

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

In the Matter of)	
)	
N A. B)	OAH No. 16-0801-ADQ
_____)	Agency No.

DECISION AND ORDER

I. Introduction

In this administrative disqualification case, the Alaska Division of Public Assistance (Division) alleges that N B committed first-time Intentional Program Violations of the Alaska Temporary Assistance Program (ATAP) and the Food Stamp program by failing to declare certain employment and income.¹

This decision concludes that Ms. B committed first-time Intentional Program Violations of both programs. As a result, Ms. B is temporarily disqualified from participation in the ATAP and Food Stamp programs as further discussed below.

II. Facts

The following facts were established by clear and convincing evidence:

Ms. B has received ATAP and Food Stamp benefits since at least 2013.² On April 17, 2014, she completed, signed and submitted an eligibility recertification application for both the ATAP and Food Stamp programs.³ On April 22, 2014, she participated in an interview with Division staff to discuss that application.⁴ On April 24, 2014, she completed, signed and submitted a new application for ATAP and Food Stamp benefits.⁵ Both of the forms Ms. B submitted in April 2014 included a question asking about the jobs held by persons in Ms. B's household, and the income from that employment. In both instances, Ms. B indicated that she was employed with "Employer A" or "Employer A." She indicated that this work was the household's only source of earned income.⁶

From May 5, 2014 through November 8, 2014, Ms. B was employed as a personal care worker by Employer B.⁷ She obtained this job for the purpose of providing personal care services

¹ Exhibit 3.
² Exhibit 2.
³ Exhibit 8, p. 1.
⁴ Exhibit 9, p. 1.
⁵ Exhibit 8, p. 5.
⁶ Exhibit 8, pp. 3, 10.
⁷ Exhibit 10, pp. 1-2.

for her father.⁸ From mid-May through mid-November 2014, Ms. B received 14 bi-weekly paychecks from that employer.⁹ Although Ms. B was officially employed by Employer B, and she received and cashed the paychecks from that job, Ms. B's mother actually performed the personal care services for which Ms. B was paid. Therefore, Ms. B gave all of her income from Employer B to her parents.

On May 21, 2014, Ms. B participated in an interview with one of the Division's Eligibility Technicians regarding her April 2014 benefit applications.¹⁰ During the interview, the Division asked Ms. B to report any employment or income received by anyone in her household. By May 21st, Ms. B had already received her first paycheck from Employer B; however, she did not disclose that employment during the interview.¹¹

On October 1, 2014, Ms. B completed, signed and submitted another recertification application for ATAP and Food Stamp benefits.¹² Like the previous applications, the recertification form included a question asking about jobs held by persons in Ms. B's household. Ms. B left this question blank, but she noted that "someone should be working soon."¹³

On December 4, 2014, Ms. B participated in another interview with an Eligibility Technician regarding her October 2014 application.¹⁴ During the interview, Ms. B again was asked about employment held by anyone in her household. She asserted that no one in the home was working or earning income.¹⁵

Each of the three application forms that Ms. B signed and submitted in April and October 2014 includes a "Statement of Truth." This statement immediately precedes the applicant's signature, and it requires the applicant to certify under penalty of perjury that all of the information contained in the application is true and correct to the best of the applicant's knowledge. Ms. B signed her name in the "Statement of Truth" section of her April 17, April 24 and October 1, 2014 applications.¹⁶

⁸ Testimony of N B.

⁹ Exhibit 10 pp. 3-10.

¹⁰ Exhibit 9, pp. 4-5. The Division clarified at hearing that this interview took place on May 21, 2014, not May 26, 2014, as indicated at Exhibit 1, p. 1 and Exhibit 3, p. 2.

¹¹ *Id.*

¹² Exhibit 8, p. 17.

¹³ Exhibit 8, p. 19.

¹⁴ Exhibit 9, pp. 6-7.

¹⁵ *Id.*

¹⁶ Exhibit 8 pp. 4, 16, 22.

Attached to each application for ATAP or Food Stamp benefits, the Division also includes an informational statement regarding an applicant's rights and responsibilities.¹⁷ The "Rights & Responsibilities" statement informs applicants of their responsibility to report changes in household circumstances, including changes in employment. The Division specifically reviewed these rights and responsibilities in interviews with Ms. B on April 22, 2014 and December 4, 2014.¹⁸ Ms. B indicated that she had no questions, and she understood this information.

The Division initiated a fraud investigation after it became aware of Ms. B's unreported employment and income from Employer B. It alleged that Ms. B committed first-time Intentional Program Violations of the ATAP and Food Stamp programs. As a result, it requested that she be temporarily disqualified from those programs. It further requested that she repay the full amount of overpaid benefits.¹⁹ The Division calculated that Ms. B's household received \$4410 in overpaid ATAP benefits, and \$2423 in overpaid Food Stamp benefits, from May 2014 through October 2014.²⁰

The Division sent Ms. B notice of this case by certified mail and first-class mail on or about July 8, 2016.²¹ Ms. B appeared in person on August 11, 2016 for the hearing; however, the hearing was continued until August 29, 2016, to allow her time to pick up the Division's evidence packet and to prepare her response.

The hearing took place on August 29, 2016. Kenneth Cramer, an investigator employed by the Division's Fraud Control Unit, participated by telephone and represented the Division. Mr. Cramer and Eligibility Technician Amanda Holton testified on behalf of the Division. Ms. B appeared in person and represented herself. She testified on her own behalf, as did her brother, Z B. The hearing was recorded. All submitted documents were admitted into the record. The record closed at the end of the hearing.

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¹⁷ See Exhibit 7, Exhibit 9, p. 10. Testimony of Amanda Holton.

¹⁸ Exhibit 9, p. 1 ("R&R: Explained to N. She had no questions."); Exhibit 9, p. 6 ("R&R: N states she understands/has no questions"). The Division also may have addressed this information during the May 21, 2014 interview. However, it did not specifically document that discussion. See Exhibit 9, pp. 4-5.

¹⁹ Exhibit 1, p. 7.

²⁰ Exhibit 11.

²¹ Exhibit 1, p. 3; Exhibit 4.

III. Discussion

A. Alaska Temporary Assistance Program

The Division must prove an Intentional Program Violation of the ATAP program by clear and convincing evidence.²² It must show that Ms. B intentionally misrepresented, concealed or withheld a material fact, for the purpose of establishing or maintaining her family's eligibility for ATAP benefits, or to increase or prevent a reduction in benefits.²³ The Division has met its burden in this case.

It is clear that Ms. B did not report her employment or income from Employer B during her eligibility interview on May 21, 2014 or on her October 1, 2014 recertification application. This constitutes misrepresentation by omission, concealment, and/or withholding.

Further, Ms. B's misrepresentation was intentional. Ms. B testified that she did not understand her obligation to report her Employer B income, because she merely cashed the paychecks and gave 100% of that income to her parents, who live in a separate household. Since Ms. B did not perform the work or keep any of the income for herself, she did not believe it counted as income for her household.

Ms. B has had prior experience with the Food Stamp and ATAP benefit programs, and she has gone through the application and interview process many times. As a result, she has been reminded repeatedly of her responsibility to truthfully and accurately report her employment and income, both during her interviews and on her application forms. When she applied to serve as a personal care worker for her father, and she was hired for that position, Ms. B understood that she was employed by Employer B. She also knew that she received regular paychecks, issued to her name by Employer B, for work she purportedly performed. Ms. B personally cashed or signed over each paycheck.

Ms. B was already receiving regular paychecks from Employer B when she interviewed with the Division on May 21, 2014 and when she re-applied for public benefits on October 1, 2014.²⁴ She responded to specific and direct questions about her employment and income at those times, and she consciously decided not to disclose her employment with Employer B. As a result, she falsely certified on her October 1, 2014 application that she had provided true and correct information in the application.

²² 7 AAC 45.585(d).

²³ 7 AAC 45.580(n).

²⁴ Exhibit 10, p. 3.

Under the circumstances of this case, there can be no question that Ms. B received unreported employment income from Employer B, and she intentionally failed to disclose that income to the Division. The fact that she did not actually perform the work for which she was paid, and her subsequent gifts of that income to her parents, do not change the analysis.

Lastly, Ms. B's intentional misrepresentation or concealment of her income was for the purpose of establishing or maintaining the household's eligibility for ATAP benefits. ATAP eligibility and benefit levels are based in large part on a household's income.²⁵ Ms. B's failure to report her income from Employer B 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. Indeed, the Division determined that Ms. B's household would have not been eligible for any ATAP benefits if her income from Employer B had been disclosed. This supports the conclusion that Ms. B misrepresented or concealed her Employer B income for the purpose of establishing and maintaining her eligibility for Temporary Assistance benefits.

The Division has shown clear and convincing evidence that Ms. B committed an Intentional Program Violation of the ATAP benefit program.²⁶ This is Ms. B's first known ATAP Intentional Program Violation.²⁷

B. The Food Stamp Program

The Division must prove an Intentional Program Violation of the Food Stamp program by clear and convincing evidence.²⁸ To do so, the Division must show that Ms. B intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."²⁹

The evidence in the record clearly and convincingly establishes that Ms. B did not report her employment with, or income from, Employer B during her May 21, 2014 interview, nor did she report this employment and income on her October 1, 2014 recertification application. This constitutes a misrepresentation by omission, concealment, and/or withholding. For the same reasons discussed above regarding Ms. B's ATAP program violation, this misrepresentation was intentional.

²⁵ 7 AAC 45.470; 7 AAC 45.525.

²⁶ 7 AAC 45.580(n).

²⁷ Exhibit 1, pp. 1, 7.

²⁸ 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is established if the truth of the asserted facts is highly probable. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

²⁹ 7 C.F.R. § 273.16(c).

The Division has shown clear and convincing evidence that Ms. B committed an Intentional Program Violation, as defined by the Food Stamp program regulations. This is Ms. B's first known Food Stamp Intentional Program Violation.³⁰

IV. Conclusion and Order

A. Alaska Temporary Assistance Program

N B 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.³¹ If Ms. B is currently receiving ATAP benefits, her disqualification period shall begin on November 1, 2016.³² If Ms. B is not currently receiving ATAP benefits, her disqualification period shall be postponed until she applies for and is found eligible for ATAP benefits.³³ This disqualification applies only to Ms. B, and not to any other individuals who may be included in her household.³⁴ 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.³⁵ However, Ms. B must report her income and resources as they may be used in these determinations.³⁶

The Division shall provide written notice to Ms. B and the caretaker relative, if other than Ms. B, of the ATAP benefits they will receive during the disqualification period.³⁷

If over-issued ATAP benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.³⁸ If Ms. B disagrees with the Division's calculation of the amount of over issuance to be repaid, she may request a hearing on that limited issue.³⁹

B. Food Stamp Program

Ms. B 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 she is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.⁴⁰ The Food Stamp disqualification period shall begin on November

³⁰ Exhibit 1 pp. 1, 7.

³¹ AS 47.27.015(e)(1).

³² 7 AAC 45.580(f).

³³ 7 AAC 45.580(g).

³⁴ 7 AAC 45.580(e)(1).

³⁵ 7 AAC 45.580(k)(3).

³⁶ 7 AAC 45.580(e)(3).

³⁷ 7 AAC 45.580(k)(4).

³⁸ 7 AAC 45.570(a).

³⁹ 7 AAC 45.570(l).

⁴⁰ 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).

1, 2016.⁴¹ This disqualification applies only to Ms. B and not to any other individuals who may be included in her household.⁴² For the duration of the disqualification period, Ms. B's needs will not be considered when determining eligibility and benefit amounts for her household. However, Ms. B must report her income and resources as they may be used in these determinations.⁴³

The Division shall provide written notice to Ms. B 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.⁴⁴

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

Dated August 31, 2016.

Signed

Kathryn Swiderski
Administrative Law Judge

Adoption

The undersigned 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 14th day of September, 2016.

By: *Signed*

Name: Kathryn A. Swiderski
Title: Administrative Law Judge

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

⁴¹ 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).

⁴² 7 C.F.R. § 273.16(b)(11).

⁴³ 7 C.F.R. § 273.11(c)(1).

⁴⁴ 7 C.F.R. § 273.16(e)(9)(ii).

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

⁴⁶ 7 C.F.R. § 273.15.