

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

In the Matter of	)	
	)	
O T. X	)	OAH No. 17-0218-ADQ
_____	)	DPA/FCU No.
	)	Agency No.

**DECISION and ORDER**

**I. Introduction**

O T. X applied for Supplemental Nutrition Assistance (Food Stamp) benefits and Alaska Temporary Assistance (ATAP) benefits in late January of 2017, receiving payments from those programs in that month and the two following months. On March 10, 2017, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp and ATAP programs.<sup>1</sup>

A hearing convened in this case on April 14, 2017, but Mr. X requested a delay. By agreement, the case was rescheduled to April 28, 2017 at 9:00 a.m. Mr. X did not pick up his phone when called—twice—at 9:00 and 9:10. The hearing went forward in his absence.<sup>2</sup>

DPA was represented at the hearing by Dean Rogers, an investigator employed by DPA’s Fraud Control Unit. Amanda Holton, a DPA Eligibility Technician, and L X testified as part of DPA’s case. Exhibits 1-13 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. X committed a first Intentional Program Violation of the Food Stamp and ATAP programs. He must be barred from Food Stamps for twelve months and from ATAP for six months.

**II. Facts**

O X has had some experience with the public assistance system, having received Food Stamps in 2014 and 2015. On January 20, 2017, he turned in a new application for public

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<sup>1</sup> Ex. 2.

<sup>2</sup> Once proper notice has been given, the Food Stamps 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. Once proper notice has been given, the ATAP regulations likewise allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 AAC 45.585(c).

assistance, which he had signed under penalty of perjury on January 17, 2017.<sup>3</sup> He listed himself, his son M, and his daughter P as the three members of his household in Alaska.<sup>4</sup> At an interview on January 20, he reaffirmed to the Eligibility Technician that the two children were living in his household.<sup>5</sup> In fact, however, both children had been living in Washington with his estranged wife since July 19, 2016.<sup>6</sup> His son M was enrolled in the public school system there for the 2016-17 school year, and remained enrolled at the time of the application.<sup>7</sup> His daughter P was enrolled in a Washington health plan under a Washington address.<sup>8</sup>

M and P were, in fact, present in Alaska at the time Mr. X turned in the application, although they may not have been staying with Mr. X. The children had used round-trip air tickets to come to Alaska for a prearranged three-week vacation from January 7 to January 28.<sup>9</sup> While in Alaska they stayed with various people, including at least a few days with Mr. X. However, there was never any question that they would promptly be returning home to Washington, and thus were not members of Mr. X's household.

The children left Alaska on January 28. Mr. X did not report even then that his household did not include the two children. He had been advised that changes in his household composition must be reported within five days.<sup>10</sup>

DPA paid Food Stamp and ATAP benefits to Mr. X from January 20, 2017 through the month of March based on a household size that included M and P.<sup>11</sup> DPA has calculated the excessive benefits as \$2988.<sup>12</sup>

Mr. X's wife became aware of the erroneous claim of where the children were living when she was notified that she would be billed for child support. She notified DPA that the children were living with her.<sup>13</sup> A fraud investigation, and this proceeding, ensued.

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<sup>3</sup> Ex. 6.

<sup>4</sup> Ex. 6.

<sup>5</sup> Ex. 7, p. 1. The interview, as well as written materials distributed with the application, covered the illegality of giving false or incomplete information to get benefits.

<sup>6</sup> Testimony of L X.

<sup>7</sup> Ex. 11.

<sup>8</sup> Ex. 12.

<sup>9</sup> Ex. 10; testimony of L X.

<sup>10</sup> Ex. 6, p. 13.

<sup>11</sup> Ex. 13; Holton testimony.

<sup>12</sup> Ex. 13.

<sup>13</sup> Testimony of L X; Ex. 1, p. 3.

### III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.<sup>14</sup> Alaska law likewise prohibits securing ATAP benefits by such means.<sup>15</sup>

In this case, DPA seeks to establish an IPV in both benefit programs in which Mr. X was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.<sup>16</sup> No evidence has been offered that Mr. X has ever been found to have committed a prior IPV, and therefore both alleged IPV's will be evaluated on the assumption that they are first-time violations.

#### A. Food Stamp Program

Except for someone with prior IPV's in his or her record or who has other circumstances, not applicable here, that can lead to enhanced penalties, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.<sup>17</sup>

It is clear that Mr. X claimed, both on his own handwritten application form and in the follow-up interview, that his son and daughter were living with him at a time when they were in fact long-term residents in the home of his estranged wife in Washington. This was a misrepresentation. Even if the children were physically with him when he made the representation, he knew they would be leaving in just over a week on the return leg of their round-trip ticket. Further, he concealed their departure despite an obligation to report it. It is impossible to construe this pattern of misrepresentation and concealment as anything but intentional behavior.

The Division has therefore met its burden of proof and established that Mr. X intentionally misrepresented and then concealed a material fact: the fact that his son and daughter were not living with him. He has therefore committed a first IPV of the Food Stamp program.

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<sup>14</sup> See, e.g., 7 U.S.C. § 2015(b).

<sup>15</sup> 7 AAC 45.580(n).

<sup>16</sup> 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

<sup>17</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

**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 evidence that Mr. X intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”<sup>18</sup> As discussed above, Mr. X intentionally misrepresented and concealed his children’s true domicile. Household composition is an essential component in qualifying for ATAP benefits.<sup>19</sup> It is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Mr. X would have intentionally misrepresented where the children were living would have been to establish his eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that O X intentionally misrepresented or withheld a material fact. This intentional misrepresentation of a material fact was made for the purpose of establishing his eligibility for ATAP benefits. Mr. X has therefore committed a first IPV of the Temporary Assistance program.

**IV. Conclusion and Order**

**A. Food Stamp Program**

Mr. X has committed a first-time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.<sup>20</sup> The Food Stamp disqualification period shall begin June 1, 2017.<sup>21</sup> This disqualification applies only to Mr. X, and not to any other individuals who may be included in his household.<sup>22</sup> For the duration of the disqualification period, Mr. X’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources so that they can be used in these determinations.<sup>23</sup>

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<sup>18</sup> 7 AAC 45.580(n).

<sup>19</sup> AS 47.27.0025(a).

<sup>20</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>21</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995). Insofar as 273.16(e)(9)(ii) is inconsistent with this result, it must be disregarded as contrary to statute, as discussed in *Garcia* and in *Devi v. Senior and Disabled Serv. Div.*, 905 P.2d 846 (Or. App. 1995).

<sup>22</sup> 7 C.F.R. § 273.16(b)(11).

<sup>23</sup> 7 C.F.R. § 273.11(c)(1).

DPA shall provide written notice to Mr. X 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.<sup>24</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. X or any remaining household members are now required to make restitution.<sup>25</sup> If Mr. X disagrees with DPA's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>26</sup>

*B. Alaska Temporary Assistance Program*

Mr. X has also committed a first-time Temporary Assistance Intentional Program Violation. He is therefore disqualified from participation in the Temporary Assistance program for a period of six months.<sup>27</sup> If Mr. X is currently receiving Temporary Assistance benefits, his disqualification period shall begin June 1, 2017.<sup>28</sup> If Mr. X is not currently a Temporary Assistance recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, Temporary Assistance benefits.<sup>29</sup> This disqualification applies only to Mr. X, and not to any other individuals who may be included in his household.<sup>30</sup> For the duration of the disqualification period, Mr. X's needs will not be considered when determining ATAP eligibility and benefit amounts for his household. However, Mr. X must report his income and resources as they may be used in these determinations.<sup>31</sup>

The Division shall provide written notice to Mr. X and the caretaker relative, if other than Mr. X, of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>32</sup>

If over-issued Temporary Assistance benefits have not been repaid, Mr. X or any remaining household members are now required to make restitution.<sup>33</sup> If Mr. X disagrees with

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<sup>24</sup> 7 C.F.R. § 273.16(e)(9)(ii).  
<sup>25</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).  
<sup>26</sup> 7 C.F.R. § 273.15.  
<sup>27</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).  
<sup>28</sup> 7 AAC 45.580(f).  
<sup>29</sup> 7 AAC 45.580(g).  
<sup>30</sup> 7 AAC 45.580(e)(1).  
<sup>31</sup> 7 AAC 45.580(e)(3).  
<sup>32</sup> 7 AAC 45.580(k).  
<sup>33</sup> 7 AAC 45.570(b).

DPA's calculation of the amount of over-issuance to be repaid, he may request a hearing on that limited issue.<sup>34</sup>

Dated this 28<sup>th</sup> day of April, 2017.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
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 16<sup>th</sup> day of May, 2017.

By: *Signed* \_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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

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<sup>34</sup> 7 AAC 45.570(l).