP and SNAP benefits it was not entitled to receive in the amount of \$2,143.

**III. Facts**

Ms. C was a SNAP and ATAP recipient. As part of her participation in these programs, Ms. C developed a self-sufficiency plan. This plan involved an employment agency “Facility Z.” In the No Name area, Facility Z and the Division share the same building.<sup>4</sup> It was with the assistance of Facility Z that Ms. C obtained employment and received vouchers for work clothing. As part of Ms. C’s relationship with Facility Z, she was required to supply them with paystubs and notice of any changes in her employment status. The unchallenged evidence

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<sup>1</sup> Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (“SNAP”). This decision uses the new SNAP terminology.

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

<sup>3</sup> Ex. 7, p. 1.

reveals that when Ms. C would report to Facility Z, her Facility Z caseworker would tell Ms. C that they (Facility Z) would inform or pass along her information to the Division. Ms. C believed this was sufficient.<sup>5</sup>

The Division's exhibits contain two applications filed by Ms. C. The first application was filed in March 2015 at the Division's No Name office. This application contained a question asking whether anyone in Ms. C's household was working. She responded that she had "just received job but have not received schedule."<sup>6</sup> The March Food Stamp application was approved and benefits were issued.<sup>7</sup>

Ms. C applied to renew her benefits in August 24, 2015 at the Division's Anchorage office.<sup>8</sup> The renewal application contained the same question (regarding employment) as her prior application. Ms. C left the question blank.<sup>9</sup>

Both the March 2015 and April 2015 application forms contain a statement, at the end of the application form and directly above the signature line, where the applicant certifies, under penalty of perjury, that all information contained in the application is true and correct to the best of the applicant's knowledge. Both applications also contained a "Rights and Responsibilities" attachment that notifies applicants that they are required to notify the Division within 10 days of any change in employment status, unearned income of more than \$50 per month, if anyone moved in or out of the home, or if they received ATAP benefits.<sup>10</sup>

It is the Division's standard practice to conduct either an in-person or telephonic interview with the applicant to confirm the information contained in the application. The Division records its interactions with applicants in computerized case notes.

In response to the August renewal application, the case notes entered on September 3, 2015 by the Eligibility Technician reveal the following procedure and requests for information:

- Verified by date of birth and Social Security Number that person on the phone was Ms. C.
- Living at homeless women's shelter with her daughter.
- Only worked in May.

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<sup>4</sup> C Testimony.

<sup>5</sup> C Testimony.

<sup>6</sup> Ex. 7, p. 3.

<sup>7</sup> Ex. 9, p. 1.

<sup>8</sup> Ex. 7, pp. 6 – 14.

<sup>9</sup> Ex. 7, p. 8.

<sup>10</sup> Ex. 7, p. 11.

- Department of Labor shows reported earnings in the amount of \$1,569.34.
- Lost phone connection.<sup>11</sup>

After the phone connection was lost, the Eligibility Technician called Facility Z. Facility Z told the Eligibility Technician that Ms. C was working eight hours a day, Monday through Friday, at Facility X.<sup>12</sup>

On September 15, 2015, an Eligibility Technician attempted to complete the interview. However, the phone connection was poor. The case note from this conversation contains the following information:

- Ms. C was working for Facility X but the employment ended August 28, 2015.
- She was working with case manager at Facility Z to secure other employment.<sup>13</sup>

The Division continued to investigate Ms. C's employment status. On September 22, 2015, the Division confirmed that Ms. C was terminated from Facility X effective August 28, 2015.<sup>14</sup> The case note also confirmed that the Eligibility Technician asked if Ms. C "had any other income into the house at this time. Client[']s response was no[,] no other income."<sup>15</sup> The case note reveals that Ms. C and the Technician discussed the imposition of a penalty and that Ms. C would accept a penalty if imposed. The case note also describes the issues Ms. C was having with her case managers at Facility Z. Finally, the case note describes how the Technician asked Ms. C if she started a new job since Facility X and that Ms. C responded "no", that she was still looking for work and her Facility Z case manager was aware of what Ms. C was doing.<sup>16</sup>

On September 28, 2015 the Division obtained information that Ms. C was employed by Facility Y, effective September 1, 2015, and she received her first pay check on September 25, 2015.<sup>17</sup> The Division obtained employment records confirming that Ms. C was terminated from Facility X on August 22, 2015.<sup>18</sup> She received her last check on September 11, 2015.<sup>19</sup>

Ms. C was visibly upset throughout the hearing. She is a single mother. She adamantly denied speaking with the Division in September. When asked to explain the information in the

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<sup>11</sup> Ex. 10, p. 1.

<sup>12</sup> Ex. 10, p. 2.

<sup>13</sup> Ex. 11, p. 1.

<sup>14</sup> Ex. 11, p. 4.

<sup>15</sup> Ex. 11, p. 3.

<sup>16</sup> Ex. 11, pp. 10, 11.

<sup>17</sup> Ex. 13.

<sup>18</sup> Ex. 12, p. 2.

<sup>19</sup> Ex. 12, p. 3.

case notes, Ms. C responded that she did not know. Ms. C explained that she often misplaces her phone so it could have been answered by someone else.

#### **IV. Discussion**

In order to prevail, the Division must prove this violation by clear and convincing evidence.<sup>20</sup> Proof by clear and convincing evidence means that the facts asserted are *highly probable*.<sup>21</sup> 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. Whether a person intends to commit misrepresentation is a case specific factual question. It cannot be reduced to a bright line test.

##### **A. Alaska Temporary Assistance Program**

In order to prove an Intentional Program Violation of ATAP, the Division must prove by clear and convincing evidence<sup>22</sup> that Ms. C intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining [her] family’s eligibility for ATAP benefits . . . or for increasing or preventing a reduction in the amount of the benefit.”<sup>23</sup>

##### *1. Facility X*

It is undisputed that Ms. C did not report to the Division her employment with, or income from, Facility X within ten days as is her responsibility. This constitutes misrepresentation by omission, concealment, and/or withholding.

The next issue is whether the misrepresentation was intentional. Her misrepresentation could theoretically have been merely negligent. Ms. C testified convincingly that she believed she had fulfilled her reporting requirement through Facility Z. It was reasonable for her to consider reporting to Facility Z, which is part of her program self-sufficiency plan, the same as reporting the employment to the Division. This is especially true because of the close proximity of the offices. The next item the Division must prove is that Ms. C's intentional misrepresentation or concealment of her income 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. ATAP bases its financial eligibility and benefit levels in large part on the income of the household members.<sup>24</sup> Failure to report a change in

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<sup>20</sup> 7 C.F.R. 273.16(e)(6).

<sup>21</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003).

<sup>22</sup> 7 AAC 45.585(e).

<sup>23</sup> 7 AAC 45.580(n).

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

employment status is effectively omitting income from being counted for eligibility and benefit level purposes. The information reported to Facility Z was material because it had the effect of decreasing her reported income, thereby increasing the amount of ATAP benefits for which her household was eligible. By misrepresenting or concealing her receipt of the employment income at issue, Ms. C prevented that income from being counted for eligibility and benefit level purposes. The Division has therefore shown that the facts misrepresented or concealed by Ms. C were material.

Finally, the Division must prove that the intentional misrepresentation or concealment of the material fact was made for the purpose of establishing or maintaining the household's eligibility for ATAP benefits. Ms. C reported her employment status to Facility Z. Facility Z is in the same building as DPA. It is an entity that works closely with DPA and to which DPA clients are referred. Therefore, Ms. C's belief that informing Facility Z was enough is reasonable under the circumstances.

Ms. C's failure to report her employment with Facility X was not intentional. At most it was negligent. Because she believed she was reporting, and because her testimony on this point is credible, she did not fail to report a change in her Facility X job status for the purpose of maintaining ATAP eligibility. Under these circumstances the Division has failed to establish, by clear and convincing evidence, that Ms. C *intentionally* concealed or withheld her employment with Facility X *for the purpose* of maintaining her family's eligibility for ATAP benefits.

## 2. Facility Y

However, the same cannot be said of M. C's failure to report her employment with, and income from, Facility Y during her September 3, September 15, and September 22, 2015 interviews.<sup>25</sup> As part of each interview the Eligibility Technician asked Ms. C about employment. It is undisputed that Ms. C was working for Facility Y on September 1, 2015. When asked if she was working, Ms. C should have answered yes. She appears to argue that she could not have intended to misrepresent material facts because she never spoke with an Eligibility Technician in September 2015. Her testimony and explanation are not persuasive. This is especially so when weighed against the Division's business records kept in the ordinary course of business.

A case note is a business record kept in the ordinary course of business. The September 22, 2015 case note contains information that is specific to Ms. C, and it is highly probable that

she participated in that conversation. When the Eligibility Technician asked the question regarding employment, Ms. C misrepresented her employment status. Because of the proximity in time and the type of information withheld, Ms. C's failure to report her employment with Facility Y, when specifically asked about her employment status, is an intentional misrepresentation, concealment, or withholding of material fact.<sup>26</sup>

Finally, the Division must prove that the intentional misrepresentation of the material fact was made for the purposes of establishing or maintaining the household's eligibility for ATAP. The only reason Ms. C would have intentionally concealed her income from Facility Y would have been to establish ATAP eligibility or to receive ATAP benefits in a higher amount than that to which she would otherwise have been entitled. Accordingly, the Division has established this final element of its case.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. C committed an Intentional Program Violation as defined by the Alaska Temporary Assistance Program regulations when she failed to truthfully answer the Division's questions.<sup>27</sup> This is Ms. C's first Intentional Program Violation with regard to the Alaska Temporary Assistance Program.

***B. Supplemental Nutrition Assistance Program***

In order to prove that Ms. C committed an Intentional Program Violation of SNAP, the Division must prove by clear and convincing evidence<sup>28</sup> that she "made a false or misleading statement, or misrepresented, concealed, or withheld facts" with regard to her August 2015 eligibility review form, and that this misrepresentation / concealment was intentional.<sup>29</sup> A person who is found to have committed an IPV is disqualified from receiving Food Stamps for 12 months for a first time violation, and must repay any benefits wrongfully received.<sup>30</sup>

As discussed above, Ms. C intentionally misstated her employment status several times in September, 2015 (September 3, September 15, and September 22). Ms. C's employment is a material fact because household income is relevant to determining eligibility and benefit levels.

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<sup>25</sup> Ex. 10; Ex. 11.

<sup>26</sup> See discussion of materiality above.

<sup>27</sup> 7 AAC 45.580(n).

<sup>28</sup> 7 C.F.R. § 273.16(e)(6).

<sup>29</sup> 7 C.F.R. § 273.16(c).

<sup>30</sup> 7 C.F.R. 273.16(b)(1) and (b)(12).

In summary, it is highly probable that Ms. C intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” regarding her employment status.<sup>31</sup> She has committed a first IVP of SNAP.

**V. Conclusion and Order**

**A. Alaska Temporary Assistance Program**

Ms. C has committed a first time Intentional Program Violation of the Alaska Temporary Assistance Program. She is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.<sup>32</sup> If Ms. C is currently receiving Alaska Temporary Assistance Program benefits, her disqualification period shall begin on March 1, 2016.<sup>33</sup> If Ms. C is not currently receiving Alaska Temporary Assistance Program benefits, her disqualification period shall be postponed until she applies for and is found eligible for ATAP benefits.<sup>34</sup> This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.<sup>35</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, Ms. C must report her income and resources as they may be used in these determinations.<sup>36</sup>

The Division shall provide written notice to Ms. C and the caretaker relative, if other than Ms. C, of the Alaska Temporary Assistance Program benefits they will receive during the period of disqualification.<sup>37</sup>

If over-issued Alaska Temporary Assistance Program benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.<sup>38</sup> If Ms. C disagrees with the Division’s calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.<sup>39</sup>

**B. Supplemental Nutrition Assistance Program**

Ms. C has committed a first time Intentional Program Violation of SNAP. She is therefore disqualified from receiving SNAP benefits for a 12 month period, and is required to

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<sup>31</sup> 7 C.F.R. § 273.16(c).  
<sup>32</sup> A.S. 47.27.015(e)(1).  
<sup>33</sup> 7 AAC 45.580(f).  
<sup>34</sup> 7 AAC 45.580 (g).  
<sup>35</sup> 7 AAC 45.580(e)(1).  
<sup>36</sup> 7 AAC 45.580(e)(3).  
<sup>37</sup> 7 AAC 45.580(k).  
<sup>38</sup> 7 AAC 45.570(a).  
<sup>39</sup> 7 AAC 45.570(l).

reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.<sup>40</sup> The SNAP disqualification period shall begin on March 1, 2016.<sup>41</sup> This disqualification applies only to Ms. C and not to any other individuals who may be included in her household.<sup>42</sup> For the duration of the disqualification period, Ms. C's needs will not be considered when determining SNAP eligibility and benefit amounts for her household. However, Ms. C must report her income and resources as they may be used in these determinations.<sup>43</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>44</sup>

If over-issued SNAP benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.<sup>45</sup> If Ms. C disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.<sup>46</sup>

Dated this 2<sup>nd</sup> day of February, 2016.

*Signed* \_\_\_\_\_

Rebecca L. Pauli

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 11<sup>th</sup> day of February, 2016.

By:

*Signed* \_\_\_\_\_

Name: Rebecca L. Pauli

Title: Administrative Law Judge

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

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<sup>40</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>41</sup> 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>42</sup> 7 C.F.R. § 273.16(b)(11).

<sup>43</sup> 7 C.F.R. § 273.11(c)(1).

<sup>44</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>45</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>46</sup> 7 C.F.R. § 273.15.