

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

In the Matter of)	
)	
L D. S)	OAH No. 16-1512-ADQ
_____)	Agency No.

DECISION

I. Introduction

L S received public assistance benefits based on her representation that her child was living in her household. At the time, however, her child was not living with her. Because Ms. S intentionally violated the rules for the two public assistance programs, she is barred for six months from applying for Alaska Temporary Assistance, and 12 months from applying for food stamps. In addition, she must repay the benefits that she wrongfully received.

II. Facts

L S applied for food stamp and Alaska Temporary Assistance Program (ATAP) benefits in August 2015. In support of her application, she declared that her daughter, J, was living with her in her household in City A.¹ Ms. S’s application for benefits was approved. The approval of ATAP, and the benefit level for food stamps, were based on Ms. S’s representation that J was living with her.

In fact, however, J was not living with Ms. S. J’s father, S N, testified at the hearing in this case. He explained that at all times, J was living with him in City B.² Ms. S left their home and moved to City A. Mr. N was not sure of the precise dates of the move—Ms. S returned to City B at least once for an attempted reconciliation—but he was certain that the move occurred well before the fall of 2015. The documents in the record, which include J’s enrollment in kindergarten in City B in 2015, corroborate Mr. N’s testimony that J was living in City B from August 2015 – January 2016.³

In a recorded telephone interview with Investigator Will Schwenke, Ms. S admitted that she applied for benefits for herself and J at a time when she knew that J was not living with her.⁴

¹ Division Exhibit 8 at 2-3.

² Ms. S’s unsworn statements in a recorded interview dispute that J always lived with S. According to Ms. S, she had J some of the time. But she did admit that J lived with S permanently after April 1, 2015, albeit against Ms. S’s will. Division Exhibit 12.

³ Division Exhibit 11.

⁴ Division Exhibit 12.

Ms. S said that the reason she applied for benefits on behalf of herself and J in January was to try to get money to go get J. She said that she understood that her conduct might result in overpayments being assessed and a penalty.⁵

Because of Ms. S's representation regarding J, from August 2015 to January 2016, she received \$538 in food stamp and \$2,299 in ATAP benefits to which she was not entitled. Total overpayment of public assistance benefits during this time was \$2,937.

After investigation, the Division of Public Assistance determined that Ms. S had intentionally violated the rules for the two public assistance programs. The Division sent Ms. S an advance notice that it was seeking to administratively disqualify her from ATAP for six months and food stamps for twelve months, and that the Division would seek to recoup the entire amount of overpaid benefits.⁶ The notice advised that a telephonic hearing on the disqualification would take place on February 2, 2017, at 2:00 p.m. The hearing date and time were confirmed by a December 30, 2016, notice from the Office of Administrative Hearings. This notice advised that I would call Ms. S on the day of the hearing, and that she should ensure that the office had a correct telephone number for her.⁷

The hearing convened on February 2, 2017, at 2:00 p.m. I called the number for Ms. S twice, with no answer. Because the Division saw that a second address was in the record, it renoticed the hearing for March 9, 2017, at 2:00, and sent the notice to both possible addresses. I again called the number provided by Ms. S, with no answer. The hearing occurred on March 9th without her participation.

III. Discussion

In order to establish an Intentional Program Violation of the Temporary Assistance Program, the Division must prove by clear and convincing evidence that Ms. S intentionally misrepresented, concealed, or withheld a material fact on her application “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”⁸ In order to establish an Intentional Program Violation of the food stamp program, the Division must prove by clear and convincing evidence that Ms. S intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” in her application for food stamps.⁹

⁵ *Id.*

⁶ Division Exhibit 1.

⁷ *Id.*

⁸ 7 AAC 45.585(d); 7 AAC 45.580(n).

⁹ 7 C.F.R. §§ 273.16(c), 273.16(e)(6).

An applicant must have a minor child living in the home to be eligible for ATAP.¹⁰ The benefit level of food stamp benefits depends on the number of eligible residents in the household. Here, when Ms. S filled out her application, she represented that J was living in the home. Yet, she knew that was not true. J was living at that time with Mr. N. Ms. S admitted that she knew J was not with her. The evidence is both clear and convincing that Ms. S intended to mislead public assistance officials with regard to the composition of her household. No evidence suggests that Ms. S made an innocent mistake when applying for benefits to which she was not entitled. Therefore, the Division has met its burden of proof.

IV. Conclusion

1. L D. S committed a first-time intentional program violation of the food stamps program.
2. Ms. S committed a first-time intentional program violation of the Alaska Temporary Assistance program.
3. Ms. S is administratively disqualified from participation in the Alaska Temporary Assistance program for six months.
4. Ms. S is administratively disqualified from participation in food stamps program for 12 months.
5. Ms. S is ordered to repay to the Division of Public Assistance \$2,937, subject to her right to contest the accuracy of the amount of the overpayment.

DATED this 29th of March, 2017.

By: Signed _____
Stephen C. Slotnick
Administrative Law Judge

¹⁰ 7 AAC 45.225(a).

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 19th day of April, 2017.

By: *Signed* _____
Name: Stephen C. Slotnick
Title: Administrative Law Judge

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