

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

In the Matter of)
)
 N R. O)
_____)

OAH No. 17-0809-ADQ
DPA/FCU No.
Agency No.

DECISION and ORDER

I. Introduction

N R. O received Supplemental Nutrition Assistance (Food Stamp) benefits and Alaska Temporary Assistance (ATAP) benefits between January and July of 2017. On July 28, 2017, 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 the Food Stamp and ATAP programs.¹

A hearing in this case first convened on August 31, 2017, but Ms. O requested a delay because she said her address had changed and she had not received notice or a copy of the DPA exhibits. By agreement, the case was rescheduled to September 20, 2017 at 10:30 a.m. The written materials were mailed to Ms. O at her new address, and she signed for them on September 14, 2017. However, Ms. O did not pick up her phone on September 20 when called—six times—between 10:30 and 10:50 a.m. The hearing went forward in her absence.²

DPA was represented at the hearing by Wynn Jennings, an investigator employed by DPA’s Fraud Control Unit. He and Amanda Holton, a DPA Eligibility Technician testified as part of DPA’s case. Exhibits 1-11 were admitted into evidence without objection and without restriction.

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

¹ Ex. 1.

² 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).

II. Facts

N O has had some experience with the public assistance system, having received Food Stamps since late 2015 and ATAP since June of 2016.³ On October 3, 2016, she turned in an eligibility review form for public assistance, listing herself and her son B K as the two members of her household.⁴ She was informed at that time (among others) that if a child leaves the home, the change in household composition must be reported within five days.⁵ Food Stamps and ATAP benefits continued based on that household composition.⁶ On April 27, 2017, she submitted another eligibility review form, signed under penalty of perjury.⁷ Again, she listed herself and B as residing in the home.⁸ As part of the recertification, she appeared for a face-to-face interview with an eligibility technician on May 25, 2017.⁹ The rights and responsibilities associated with the program, including the obligation to report household composition changes, were read to her at the interview.¹⁰ At the interview, she reaffirmed that B was living with her.¹¹ Food Stamp and ATAP were again approved based on the household size she had reported.¹²

In fact, however, B K had been removed from Ms. O's custody on January 26, 2017, and placed in a foster home under State custody.¹³ He remained in that status through at least July 21, 2017.¹⁴

DPA paid Food Stamp and ATAP benefits to Ms. O in March, April, May, June, and July 2017 based on a household size that included B.¹⁵ DPA has calculated the excessive

³ Ex. 11, pp. 1-2.

⁴ Ex. 8, p. 1.

⁵ Ex. 7, p. 1; Holton testimony. This notification requirement only applies to ATAP, not to Food Stamps.

⁶ Ex. 8.

⁷ Ex. 9.

⁸ *Id.*, p. 1.

⁹ Holton testimony; Ex. 9, pp. 6-7.

¹⁰ *Id.*

¹¹ Ex. 9., p. 6.

¹² Holton testimony; Ex. 9, pp. 9-10.

¹³ Ex. 10; Jennings and Holton testimony.

¹⁴ *Id.* For part of that period he was placed with L O, a grandparent. Ms. O may have used L O's telephone as her contact number in recent months (July-September), because the voice mail on the phone she has used as a contact number in this case tells the caller that he or she has reached "L." Notably, however, N O had a different contact number from the "L" number at the time of her April 27, 2017 recertification application. Ex. 9, p.1.

¹⁵ Ex. 13; Holton testimony.

benefits paid to Ms. O to be \$4621.¹⁶

DPA learned of B's removal from the home through internal cross-checking with other agencies.¹⁷ A fraud investigation, and this proceeding, ensued.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁸ Alaska law likewise prohibits securing ATAP benefits by such means.¹⁹

In this case, DPA seeks to establish an IPV in both benefit programs in which Ms. O was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.²⁰ No evidence has been offered that Ms. O 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.²¹

It is clear that Ms. O claimed, both on her own recertification form in April and in the follow-up interview, that her son was living with her at a time when he was in fact in State custody and placed in a foster home. This was a misrepresentation. Further, even before the recertification, Ms. O had concealed her loss of custody 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 Ms. O intentionally misrepresented and then concealed a material fact: the fact that her son was not living with her. She has therefore committed a first IPV of the Food Stamp program.

¹⁶ Ex. 13. Because of different program rules, the Food Stamps paid in March and April based on a larger household size than reported were not excess benefits; only in May did those benefits become excessive. For the ATAP program, benefits were excessive for all five months.

¹⁷ Holton testimony; Ex. 2.

¹⁸ See, e.g., 7 U.S.C. § 2015(b).

¹⁹ 7 AAC 45.580(n).

²⁰ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

²¹ 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 Ms. O intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²² As discussed above, Ms. O intentionally misrepresented and concealed her child’s true domicile. Household composition is an essential component in qualifying for ATAP benefits.²³ It is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. O would have intentionally misrepresented where the children were living would have been to establish her eligibility for Temporary Assistance benefits, which are available only to households with children.

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

IV. Conclusion and Order

A. Food Stamp Program

Ms. O has committed a first-time Intentional Program Violation of the Food Stamp program. She 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.²⁴ The Food Stamp disqualification period shall begin February 1, 2018.²⁵ This disqualification applies only to Ms. O, and not to any other individuals who may be included in her household.²⁶ For the duration of the disqualification period, Ms. O’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 so that they can be used in these determinations.²⁷

²² 7 AAC 45.580(n).

²³ AS 47.27.0025(a).

²⁴ 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).

²⁵ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th 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).

²⁶ 7 C.F.R. § 273.16(b)(11).

²⁷ 7 C.F.R. § 273.11(c)(1).

DPA shall provide written notice to Ms. O 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.²⁸

If over-issued Food Stamp benefits have not been repaid, Ms. O or any remaining household members are now required to make restitution.²⁹ If Ms. O disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.³⁰

B. Alaska Temporary Assistance Program

Ms. O has also 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.³¹ If Ms. O is currently receiving Temporary Assistance benefits, her disqualification period shall begin February 1, 2018.³² If Ms. O 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.³³ This disqualification applies only to Ms. O, and not to any other individuals who may be included in her household.³⁴ For the duration of the disqualification period, Ms. O's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. O must report her income and resources as they may be used in these determinations.³⁵

The Division shall provide written notice to Ms. O and the caretaker relative, if other than Ms. O, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁶

If over-issued Temporary Assistance benefits have not been repaid, Ms. O or any remaining household members are now required to make restitution.³⁷ If Ms. O disagrees with

²⁸ 7 C.F.R. § 273.16(e)(9)(ii).
²⁹ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
³⁰ 7 C.F.R. § 273.15.
³¹ AS 47.27.015(e)(1); 7 AAC 45.580(d).
³² 7 AAC 45.580(f).
³³ 7 AAC 45.580(g).
³⁴ 7 AAC 45.580(e)(1).
³⁵ 7 AAC 45.580(e)(3).
³⁶ 7 AAC 45.580(k).
³⁷ 7 AAC 45.570(b).

DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³⁸

Dated this 24th day of November, 2017.

Signed _____
Andrew M. Lebo
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 12th day of December, 2017.

By: *Signed* _____
Name: Andrew M. Lebo
Title: Administrative Law Judge/OAH

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

³⁸ 7 AAC 45.570(l).