

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

In the Matter of)	
)	OAH No. 16-1227-ADQ
B C)	Agency No.
_____)	

DECISION and ORDER

I. Introduction

B C received Food Stamp¹ and Temporary Assistance benefits from December 2012 through February 2014. The Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of these two programs.² This decision concludes that DPA proved by clear and convincing evidence that Ms. C committed her first Intentional Program Violation of the Food Stamp and Temporary Assistance programs. She must pay \$3,927.00 in restitution, is barred from receiving Food Stamps for 12 months, and is barred from receiving Temporary Assistance for six months.

Ms. C's hearing was initially scheduled for November 23, 2016. At the start of the hearing, Ms. C stated that she had not received the exhibits and notice of hearing because she had moved. The parties agreed to a new hearing date on December 7, 2016. DPA resent the exhibits and notice of hearing to Ms. C at her new address.³ On December 7, 2016, Ms. C could not be reached by telephone and the hearing went forward in her absence.⁴

William Schwenke, an investigator employed by DPA's Fraud Control Unit, presented DPA's position at the hearing. Amy Williams, DPA eligibility technician, and N C testified on behalf of DPA.

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). The program is still commonly referred to as the Food Stamp program.

² Ex. 1.

³ Ex. 19.

⁴ Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear. Ms. C had actual notice of the new hearing date and time.

II. Facts

B C gave birth to Z C on September 9, 2012. Ms. C expressed to her uncle N C and his wife F C that she was not able to care for the child. N and F C began caring for Z. By mid-October 2012, N and F C cared for and raised Z full-time.⁵ Z remained with N and F except from March 3 – 19, 2014, when Ms. C traveled to Colorado with the child. N and F adopted Z on May 23, 2015.⁶

Ms. C submitted public assistance applications on August 14, 2012, February 3, 2013, and August 30, 2013.⁷ Ms. C participated in eligibility interviews for the August 2012 and February 2013 applications.⁸ As stated on applications and during interviews, Public Assistance recipients must report changes in household composition to DPA.⁹ Ms. C added Z to her household in early October 2012.¹⁰ DPA increased her benefits as a result.¹¹ On her February 3, 2013 and August 30, 2013 applications and during her March 2013 interview, Ms. C claimed herself and her two children, S and Z as household members.¹²

Because Ms. C inaccurately reported her household size, DPA issued Ms. C excessive Food Stamp and Temporary Assistance benefits from December 2012 through February 14.¹³ The total overpayment amount is \$3,927.00: \$1,724.00 in Temporary Assistance and \$2,203.00 in Food Stamps, benefits.¹⁴

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁵ that Ms. C intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁶

⁵ Ex. 2; N C testimony; audio recordings U C and U H.

⁶ Ex. 15.

⁷ Ex. 8-10.

⁸ Ex. 4.

⁹ Williams testimony; Ex. 8-10; Ex. 12.

¹⁰ Ex. 12.

¹¹ Ex. 12.

¹² Ex. 9-10; Ex. 4, p.2.

¹³ Ex. 11; Schwenke testimony.

¹⁴ Ex. 3, p. 15.

¹⁵ 7 C.F.R. § 273.16(e)(6).

¹⁶ 7 C.F.R. § 273.16(c).

Food Stamp eligibility and benefit amounts are based in part on a household's size.¹⁷ Ms. C's application listed Z as part of her household, despite the fact he was living in N and F C's household. As a result, DPA issued Food Stamp benefits for a three person household, when the household actually consisted of 2 persons.

Ms. C was fully aware Z was not living with her when she completed the applications and interviews. Consequently, Ms. C intentionally misrepresented that Z was residing in her home when he was not.

The Division has therefore met its burden of proof and established that Ms. C made an intentional misrepresentation for Food Stamp benefits. As a result, she committed a first Intentional Program Violation of the Food Stamp program and is disqualified for 12 months.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence¹⁸ that Ms. C intentionally misrepresented, concealed or withheld a material fact on her application “for the purpose of establishing or maintaining a family’s eligibility for Temporary Assistance benefits.”¹⁹ As discussed above, Ms. C intentionally misrepresented that Z lived with her when he did not.

In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child residing in his or her home for more than half the time.²⁰ The amount of Temporary Assistance benefits a family receives is based on household size.²¹ Household size is therefore a material fact for the purpose of determining Temporary Assistance eligibility.

The Division must then prove that the intentional misrepresentation of the material fact was for the purpose of establishing or maintaining the household’s eligibility, or for increasing or preventing a reduction in Temporary Assistance benefits.²² Because Ms. C would have been eligible for less benefits, her intentional misrepresentation regarding Z’s presence in her home caused her to receive more benefits than she was entitled to. Ms. C therefore committed a first Intentional Program Violation of the Temporary Assistance program and is disqualified for 6 months.

¹⁷ 7 C.F.R. § 273.10(e)(1)(i)(A).

¹⁸ 7 AAC 45.585(d).

¹⁹ 7 AAC 45.580(n).

²⁰ AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a) and (b).

²¹ <http://dhss.alaska.gov/dpa/Pages/atap/default.aspx>

²² 7 AAC 45.585.

IV. Conclusion and Order

A. Food Stamp Program

Ms. C committed a first time Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.²³ This disqualification applies only to Ms. C, and not to any other individuals in the household.²⁴ For the duration of the disqualification period, Ms. C'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 as they may be used in these determinations.²⁵

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.²⁶

If over-issued Food Stamp benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.²⁷ If Ms. C disagrees with the Division's calculation of the amount to be repaid, she may request a separate hearing on that limited issue.²⁸

B. The Alaska Temporary Assistance Program

Ms. C has committed a first time Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of six months.²⁹ If Ms. C is currently receiving Temporary Assistance benefits, her disqualification period shall begin March 1, 2017.³⁰ If Ms. C is not currently a Temporary Assistance recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, Temporary Assistance benefits.³¹ This disqualification applies only to Ms. C,

²³ 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).

²⁴ 7 C.F.R. § 273.16(b)(11).

²⁵ 7 C.F.R. § 273.11(c)(1).

²⁶ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁸ 7 C.F.R. § 273.15.

²⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁰ 7 AAC 45.580(f), or at another time in accordance with program guidelines.

³¹ 7 AAC 45.580(g).

and not to any other individuals who may be included in her household.³² For the duration of the disqualification period, Ms. C's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. C must report her income and resources as they may be used in these determinations.³³

The Division shall provide written notice to Ms. C and the caretaker relative, if other than Ms. C, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁴

If over-issued Temporary Assistance benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.³⁵ If Ms. C disagrees with the Division's calculation of the benefits amount to be repaid, she may request a hearing on that limited issue.³⁶

Dated this 3rd day of January 2017.

Signed

Bride Seifert
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 25th day of January, 2017.

By: Signed

Signature
Bride A. Seifert

Name
Administrative Law Judge/OAH

Title

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

³² 7 AAC 45.580(e)(1).
³³ 7 AAC 45.580(e)(3).
³⁴ 7 AAC 45.580(k).
³⁵ 7 AAC 45.570(b).
³⁶ 7 AAC 45.570(l).