

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

In the Matter of)	
)	
D N)	OAH No. 17-0001-ADQ
_____)	Agency No.

DECISION

I. Introduction

D N received Alaska Temporary Assistance Program (ATAP) benefits from November 30, 2016 through January 2017. The Department of Health and Social Services, Division of Public Assistance (Division) initiated this administrative disqualification proceeding, alleging that Mr. N committed an ATAP Intentional Program Violation by falsely stating that his teenage son lived in his home, when the child actually lived elsewhere.

The Division did not meet its burden to show by clear and convincing evidence that Mr. N intentionally misrepresented, concealed or withheld a material fact for the purpose of establishing or maintaining his family’s eligibility for ATAP benefits. When Mr. N applied for ATAP benefits on November 30, 2016, his son had only very recently started spending more of his time at his brother’s house than he did at Mr. N’s. However, Mr. N continued to provide a home and food for the child, and it was not clear on November 30th that the child’s absence was anything other than a temporary one. Mr. N therefore did not commit the first Intentional Program Violation that the Division alleged.

II. Facts

The central issue in this case is whether Mr. N falsely claimed that his 17-year-old son E N was living with him when Mr. N applied and was approved for ATAP benefits.

On November 30, 2016, when Mr. N applied for ATAP benefits, he declared under penalty of perjury that E was a member of his household.¹ He confirmed this information during an eligibility interview on the same day.² The Division approved the application, and Mr. N received ATAP benefits totaling \$1,037 from November 2016 through January 2017.³ Through the application and interview process, Mr. N was advised of his rights and responsibilities, including his responsibility to provide accurate information about his household composition.

¹ Exhibit 6.
² Exhibit 7; Amanda Holton testimony.
³ Exhibit 8; Exhibit 9, pp. 4-6.

When it approved his application, the Division again reminded Mr. N of his obligation to inform the Division within 5 days if a child was no longer living in his home.⁴

On December 14, 2016, E's mother contacted the Division and asserted that she was being incorrectly billed for child support due to Mr. N's receipt of public assistance on E's behalf. She claimed that E did not live with Mr. N.⁵ Following its investigation, the Division initiated these proceedings.

Mr. N's hearing took place on March 24, 2017. Mr. N appeared telephonically, represented himself and testified on his own behalf. Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented the Division. E N testified for the Division, as did Amanda Holton, one of the Division's eligibility technicians. The hearing was recorded. All submitted documents were admitted to the record, and the record closed following the hearing.

III. Discussion

To establish an Intentional Program Violation of the ATAP program, the Division must prove by clear and convincing evidence that Mr. N intentionally misrepresented, concealed or withheld a material fact for the purpose of establishing or maintaining his family's eligibility for ATAP benefits.⁶ Proof by clear and convincing evidence means that the party with the burden has established that the truth of the asserted facts is highly probable.⁷ This standard is higher than the "preponderance of the evidence" standard, but less than the "beyond a reasonable doubt" standard used in criminal cases.

To be eligible for ATAP benefits, a dependent child must be living with a caretaker relative in the home of the caretaker relative.⁸ A child's actual location and living circumstances are the primary determining factor in assessing the child's place of residence. ATAP regulations provide: "Except in the case of a temporary absence . . . from the usual place of residence, the child's home is the place where the child resides more than half of the time in a month."⁹

Under this standard, the Division must show that E did not reside with Mr. N during the time in question, and he was not temporarily absent. The Division met its burden on this first showing, but not the second. The Division showed that, from November 25, 2016 through

⁴ Exhibit 9, pp. 1-3; Holton testimony.

⁵ Exhibit 1, p. 2.

⁶ 7 AAC 45.585(d); 7 AAC 45.580(n).

⁷ *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

⁸ 7 AAC 45.225(a). *See also* 7 AAC 45.990(23); ATAP Manual §711-6A (Definition of the "Home"). The ATAP Manual is available online at <http://dpaweb.hss.state.ak.us/manuals/ta/ta.htm>.

⁹ 7 AAC 45.225(b).

December 25, 2016, E spent significantly more than half of his time living with his half-brother B, rather than with Mr. N.¹⁰ Mr. N agreed this was true. The Division also showed, and Mr. N agreed, that E did not live in Mr. N's home after December 25, 2016. On that day, E removed his personal belongings from Mr. N's home and made clear his intention to live in another household.¹¹

For the period between November 25th and December 25th, however, the Division did not show that Mr. N was aware that E's absence from his home was more than a temporary situation. During this time, Mr. N continued to exercise parental care and control to the extent he was able, given his strained relationship with E. Mr. N submitted a letter from Q T, his mother and E's grandmother, who explained that E moved to Alaska to live with his father during the summer of 2016.¹² After he met B, however, E lost interest in school, and he began to spend more time "partying" with B. Both Mr. N and Ms. T made continuing efforts to guide E to different choices, but without success.

Mr. N credibly testified that, from November 25 to December 25, he believed that E continued to be a member of his household. He viewed E's preference to spend time at B's house as a temporary change, because his real home was at Mr. N's. Mr. N provided evidence to support this conclusion. For instance, he submitted a copy of E's November 20, 2016 text message, in which E referred to Mr. N's residence as "home."¹³ Further, as of Thanksgiving 2016, E had recently repainted his bedroom at Mr. N's house, which he showed off to his grandmother during the family's Thanksgiving get-together. In doing so, it appears that E may have led others in the family to believe that his usual place of residence was at his father's home, even in late November 2016.

When he started spending more of his time at B's house after Thanksgiving 2016, E left many or most of his belongings at Mr. N's house. He stayed in regular contact with his father, and he came and went from Mr. N's house as he needed. Mr. N tried to have E return home permanently, and he expressed concern that E was spending time at his brother's house only because he could use drugs and alcohol there.¹⁴ During this time, Mr. N continued to provide parental oversight and care, for instance, by purchasing significant quantities of food for E, to

¹⁰ Exhibit 10; E N testimony.

¹¹ D N testimony; email from H T, Mr. N's step-father (E was dropped at his brother's house on Christmas Day 2016 with his clothes and a jacket).

¹² Q T letter, p. 1.

¹³ See March 23, 2017 submission to record.

¹⁴ See also Q T letter, pp. 2-3.

ensure he was eating adequately. Ms. T also noted that B's housemates were not happy with E's presence at B's home, and they did not want or expect him to remain in the home for long.¹⁵

After a family Christmas party on December 25, 2016, E took definitive steps and removed any ambiguity about his place of residence, by taking all his personal belongings with him when he left Mr. N's house. In hindsight, this event makes clear that E's absence from Mr. N's home after November 25th was not merely temporary. However, Mr. N argues that he did not know this before December 25th. Instead, he saw E's absence as part of the temporary ups-and-downs of life with a stubborn and misdirected 17-year-old.

On December 23, 2016, E met with the Division's investigator and signed a sworn statement that he did not live with his father after November 15, 2016.¹⁶ Prior to the hearing, Mr. N submitted E's November 20, 2016 text message, in which E referred to Mr. N's residence as "home." At the hearing, E then revised his earlier statement, testifying that he did not live in Mr. N's home after November 25th rather than the 15th. E's carelessness in signing an inaccurate affidavit raises some questions about the reliability of his testimony. In any event, the issue is not simply whether E was spending more time at Mr. N's home or at B's home. There is also the issue whether Mr. N knew that E's absence was not temporary.

At some point, a wayward teen's absence from his usual place of residence becomes a new norm, and a parent cannot reasonably claim that the absence is temporary. The ATAP policy manual generally sets a thirty-day limit for temporary absences, unless specified exceptions for longer time periods are met.¹⁷ In this case, E apparently began spending the majority of his time at B's home on November 25th. Mr. N applied and was interviewed for ATAP benefits five days later, on November 30th. Based on the evidence in the record, as of November 30th, it was not unreasonable for Mr. N to believe that his home continued to be E's usual place of residence, and E's absence was only temporary. Consistent with this interpretation, Mr. N continued to provide a home for E and to show responsibility for his care, while also trying to get the young man to reject the drugs and alcohol that were luring him elsewhere.

In his affidavit and hearing testimony, E did not indicate that he had made clear to his father his intention to permanently move out, either on November 25th or shortly thereafter. By

¹⁵ *Id.*, p. 3.

¹⁶ Exhibit 10; E N testimony.

¹⁷ ATAP Manual § 711-7A (absences of less than one month can be considered temporary, as long as the child and caretaker relative are both in the home for one day of the calendar month).

leaving his personal belongings at the house, remaining in regular contact and accepting care from Mr. N, E's behavior could lead his father to believe otherwise.

The Division bears the burden to prove it is highly probable that, during the application process on November 30, 2016, Mr. N intentionally misrepresented, concealed or withheld a material fact when he claimed that E was a member of his household. For the reasons discussed above, the evidence fell short of the required clear and convincing standard.

The Division did not allege that Mr. N committed an Intentional Program Violation by failing to report within five days that E had moved out of his home in December 2016. Therefore, this decision does not address that issue. This decision also does not address whether Mr. N nonetheless has an obligation to reimburse the Division for some or all of the ATAP benefits he received. The Division is not precluded from issuing a recoupment notice.

IV. Conclusion

Mr. N applied and was interviewed for ATAP benefits five days after E asserted that he had moved out of his father's household. As of that time, Mr. N reasonably could have believed that E's absence from his home was only temporary, and therefore Mr. N's household continued to be E's usual place of residence. As a result, the Division did not show with high probability that Mr. N made a false declaration on his ATAP application or during his eligibility interview.

Because the Division did not prove the Intentional Program Violation that it alleged by clear and convincing evidence, Mr. N is not disqualified from participation in the Temporary Assistance program.

DATED: April 6, 2017.

By: Signed _____
Kathryn Swiderski
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 20th day of April, 2017.

By: Signed _____
Name: Kathryn A. Swiderski
Title: Administrative Law Judge

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