

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

In the Matter of:)	
)	
J A. T)	OAH No. 15-1460-ADQ
)	DPA Case No.
_____)	FCU Case No.

DECISION AND ORDER

I. Introduction

Ms. J T is a former applicant for Alaska Temporary Assistance Program (ATAP) benefits, and a former recipient of Food Stamp benefits. On November 19, 2015, the State of Alaska Division of Public Assistance (DPA or Division) initiated this Administrative Disqualification case against Ms. T, alleging that she committed first-time Intentional Program Violations (IPVs) of the ATAP and Food Stamp programs.¹ The Division asserts that Ms. T violated the provisions of the ATAP and Food Stamp programs by failing to declare certain employment, and the earnings therefrom, when she completed, signed, and submitted a benefit application on January 16, 2015.²

This decision concludes, based on the evidence presented, that Ms. T committed first-time Intentional Program Violations of the ATAP and Food Stamp programs by failing to report all of her then-current employment and income to the Division at the time she submitted her benefit application of January 16, 2015. Accordingly, Ms. T is temporarily disqualified from participation in the ATAP and Food Stamp programs as further discussed below.

II. Facts

Ms. T has received Food Stamp benefits since January 2012 or before.³ On January 14, 2015, Ms. T completed and signed an application for ATAP and Food Stamp benefits; the application was submitted to the Division on January 16, 2015.⁴ The application form contained a question asking about the jobs held by persons in Ms. T's household.⁵ The only job listed by Ms. T was a job described as "Child Care Assistance."⁶ On the next page of the application, Ms. T explained that this job involved her self-employment, as a provider of child care services, from

¹ Ex. 3.
² Ex. 3 p. 2.
³ Ex. 9 p. 3.
⁴ Ex. 7 pp. 1, 10, 11, 12.
⁵ Ex. 7 p. 6.
⁶ Ex. 7 p. 6.

which she received average income of \$950.00 per month.⁷ No other employment or earned income was listed for anyone in Ms. T's household.⁸ At the end of the application form, Ms. T signed a statement, under penalty of perjury, certifying that all information contained in her application was true and correct to the best of her knowledge.⁹

On January 22, 2015, Ms. T participated in an eligibility interview with a DPA eligibility technician (ET).¹⁰ She told the ET that she was self-employed as a babysitter and did not mention any other current employment;¹¹ she specifically stated that she had not worked for anyone else in two years.¹²

Records obtained by the Division from No Name, Inc. (No Name) indicate that Ms. T was employed by No Name from December 6, 2014 through May 22, 2015, and again from September 12, 2015 through September 25, 2015.¹³ Ms. T received paychecks from her employer on December 26, 2014, January 9, 2015, January 23, 2015, February 6, 2015, February 20, 2015, March 6, 2015, March 20, 2015, April 3, 2015, April 17, 2015, May 1, 2015, May 29, 2015, and October 2, 2015.¹⁴ This indicates that Ms. T was employed with, and earning income from, No Name when she completed and signed her application for ATAP and Food Stamp benefits on January 14, 2015, and when she submitted the application to the Division on January 16, 2015.

Ms. T's benefit application of January 16, 2015 was denied as to ATAP benefits but approved as to Food Stamp benefits.¹⁵ Ms. T subsequently received and redeemed Food Stamp benefits, from January 23, 2015 through November 1, 2015, in the total amount of \$4,475.00.¹⁶ This was \$1,320.00 more in Food Stamp benefits than Ms. T's household would have been paid had she reported her true income during this period.¹⁷

The Division became aware of Ms. T's unreported employment and income on September 15, 2015.¹⁸ The Division then initiated a fraud investigation which culminated in the Division's filing of this case.¹⁹

⁷ Ex. 7 p. 7.

⁸ Ex. 7.

⁹ Ex. 7 p. 12.

¹⁰ Ex. 8 pp. 1 - 3.

¹¹ Ex. 8 p. 1.

¹² Ex. 8 p. 2.

¹³ Ex. 10 pp. 4 - 15.

¹⁴ Ex. 10 pp. 4 - 15.

¹⁵ Ex. 8 p. 3.

¹⁶ Ex. 9 p. 1.

¹⁷ Ex. 11 p. 1.

¹⁸ Ex. 2 p. 1.

¹⁹ Ex. 1.

The Division notified Ms. T of its filing of this case, and of her hearing date, on November 19, 2015.²⁰ On November 24, 2015, the Office of Administrative Hearings (OAH) mailed Ms. T a separate notice of hearing. Ms. T's hearing began as scheduled on December 22, 2015. Ms. T did not attend the hearing or participate by phone. The hearing proceeded in Ms. T's absence as required by 7 AAC 45.585(b) (ATAP) and 7 CFR Section 273.16(e)(4) (Food Stamp program). Dean Rogers, an investigator employed by the Division's Fraud Control Unit, participated in the hearing by phone and represented the Division. DPA eligibility technician Amanda Holton participated in the hearing by phone and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. Alaska Temporary Assistance Program

In order to prove an Intentional Program Violation of ATAP, the Division must prove by clear and convincing evidence²¹ that Ms. T intentionally misrepresented, concealed or withheld a material fact on her January 16, 2015 benefit application form "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."²²

Initially, it is clear that Ms. T did not report her employment or income from No Name on her January 16, 2015 benefit application form or during her eligibility interview on January 22, 2015. This constitutes misrepresentation by omission, concealment, and/or withholding.

The next issue is whether the misrepresentation was intentional. Ms. T did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence. Her misrepresentation could theoretically have been merely negligent. However, Ms. T had significant prior experience with other public benefit programs. Accordingly, it is reasonable to infer that she knew the importance of truthfully and accurately reporting her employment and income on benefit applications and renewal forms. Also, Ms. T received paychecks from No Name on January 9, 2015 (only five days before she signed her application), and on January 23, 2015 (the day after her eligibility interview), making it less likely that her failure to report this employment and income was accidental. Finally, it would be hard to miss the "Statement of Truth" provision directly above the benefit application form's signature line. Together, these factors constitute clear

²⁰ Ex. 1 p. 3 Para. 6; Ex. 3 p. 2; Ex. 4 pp. 1 -2.

²¹ 7 AAC 45.585(d).

²² 7 AAC 45.580(n).

and convincing evidence that Ms. T's failure to report her employment and income from No Name was intentional.

The next item the Division must prove is that Ms. T'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.²³

ATAP eligibility and benefit levels are based in large part on a household's income.²⁴ Ms. T's failure to report the employment income at issue was material because it had the effect of decreasing her reported income, thereby increasing the amount of ATAP benefits for which her household would be eligible. By misrepresenting or concealing her receipt of the employment income at issue, Ms. T prevented that income from being counted for purposes of determining eligibility and benefit level. The Division has therefore shown that the facts misrepresented or concealed by Ms. T 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.²⁵ The only conceivable reason Ms. T would have intentionally concealed her employment income 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 ATAP IPV case.²⁶

In summary, the Division has demonstrated by clear and convincing evidence that Ms. T committed an Intentional Program Violation as defined by the Alaska Temporary Assistance Program regulations.²⁷ This is Ms. T's first known Intentional Program Violation of the Alaska Temporary Assistance Program.²⁸

B. The Food Stamp Program

In order to prove that Ms. T committed an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence²⁹ that Ms. T "made a false or misleading statement, or misrepresented, concealed, or withheld facts" with regard to her January

²³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986). Research indicates that the Alaska Supreme Court has not yet stated its own generally applicable definition of materiality.

²⁴ 7 AAC 45.470; 7 AAC 45.525.

²⁵ 7 AAC 45.580(n).

²⁶ It is possible that, had she appeared and testified at hearing, Ms. T might have adequately explained why she did not report the employment and income at issue. Absent her testimony, it is necessary to draw reasonable inferences from the available evidence. Here, those inferences establish an IPV by clear and convincing evidence.

²⁷ 7 AAC 45.580(n).

²⁸ Ex. 1 pp. 1, 7; Dean Rogers' hearing testimony.

²⁹ 7 C.F.R. § 273.16(e)(6).

16, 2015 benefit application form, and that this misrepresentation / concealment was intentional.³⁰ Initially, it is clear that Ms. T did not report her employment with, or income from, No Name on her January 16, 2015 benefit application form or during her subsequent interview. This constitutes misrepresentation by omission, concealment, and/or withholding.

The last issue is whether Ms. T's misrepresentation was intentional. The misrepresentation was intentional for the reasons previously discussed in Section III(A) at pages 3 - 4, above, with regard to Ms. T's ATAP IPV.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. T committed an Intentional Program Violation as defined by the Food Stamp program regulations. This is Ms. T's first known Food Stamp program Intentional Program Violation.³¹

IV. Conclusion and Order

A. Alaska Temporary Assistance Program

Ms. T has committed a first-time Intentional Program Violation of the Alaska Temporary Assistance Program. She is therefore disqualified from participation in ATAP for a period of six months.³² If Ms. T is currently receiving ATAP benefits, her disqualification period shall begin on March 1, 2016.³³ If Ms. T is not currently receiving ATAP benefits, her disqualification period shall be postponed until she applies for and is found eligible for ATAP benefits.³⁴ This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.³⁵ 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.³⁶ However, Ms. T must report her income and resources as they may be used in these determinations.³⁷ The Division shall provide written notice to Ms. T and the caretaker relative, if other than Ms. T, of the ATAP benefits they will receive during the disqualification period.³⁸ If over issued Alaska Temporary Assistance Program benefits have not been repaid, Ms. T or any remaining household members are now

³⁰ 7 C.F.R. § 273.16(c).

³¹ Ex. 1 pp. 1, 7; Dean Rogers' hearing testimony.

³² AS 47.27.015(e)(1).

³³ 7 AAC 45.580(f).

³⁴ 7 AAC 45.580(g).

³⁵ 7 AAC 45.580(e)(1).

³⁶ 7 AAC 45.580(k)(3).

³⁷ 7 AAC 45.580(e)(3).

³⁸ 7 AAC 45.580(k)(4).

required to make restitution.³⁹ If Ms. T disagrees with the Division's calculation of the amount of over issuance to be repaid, she may request a hearing on that limited issue.⁴⁰

B. Food Stamp Program

Ms. T has committed a first-time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.⁴¹ The Food Stamp disqualification period shall begin on March 1, 2016.⁴² This disqualification applies only to Ms. T and not to any other individuals who may be included in her household.⁴³ For the duration of the disqualification period, Ms. T's needs will not be considered when determining eligibility and benefit amounts for her household. However, Ms. T must report her income and resources as they may be used in these determinations.⁴⁴ The Division shall provide written notice to Ms. T 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.⁴⁵ If over issued Food Stamp benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.⁴⁶ If Ms. T disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.⁴⁷

Dated this 13th day of January, 2016.

Signed

Jay Durych
Administrative Law Judge

³⁹ 7 AAC 45.570(a).

⁴⁰ 7 AAC 45.570(l).

⁴¹ 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).

⁴² 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 (9th Cir. 1995).

⁴³ 7 C.F.R. § 273.16(b)(11).

⁴⁴ 7 C.F.R. § 273.11(c)(1).

⁴⁵ 7 C.F.R. § 273.16(e)(9)(ii).

⁴⁶ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

⁴⁷ 7 C.F.R. § 273.15.

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 22nd day of January, 2016.

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

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