

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

In the Matter of	)	
	)	
D B	)	OAH No. 16-0775-ADQ
_____	)	Agency No.

**DECISION AND ORDER**

**I. Introduction**

The Department of Health and Social Services, Division of Public Assistance (DPA) alleges that D B committed an Intentional Program Violation (IPV) of the Food Stamp and Alaska Temporary Assistance Programs (ATAP), first by failing to disclose an additional adult household member and his income, and later by failing to disclose when her two minor children left her home and moved out of state. Because DPA provided by clear and convincing evidence that Ms. B committed the IPVs as alleged, she must repay the wrongfully-received benefits. This is Ms. B's first IPV of the Food Stamp program, so she is barred from receiving Food Stamp benefits for a period of twelve months. This is Ms. B's second IPV of the ATAP program, so she is barred from receiving ATAP benefits for a period of twelve months.

**II. Facts**

Ms. B submitted an application for Food Stamps and ATAP on November 25, 2015.<sup>1</sup> Ms. B's application identified the household as consisting of herself and three minor children, A, age 13, B, age 3, and C, age 2.<sup>2</sup> Ms. B identified the household's only source of income as \$880 in unemployment benefits she received every two weeks.<sup>3</sup>

Based on the information she provided, Ms. B's application was approved and she began receiving benefits in January 2016, effective as of December 2015.<sup>4</sup> She continued to receive those benefits through May 2016, when she failed to submit a recertification application and her benefits were discontinued.<sup>5</sup>

In June 2016, the Division learned that, at the time Ms. B submitted her application in November 2015, she was sharing a household with N C, the father of her two youngest children.<sup>6</sup>

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<sup>1</sup> Holton testimony; Ex. 8.  
<sup>2</sup> Holton testimony; Ex. 8, pp. 2-4.  
<sup>3</sup> Holton testimony; Ex. 8, p. 7.  
<sup>4</sup> Holton testimony; Ex. 9, p. 2; Ex. 10, pp. 1, 5.  
<sup>5</sup> Holton testimony.  
<sup>6</sup> C testimony; Ex. 1, p. 2.

At that time, Mr. C was employed with the Alaska Railroad.<sup>7</sup> But because Ms. B did not identify him as part of the household, the Division did not consider that income either in determining the household's benefits eligibility or in calculating the amount of benefits.<sup>8</sup>

The Division further learned that, on January 8, 2016, Mr. C and the two youngest children relocated to Florida.<sup>9</sup> Ms. B did not report this change in household composition to the Division. As a result, her household's benefits remained set at the level calculated for a household with three children. She continued to receive benefits at that level until May 2016.

The Division asserts both that Ms. B misrepresented her actual household composition at the time of her application, and that she later concealed the younger children's departure from the household.

As to the first issue, Mr. C testified under oath that he and Ms. B lived together for approximately five years prior to his departure with the children in January 2016. He moved out of the house for about a week in December 2015 after a fight, but otherwise remained in the home with Ms. B and the children during the time in question.<sup>10</sup> The Division thus established by clear and convincing evidence that Mr. C was a member of the household at the time Ms. B submitted her application for benefits.

The Division further established by clear and convincing evidence that the children left the home on January 8, 2016. First, Mr. B provided direct testimony to this effect. Second, log notes from a superior court proceeding likewise document these events, reading as follows: "I took the kids to Florida January 8, walked away, to get my kids to a safe spot . . . I took off January 8 with the kids. . . ."<sup>11</sup> Third, other records also support this claim. Mr. C enrolled the children in preschool in Florida in January 2016; records documenting their enrollment are included in the administrative record.<sup>12</sup>

The Division likewise established by clear and convincing evidence a failure to disclose either of these events to the Division. Ms. B's application for benefits did not include Mr. C as a member of the household, and indicated that the household's only income was her own

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<sup>7</sup> C testimony; Ex. 15.

<sup>8</sup> See Ex. 1, pp. 4-7; Ex. 16.

<sup>9</sup> C testimony; Ex. 1, p. 2; Ex. 13, p. 2.

<sup>10</sup> C testimony. Mr. C contacted the Division's fraud protection unit after being contacted by the Child Support Services Division.

<sup>11</sup> Ex. 13, p. 2.

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

unemployment insurance benefits.<sup>13</sup> Nor did Ms. B notify the Division when the two youngest children left the household.

Like all applicants for public assistance benefits, Ms. B received a Statement of Rights and Responsibilities from the Division at the time of her application.<sup>14</sup> This statement advises Public Assistance recipients of the requirement that they report changes to the household composition within ten days of the change.<sup>15</sup> This statement further advises Temporary Assistance recipients of the requirement that they report within five days if a child leaves the household.<sup>16</sup>

Because Ms. B failed to report Mr. C's presence and his income, DPA issued Food Stamp and Temporary Assistance benefits for December 2015 and January 2016 to which her household was not entitled.<sup>17</sup> Further, because Ms. B then failed to report the departure of the two youngest children from the household, DPA issued her household excessive Food Stamp and ATAP benefits from February 2016 through May 2016.<sup>18</sup> Between these two reporting failures, the total overpayment amount is \$5,969.<sup>19</sup>

Ms. B has one prior IPV of the ATAP program, and no prior IPV's of the Food Stamp program.<sup>20</sup>

### **III. Procedural History**

A hearing convened in this case on July 28, 2016. The Division and the Office of Administrative Hearings both attempted to provide Ms. B with advance notice of the hearing by sending it to her address of record. All of those notices – including those sent by certified mail and those sent by first class mail – were returned.<sup>21</sup>

Ms. B did not attend the hearing and could not be reached at the only telephone number she had provided to the Division.<sup>22</sup>

Public Assistance recipients are required to keep the Division apprised of their correct address, and must promptly notify the Division if they “move or get a new mailing address.”<sup>23</sup>

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<sup>13</sup> Ex. 8.

<sup>14</sup> Ex. 7; Holton testimony.

<sup>15</sup> Ex. 7; Holton testimony.

<sup>16</sup> Ex. 7; Holton testimony.

<sup>17</sup> Ex. 15; Ex. 16; Holton testimony.

<sup>18</sup> Ex. 16; Holton testimony.

<sup>19</sup> Ex. 16; Holton testimony.

<sup>20</sup> Ex. 1; Ex. 17; Rogers testimony.

<sup>21</sup> Ex. 1, p. 3; Ex. 4 – 5. The Division then attempted to locate another address for Ms. B, but was not successful in doing so. Ms. B's benefits application and her most recent PFD application give the same address used for notices in this proceeding. Rogers testimony.

<sup>22</sup> Ex. 8, p. 1.

Ms. B never provided the Division with revised contact information, and the notices in this case were sent to what therefore remains her address of record. The Division therefore satisfied the applicable advance notice requirements.<sup>24</sup>

Once proper notice has been given, both the Food Stamp regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV.<sup>25</sup> Accordingly, the hearing went forward in Ms. B's absence. The hearing was recorded. DPA was represented by Dean Rogers, an investigator employed by DPA's Fraud Control Unit (FCU). Amanda Holton, a DPA Eligibility Technician III also with the FCU, testified on behalf of DPA, as did N C. Following the hearing, the record was held open for ten days to allow Ms. B additional opportunity to contact the Office of Administrative Hearings about her participation in this matter.<sup>26</sup> The record closed with no further contact from either party.

### **III. Discussion**

#### **A. The Division established an IPV of the Food Stamp program**

In order to establish an IPV of the Food Stamp program, the Division must prove by clear and convincing evidence that Ms. B intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."<sup>27</sup> In order to prove the violation by "clear or convincing evidence," the Division must show "that the truth of the asserted facts is highly probable."<sup>28</sup> The Division has met its burden of proof.

The Division established by clear and convincing evidence that Ms. B falsely represented the household's composition and income at the time of her application for benefits, and, further, that Ms. B failed to notify the Division when her two youngest children moved out of her household in January 2016. In so doing, she made false statements and withheld material facts. The remaining issue is whether these were intentional acts. The evidence in the record does not allow a conclusion to the contrary.

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<sup>23</sup> 7 AAC 45.270(a), (b)(1); Ex. 7, p. 1.

<sup>24</sup> 7 CFR 273.16(e)(3); 7 AAC 45.583.

<sup>25</sup> See 7 CFR § 273.16(e)(3)(i); 7 AAC 45.585(b). The program regulations also set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear. See 7 CFR § 273.16(e)(4); 7 AAC 45.585(b).

<sup>26</sup> See 7 AAC 45.585(c).

<sup>27</sup> 7 C.F.R. § 273.16(e)(6); 7 C.F.R. § 273.16(c).

<sup>28</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

Ms. B failed to appear for or testify at her hearing, but her intent can be inferred from circumstantial evidence.<sup>29</sup> Ms. B knew that her children’s father was part of the household in November 2015. Failing to identify him as such is an intentional withholding of material facts. Ms. B likewise knew, of course, when her two youngest children were no longer living in her household. This was not a forgotten or overlooked fact, and her failure to report it cannot be explained other than as an intentional withholding of information. Of note, Ms. B signed a statement of rights and responsibilities acknowledging the obligation to report within five days if a child leaves the home. She did not timely report the children’s departure – indeed, she did not *ever* report their departure.<sup>30</sup> The only reasonable conclusion is that Ms. B intentionally withheld and concealed this fact.

In short, the evidence is clear and convincing that Ms. B intentionally withheld facts related to her receipt of Food Stamp benefits. She has therefore committed an IPV.

Federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual found to have committed a first IPV.<sup>31</sup> Because this is Ms. B’s first IPV of the Food Stamp program, she is disqualified for Food Stamp benefits for 12 months.

**B. The Division established an IPV of the Temporary Assistance Program**

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence that Ms. B intentionally misrepresented, concealed, or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”<sup>32</sup> The same evidence establishing an IPV of the Food Stamp program likewise satisfied the Division’s burden of proving an IPV of the Temporary Assistance program.

As discussed above, Ms. B misrepresented material facts about the household composition and income at the time of her application. The information withheld was material to the household’s benefit eligibility because Mr. C’s income would have affected the household’s benefit eligibility, or at least the amount of benefits to which the household was entitled. Further, Ms. B then concealed or withheld the significant change in household composition. The information withheld was material to the household’s benefit eligibility because a smaller household would be entitled to a lower benefit amount.

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<sup>29</sup> *Siversten v. State*, 981 P.2d 564 (Alaska 1999).

<sup>30</sup> *See Ex. 14*, pp. 7-12.

<sup>31</sup> 7 C.F.R. § 273.16(b)(1)(i).

<sup>32</sup> 7 AAC 45.585(d); 7 AAC 45.580(n).

As to both misrepresented or concealed facts, the withholding was plainly intentional because the facts at issue – first, the number of adults, and income-earners, in the household, and second, the departure of two of the three children – both concern such significant facts that it is impossible for Ms. B to have somehow inadvertently overlooked them as she applied for and then continued to receive benefits. Put another way, the withheld facts are so central to the nature of her household and its purported need for benefits that the only reasonable conclusion is that the withholding was intentional.

The Division has therefore met its burden of proving that Ms. B committed an Intentional Program Violation of the Temporary Assistance program. Because this is her second IPV of the Temporary Assistance Program, she is therefore disqualified from receiving Temporary Assistance benefits for twelve months.

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

Ms. B has committed a first Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a twelve-month period, beginning October 1, 2016.<sup>33</sup>

Ms. B is likewise disqualified from receiving ATAP benefits for a period of twelve months, beginning the first month she applies and is otherwise eligible.<sup>34</sup>

Ms. B is required to reimburse DPA \$5,969 for overpaid benefits that were the result of the IPV's.<sup>35</sup> If Ms. B 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>36</sup>

Dated: August 16, 2016

*Signed*  
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Cheryl Mandala  
Administrative Law Judge

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<sup>33</sup> The Food Stamp disqualification applies only to Ms. B, and not to any other individuals who may be included in her household. 7 C.F.R. § 273.16(b)(11). For the duration of the disqualification period, Ms. B'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).

<sup>34</sup> 7 AAC 45.580(g). As with the Food Stamp IPV, this disqualification applies only to Ms. B, 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. B's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. B must report her income and resources as they may be used in these determinations. 7 AAC 45.580(e)(3).

<sup>35</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>36</sup> 7 AAC 45.570(l).

## Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1).

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 30th day of August, 2016.

By: Signed  
Name: Cheryl Mandala  
Title/Agency: Administrative Law Judge/OAH

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