

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

In the Matter of)
)
K L. K) OAH No. 17-0921-ADQ
) Agency No.
_____)

DECISION AND ORDER

I. Introduction

K L. K received Food Stamp and Alaska Temporary Assistance benefits from October 2015 through November 2016. The Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against her, alleging that she had committed a first Intentional Program Violation of the Food Stamp and Temporary Assistance programs by claiming Z L F as a member of her household.¹

This decision concludes that the Division proved by clear and convincing evidence that Ms. K committed a first Intentional Program Violation of both programs. Ms. K must be barred from Food Stamps for twelve months and from Alaska Temporary Assistance for six months.

II. Facts

Ms. K received Food Stamps and Adult Temporary Assistance benefits from October 2015 through November 2016.² To qualify for public assistance, Ms. K was required to file application forms and periodic eligibility review forms and participate in interviews with division staff to verify eligibility information, including household composition. The forms completed and submitted by Ms. K included a four-page form entitled “Your Rights and Responsibilities,” which detailed reporting requirements, fraud penalty warnings, and general program information.³ During the eligibility interviews, division staff explained Ms. K’s responsibility to report changes, including household composition and warned her about the penalties for failing to do so.⁴ Ms. K acknowledged her understanding and had no questions.⁵ The division also sent Ms. K notices reminding her of her duty to report changes.⁶ In particular,

¹ Ex. 3.
² Ex. 9; Testimony of Amanda Holton.
³ Ex. 7.
⁴ Ex. 9 at 1, 5; Testimony of Amanda Holton.
⁵ Ex. 9 at 1, 5; Holton Testimony.
⁶ Ex. 9 at 8, 12.

the division informed Ms. K that she was required to report a child's move from her household within 5 days of when that child left her home.⁷

As part of a routine eligibility review, Ms. K completed and signed, under penalty of perjury, an eligibility review form on March 4, 2016.⁸ On the form, she listed herself, N K, G K, and N's son, Z F as the four members of her household.⁹ At an interview on March 7, 2016, Ms. K reaffirmed to the Eligibility Technician that Z was part of her household.¹⁰ On September 28, 2016, Ms. K completed and signed another eligibility review form.¹¹ This time, Ms. K did not list Z as part of her household.¹² However, at an interview on October 17, 2016, Ms. K did report Z as part of the household.¹³

Z was not living in Ms. K's household. Z had not lived with his father and Ms. K since January 2016.¹⁴ He was instead living with his maternal grandmother in Virginia, and they expected him to continue living there until the end of the school year.¹⁵

Based on Ms. K's statements about her household composition and income, the Division re-approved Food Stamp and Adult Temporary Assistance benefits for Ms. K.¹⁶ Benefits were issued and redeemed during months in which Z clearly did not reside in the home.¹⁷ Ms. K's Food Stamp and Adult Temporary Assistance benefits for May 2016 through November 2016 should have been lower.¹⁸ The Division has calculated the overpaid benefits as \$1,212 in Adult Temporary Assistance and \$783 in Food Stamps, for a total of \$1,995.¹⁹

In September 2017, the Division initiated this action. It requested that Ms. K be temporarily disqualified from receiving Food Stamp and Adult Temporary Assistance benefits. It further requested that Ms. K be ordered to pay the full amount of overpaid benefits. A hearing was scheduled and convened on September 22, 2017, but Ms. K requested a delay. By agreement, the case was rescheduled to October 6, 2017 at 1:00 p.m. Ms. K did not appear and

⁷ Ex. 9 at 12.

⁸ Ex. 8 at 1-5.

⁹ Ex. 8 at 1.

¹⁰ Ex. 9 at 3.

¹¹ Ex. 9 at 1, 5; Holton Testimony.

¹² Ex. 8 at 6.

¹³ Ex. 9 at 5.

¹⁴ Ex. 9 at 7; Ex. 10 at 2, 5, 16-18; Testimony of Davione Holloway.

¹⁵ Ex. 9 at 7; Ex. 10 at 2, 5, 16-18; Holloway Testimony.

¹⁶ Ex. 9 at 8-9; Holton Testimony.

¹⁷ Holton Testimony.

¹⁸ Holton Testimony; Ex. 11.

¹⁹ Holton Testimony; Ex. 11.

could not be reached at the telephone number she provided. The hearing went forward in her absence.²⁰

IV. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.²¹ Alaska law likewise prohibits securing Adult Temporary Assistance benefits by such means.²²

In this case, the Division seeks to establish an Intentional Program Violation for both benefit programs in which Ms. K was enrolled. To establish either of them, the Division must prove the elements of that violation by clear and convincing evidence.²³ No evidence has been offered that Ms. K has ever been found to have committed a prior Intentional Program Violation, and therefore both alleged violations will be evaluated on the assumption that this is a first-time violation.

A. Food Stamp Program

To prove an Intentional Program Violation of the Food Stamp program, the Division must show that Ms. K “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.²⁴

Ms. K claimed—on both, her handwritten eligibility review forms and in follow-up interviews—that her step-son, Z was living with her at a time when he was living with his maternal grandmother in Virginia. For Ms. K to claim Z was residing in her home was a misrepresentation. The question is whether the misrepresentation was intentional.

Ms. K failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Household composition is a central focus of any eligibility interview. It is incredible to believe that Z’s move to Virginia to live with his maternal grandmother—a move that was reportedly contentious—slipped Ms. K’s mind. Instead, the household composition she was describing was fictional. Moreover, Ms. K told Eligibility Technician,

²⁰ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(b) (Temporary Assistance program). 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.

²¹ *See e.g.*, 7 U.S.C. § 2015(b).

²² 7 AAC 45.580(n).

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

²⁴ 7 C.F.R. § 273.16(b)(1)(i), (c)(1).

Davione Holloway that she and her husband were trying to get Z back, and that she did not report Z's move because it was temporary, and she did not want to remove Z from the case and then re-add him when Z returned.²⁵ This is clear and convincing evidence that Ms. K's misrepresentation was intentional. She has therefore committed a first Intentional Program Violation.

B. Adult Temporary Assistance Program

To establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence that Ms. K intentionally misrepresented, concealed or withheld a material fact "for increasing or preventing a reduction in the amount of the benefit."²⁶ As discussed above, Ms. K intentionally misrepresented that Z was living in her household.

The benefit level of Adult Temporary Assistance benefits depends on the number of eligible residents in the household. The number of dependent children living in the home is therefore a material fact in determining the amount of the benefit. When Ms. K completed the eligibility review forms and provided information in eligibility interviews, she represented that Z was living in the home. Yet she knew that was not true. The evidence is clear and convincing that Ms. K intended to mislead the Division about the composition of her household to prevent a reduction in the amount of the benefit. Therefore, the Division has met its burden of proof.

V. Conclusion and Order

1. Ms. K committed a first-time intentional program violation of the Food Stamps program.
2. Ms. K committed a first-time intentional program violation of the Adult Temporary Assistance program.
3. Ms. K is administratively disqualified from participation in the Alaska Temporary Assistance program for six months.
4. Ms. K is administratively disqualified from participation in Food Stamps program for 12 months.

²⁵ Ex. 9 at 7; Holloway Testimony.

²⁶ 7 AAC 45.580(n).

5. Ms. K is ordered to repay to the Division of Public Assistance \$1,212 in Adult Temporary Assistance and \$783 in Food Stamps, for a total of \$1,995, subject to her right to contest the accuracy of the amount of the overpayment.

Dated: November 1, 2017

Signed

Jessica L. Srader
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 November 2017.

By: Signed

Name: Bride Seifert

Title: Administrative Law Judge

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