

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

In the Matter of)	
)	
L F. F)	OAH No. 17-0947-ADQ
_____)	Agency No.

DECISION AND ORDER

I. Introduction

The Department of Health and Social Services, Division of Public Assistance (Division) initiated this administrative disqualification proceeding against L F. It alleges that Ms. F committed first known Intentional Program Violations of the Food Stamp and the Alaska Temporary Assistance programs when she falsely declared that her daughter B lived in her home. On the two occasions she made this declaration, Ms. F knew the child was in the custody of the Office of Children’s Services (OCS) and actually living in a foster home.¹

This decision concludes that Ms. F committed first known Intentional Program Violations of the Food Stamp program and the Temporary Assistance program, and she received benefits she was not entitled to receive from each program. As a result, she is temporarily disqualified from participation in both programs, as further discussed below.

II. Facts

The following facts were established by clear and convincing evidence.

Ms. F received and redeemed Alaska Temporary Assistance Program (ATAP) benefits each month from August 2016 through July 2017.² She received and redeemed Food Stamp benefits each month from October 2016 through September 2017.³ Her daughter, B, was born in October 2016.

As of early April 2017, Ms. F lived in a household of two, consisting of herself and B. On April 29, 2017, OCS assumed emergency custody of B.⁴ The child was removed from Ms. F’s home and placed in a foster home operated by M K, who is also Ms. F’s aunt.⁵ B lived in foster

¹ Exhibit 3.
² Exhibit 9, p. 6.
³ *Id.*
⁴ Exhibit 10.
⁵ *Id.*; J F testimony; Z T testimony.

care at least through June 28, 2017 and likely several weeks longer.⁶ At some point, presumably in mid or late July 2017, she was placed back with Ms. F.

B's removal was followed by a period of uncertainty as to when she would be returned home. Ms. F initially believed OCS would agree to place B back in her home within days of her removal.⁷ She next understood that B would return to her home after OCS transferred the case from the emergency caseworker to the permanent caseworker, who would develop a reunification plan.⁸ Ms. F, her grandmother Z T, and Ms. K each believed the transfer between caseworkers would occur within weeks of B's removal. As Ms. T described it, OCS's reassurances but ongoing delays kept Ms. F in a state of limbo as to B's return. In the end, OCS did not assign the permanent caseworker for approximately three months after B's removal.⁹ This delayed her placement back with her mother.

After B's April 29th removal, Ms. F did not contact the Division of Public Assistance to report that the child was no longer living in her home. On June 2, 2017, while B lived in foster care, Ms. F submitted a recertification application for Food Stamp and ATAP benefits.¹⁰ The "Household Information" section of the eligibility review form instructs the applicant to "List all persons who live with you."¹¹ Ms. F declared under penalty of perjury that her household consisted of herself and B.¹²

Ms. F's recertification application included a four-page informational statement entitled "Your Rights and Responsibilities."¹³ The "Rights & Responsibilities" statement explains program information, including reporting requirements, verification of eligibility, responsibility for overpayments, and consequences for program violations. Under a bold heading entitled "When do I need to report changes?", it states, "If you receive Alaska Temporary Assistance and a child leaves your home, you must report this within 5 days."¹⁴ Under another bold heading entitled "What happens if I do not follow the rules?", the statement informs recipients that they

⁶ Exhibit 10 (still in foster placement as of 6/28/17); F testimony (approximately 90 days till permanent caseworker assigned and reunification plan developed); Letter from M K dated 10/10/17 (more than 60 days till reunification plan was developed).

⁷ F and T testimony; K letter.

⁸ F and T testimony; K letter.

⁹ F testimony (3 months); K letter (more than 60 days).

¹⁰ Exhibit 8.

¹¹ Exhibit 8, p. 1.

¹² Exhibit 8.

¹³ Exhibit 7; Amanda Holton testimony.

¹⁴ Exhibit 7, p. 1.

may be prosecuted if they “knowingly give false, incorrect, or incomplete information to get or try to get public assistance benefits” for which they are not eligible.¹⁵

On June 5, 2017, Ms. F participated in an interview with one of the division’s Eligibility Technicians.¹⁶ During the interview, the technician reviewed the “Rights & Responsibilities” information. Ms. F indicated that she understood her rights and responsibilities, and she had no questions about them.¹⁷ The interviewer next asked Ms. F to confirm her household composition. Ms. F explained that she and B shared a home with another adult, from whom Ms. F rented a room. The Division considered the other person a “separate economic unit” who was not part of Ms. F’s household for purposes of her Food Stamp or ATAP benefits.¹⁸ Ms. F otherwise verified the household information on her recertification application. She did not inform the technician that B was not actually living in her home on June 5th or that she had not lived there since April 29th.

The Division approved Ms. F’s application, and she received Food Stamp and ATAP benefits based on the two-person household she had described.¹⁹ Ms. F received and redeemed ATAP benefits totaling \$1,616 for June and July 2017; she received and redeemed Food Stamp benefits of \$378 for June 2017 and \$381 for July 2017.²⁰

The Division’s approval letter reminded Ms. F, “You need to tell us about changes in your family’s situation.”²¹ It detailed the types of changes to be reported in another “Rights and Responsibilities” notice, which was attached.²² The Rights and Responsibilities notice again indicated that recipients of Temporary Assistance benefits must inform the Division within 5 days if a child was no longer living in the home.²³

The Division received an anonymous complaint on June 8th that Ms. F was receiving benefits while her child was in state custody.²⁴ After an investigation, the Division brought this case, alleging that Ms. F committed intentional program violations of the Food Stamp and ATAP programs. The Division calculated that Ms. F received \$1,616 in Temporary Assistance benefits

¹⁵ Exhibit 7, p. 4.

¹⁶ Exhibit 9.

¹⁷ *Id.*; Amanda Holton testimony.

¹⁸ Exhibit 9, p. 1 (other adult listed as SEU).

¹⁹ Exhibits 9, 11.

²⁰ Exhibit 9.

²¹ Exhibit 9, p. 3.

²² Holton testimony.

²³ Exhibit 9, p. 5; Holton testimony.

²⁴ Exhibit 2.

and \$389 in Food Stamps to which she was not entitled, for the period from June through July 2017, resulting in a total overpayment of \$2,005.²⁵

Ms. F requested a formal hearing. The hearing took place in two sessions, on October 13 and October 19, 2017. Ms. F appeared in person on October 13th and by telephone on October 19th. She represented herself with the assistance of her grandmother, Z T. Ms. F and Ms. T both testified on Ms. F's behalf. Kenneth Cramer, an investigator with the Division of Public Assistance, Fraud Control Unit, appeared by telephone and represented the Division. Mr. Cramer and Eligibility Technician Amanda Holton testified for the Division. The hearing was recorded. All submitted documents were admitted to the record, which closed on October 19, 2017.

Based on the totality of the evidence presented, the Division has shown clear and convincing evidence that, by failing to disclose B's actual living situation, Ms. F intentionally misrepresented, concealed or withheld a material fact from the Division. She intentionally misrepresented, concealed or withheld this information both on her June 2, 2017 recertification application and during her June 5th eligibility interview.

III. Discussion

A. Food Stamp Program

The Division must prove an Intentional Program Violation of the Food Stamp program by clear and convincing evidence.²⁶ To do so, the Division must show that Ms. F intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."²⁷

The Division met this burden. As found above, Ms. F intentionally misrepresented that B lived in her home on June 2nd and June 5th, or she concealed or withheld complete and accurate information, since Ms. F knew that B actually lived in foster care.

During the hearing, Ms. F sometimes asserted that she had done nothing wrong. Other times, she acknowledged that she had "messed up" or made a mistake by failing to inform the Division of B's custody and living situation, but she argued that she had not done so intentionally. She claimed that she failed to disclose this information because an OCS intake worker, O Q, advised her not to take B off her public assistance case. According to Ms. F, Ms. Q informed her that OCS would handle any needed changes. Ms. F later explained that Ms. Q had said she was

²⁵ Holton testimony; Exhibit 11. The Division determined that Ms. F was not entitled to any ATAP benefits in June or July. It asserted that she qualified for \$370 in Food Stamp assistance, not the \$759 she received. (\$759 benefit paid - \$370 benefit entitled = \$389 overpayment.)

²⁶ 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is established if the truth of the asserted facts is highly probable. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

²⁷ 7 C.F.R. § 273.16(c).

not sure of OCS's procedures, and she advised Ms. F to talk about it with the permanent caseworker.

However, Ms. F stated, she could not discuss the issue with the permanent caseworker, because OCS did not assign one for approximately three months. She also explained that she believed B would be placed back in her home imminently. Lastly, she asserted that she spent all of the Food Stamp and ATAP funds she received for B's benefit. This included paying rent, so B would have a home to return to, and providing the foster home with everything B would need: a crib, high chair, car seat, clothing, food, toys and diapers.²⁸

None of these explanations change the analysis or outcome of this case. They do not justify Ms. F's decision to provide the Division with inaccurate and incomplete information on two different occasions regarding B's placement in foster care. As of June 2nd and June 5th, the child had been out of the home more than a month; Ms. F knew by then that a permanent caseworker had not been assigned, so B was not likely to return "any day." Further, the issue in this case is Ms. F's conduct in obtaining funds to which she was not entitled. Her use of the funds is not at issue and cannot justify her failure to disclose important household information.

On two occasions, Ms. F was asked direct questions about the composition of her household, meaning the individuals who actually lived in her home. Both times, she responded that B lived in her home, which was not true. The repeated nature of this assertion indicates it was intentional conduct, designed to conceal or withhold material information about B's legal custody and physical placement, not an inadvertent mistake.

Ms. F's explanation that an OCS intake worker told her not to report B's removal or foster care placement is simply not credible. Based on the evidence provided, there may have been some confusion about whether OCS *also* would report the placement change to the Division. At most, this confusion arguably could explain why Ms. F failed to contact the Division within five days of B's removal, as ATAP program rules required her to do.

While this uncertainty might have explained some inaction or passivity on Ms. F's part, it clearly does not explain or justify her active and repeated effort to mislead the Division during the benefit recertification process. Ms. F's suggestion that an OCS intake worker advised her to withhold information about B's placement from the Division of Public Assistance, despite its

²⁸ F testimony; T testimony; M K letter. Ms. F was clear that neither OCS nor the foster home asked her to provide these materials. She did it because she felt it was her responsibility. She also felt it would be helpful, because she knew OCS was resolving a temporary funding problem and it had not timely paid her aunt for providing foster care.

direct questions on this subject, or told her to make false statements about her household composition during future eligibility reviews, is neither reasonable nor credible.

Ms. F has had prior experience with the Food Stamp program. As a result, she has discussed with the Division her responsibility to provide accurate and complete information more than once, and she has reviewed the “Rights and Responsibilities” information multiple times. This experience further supports the conclusion that Ms. F intentionally misled the Division, or she intentionally concealed or withheld information, when she included B as a member of her household on June 2nd and June 5th, 2017, while knowing that her daughter actually lived in foster care.

B. Temporary Assistance Program

The Division must prove an Intentional Program Violation of the Alaska Temporary Assistance program by clear and convincing evidence.²⁹ To do so, it must show that Ms. F intentionally misrepresented, concealed or withheld a material fact, for the purpose of establishing or maintaining her family’s eligibility for ATAP benefits, or to increase or prevent a reduction in benefits.³⁰ For the same reasons discussed above, the Division has met this burden.

It is clear that Ms. F did not report on June 2nd or June 5th, 2017, that B lived in a foster care placement. Instead, she twice led the Division to believe that B lived in her home. In doing so, she intentionally misrepresented, concealed or withheld a material fact. Information about B’s placement was material because a household is not eligible for any ATAP benefits unless a dependent child is living in the caretaker relative’s home.³¹

Given her prior experience with the Temporary Assistance program, it is highly probable that Ms. F was aware she would not be eligible for ATAP benefits if the Division knew B was not living in her home. She also was aware of her obligation to provide accurate and complete information about her household, yet she did not do so. The most plausible reason for this is that, by failing to disclose B’s April 29th removal, Ms. F hoped to receive ATAP benefits for which she did not otherwise qualify. Indeed, the Division determined that her household would have not been eligible for any ATAP benefits had it known about B’s circumstances.

²⁹ 7 AAC 45.585(d).

³⁰ 7 AAC 45.580(n).

³¹ 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

IV. Conclusion and Order

A. Food Stamp Program

L F has committed a first known Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and she is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³² The Food Stamp program disqualification period shall begin December 1, 2017.³³ This disqualification applies only to Ms. F, and not to any other individuals who may be included in her household.³⁴ For the duration of the disqualification period, Ms. F's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report his income and resources as they may be used in these determinations.³⁵

The Division shall provide written notice to Ms. F 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.³⁶

If over-issued Food Stamp benefits have not been repaid, Ms. F or any remaining household members are now required to make restitution.³⁷ If Ms. F disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.³⁸

B. The Alaska Temporary Assistance Program

L F has committed a first known Temporary Assistance Intentional Program Violation. She is disqualified from participation in the Temporary Assistance program for a period of six months.³⁹ If Ms. F is currently receiving Temporary Assistance benefits, her disqualification period shall begin December 1, 2017.⁴⁰ If Ms. F is not currently receiving ATAP benefits, her disqualification period shall be postponed until she applies for and is found eligible for ATAP benefits.⁴¹ This disqualification applies only to Ms. F, and not to any other individuals who may

³² 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).

³³ 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

³⁴ 7 C.F.R. § 273.16(b)(11).

³⁵ 7 C.F.R. § 273.11(c)(1).

³⁶ 7 C.F.R. § 273.16(e)(9)(ii).

³⁷ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³⁸ 7 C.F.R. § 273.15.

³⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

⁴⁰ 7 AAC 45.580(f).

⁴¹ 7 AAC 45.580(g).

be included in her household.⁴² For the duration of the disqualification period, Ms. F's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. F must report her income and resources as they may be used in these determinations.⁴³

The Division shall provide written notice to Ms. F and the caretaker relative, if other than Ms. F, of the Temporary Assistance benefits they will receive during the period of disqualification.⁴⁴

If over-issued Temporary Assistance benefits have not been repaid, Ms. F or any remaining household members are now required to make restitution.⁴⁵ If Ms. F disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.⁴⁶

DATED: October 23, 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 7th day of November, 2017.

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

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

⁴² 7 AAC 45.580(e)(1).

⁴³ 7 AAC 45.580(e)(3).

⁴⁴ 7 AAC 45.580(k).

⁴⁵ 7 AAC 45.570(b).

⁴⁶ 7 AAC 45.570(l).