

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFER-  
RAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	
	)	OAH No. 17-0973-ADQ
B N. B	)	DPA/FCU No.
_____	)	Agency No.

**DECISION**

**I. Introduction**

B N. B received Alaska Temporary Assistance Program (ATAP) benefits from August through December of 2014. The Department of Health and Social Services, Division of Public Assistance (DPA), initiated this Administrative Disqualification Case against her, alleging that she had committed a first Intentional Program Violation (IPV) of the ATAP by falsely claiming her daughter as a member of her household.<sup>1</sup>

A hearing in this case was held on October 19, 2017. William Schwenke, an Investigator II employed by DPA’s Fraud Control Unit, appeared telephonically at the hearing and testified on behalf of the Division. The Division attempted to provide Ms. B with advance notice of the hearing, by both certified mail and standard First Class mail, to her last known address in a letter dated September 14, 2017.<sup>2</sup> However, this correspondence was returned by the U.S. Postal Service on or about October 2, 2017, as unable to be forwarded.<sup>3</sup> Subsequently, Mr. Schwenke called Ms. B by phone on October 6, 2017.<sup>4</sup> He left a message for her but she did not return his phone call.<sup>5</sup> In addition, Mr. Schwenke contacted Ms. B on her Facebook Messenger on October 12, 2017, but she did not reply to him.<sup>6</sup> At the time of the hearing, Ms. B was called several

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<sup>1</sup> See Ex. 1, at p. 1.

<sup>2</sup> See Exs. 3-4. The notice was sent to Ms. B’s employer (No Name Restaurant) in Arizona. Mr. Schwenke contacted that employer on June 15, 2017 and was advised that Ms. B was still working there. See Testimony of Mr. Schwenke. Mr. Schwenke testified that he also had contacted Ms. B on Facebook Messenger about the allegations against her on June 15, 2017 and July 12, 2017, and asked that she contact him. However, Ms. B did not reply to those messages.

<sup>3</sup> See Ex. 1, at p. 3; see also Testimony of Mr. Schwenke.

<sup>4</sup> Testimony of Mr. Schwenke. Ms. B’s employer had previously provided Mr. Schwenke with Ms. B’s phone number.

<sup>5</sup> Testimony of Mr. Schwenke.

<sup>6</sup> Testimony of Mr. Schwenke. Mr. Schwenke stated that Ms. B was still using her Facebook account when he sent this message a week before the hearing in light of recent postings on her Facebook account.

times at the phone number provided by DPA. It was no longer a working number. Consequently, the hearing went forward in her absence.<sup>7</sup>

This decision concludes that the Division has proven by clear and convincing evidence that Ms. B committed a first IPV, and received benefits she was not entitled to receive.

## **II. Facts**

Ms. B applied for ATAP benefits on August 18, 2014. On the form, she listed her daughter, T N, as living with her.<sup>8</sup> Ms. B attended a telephonic interview with DPA on August 19, 2014. She again claimed that her daughter T was part of her household. She explained that she and her child were homeless and couch-surfing between different friends.<sup>9</sup> Based upon the information provided by Ms. B in her application of August 18, 2014 and the subsequent interview, ATAP benefits were approved and a Temporary Assistance notice was sent to Ms. B on August 28, 2014.<sup>10</sup>

On August 31, 2015, C N, father of T N, called the Fraud Control Unit of DPA. He reported that he and Ms. B had separated around August of 2014.<sup>11</sup> He also stated that T N was living with him at his parents' house on a full-time basis.<sup>12</sup> X L. N, mother of C N, subsequently confirmed in a sworn statement dated September 16, 2015, that her granddaughter (T N) had been living with her son, C N, since March 1, 2014.<sup>13</sup> K D. N similarly affirmed in a sworn statement of September 16, 2015, that his son and granddaughter, C A. N and T J. N, had lived at his home in No Name Town, Alaska, since March of 2014.<sup>14</sup>

The Division brought this case, alleging that Ms. B committed intentional program violation of the ATAP. The Division calculated that Ms. B received \$1,899 in Temporary Assistance benefits to which she was not entitled, for the period from August through December of 2014.<sup>15</sup>

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<sup>7</sup> The ATAP regulations allow a hearing to be held without the participation of the household member alleged to have committed an IPV. 7 AAC 45.585(c). 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.

<sup>8</sup> See Ex. 8, at pp. 2-3.

<sup>9</sup> See Ex. 9.

<sup>10</sup> See Ex. 10.

<sup>11</sup> See Ex. 12. C N was not sure of the exact date of the separation but said he was "pretty sure" it was in August of 2014. He also said that after he and Ms. B separated, T remained with him.

<sup>12</sup> See Ex. 12.

<sup>13</sup> See Ex. 11, at pp. 1-3. C N told the Fraud Control Unit that he and Ms. B had lived together in his parents' home after T's birth on 00/00/2013 until they separated in August of 2014. When they separated, T continued to live with her father, C N, on a full-time basis.

<sup>14</sup> See Ex. 11, at pp. 4-6.

<sup>15</sup> See Ex. 14.

### III. Discussion

The Division must prove an IVP of the ATAP by clear and convincing evidence.<sup>16</sup> To meet this standard, the Division must show that Ms. B 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.<sup>17</sup>

Ms. B listed her daughter, T, as part of her household on her application for ATAP benefits.<sup>18</sup> However, the record shows that T had been living with her father since birth and that Ms. B's relationship with T's father had ended by August of 2014.<sup>19</sup> A household is not eligible for any ATAP benefits unless a dependent child is living in the caretaker relative's home.<sup>20</sup> By the time Ms. B applied for ATAP, the record shows that T was no longer living with her.<sup>21</sup>

Since Ms. B failed to appear at the hearing, there is no direct evidence of her intent in the record. Intent can, however, be deduced from circumstantial evidence.<sup>22</sup> The application form included a four-page informational statement entitled "Your Rights and Responsibilities". The statement explains program information, including reporting requirements, verification of eligibility, responsibility for overpayments, and consequences for program violations. Under a bold heading entitled "What happens if I do not follow the rules?", the statement informs applicants that they may be prosecuted for "knowingly giv[ing] false, incorrect, or incomplete information to get or try to get public assistance benefits" for which they are not eligible.<sup>23</sup> Under step 9 of the application, Ms. B certified under penalty of perjury, that all information contained in the application is true and correct.<sup>24</sup> Consequently, the only conclusion that can be drawn from these facts is that Ms. B intentionally misrepresented, concealed, or withheld a material fact when she stated that T was living with her.

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<sup>16</sup> 7 AAC 45.585(d).

<sup>17</sup> 7 AAC 45.580(n).

<sup>18</sup> See Ex. 8, at p. 2.

<sup>19</sup> See Ex. 12.

<sup>20</sup> 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

<sup>21</sup> See Ex. 12; see also Ex. 11. Since Ms. B did not apply for ATAP until August of 2014, whether C N had full-time custody of T from March of 2014 (as his parents claim) or not until August of 2014 (when the relationship between C N and B B ended), does not affect the outcome of this decision.

<sup>22</sup> In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that "in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct . . . .".

<sup>23</sup> See Ex. 7, at p. 4.

<sup>24</sup> See Ex. 8, at p. 12.

The Division has, therefore, met its burden of proof and has established that Ms. B made an intentional misrepresentation on her application for ATAP benefits dated August 18, 2014.

#### **IV. Conclusion and Order**

Ms. B has committed a first-time IPV of the ATAP. She is, therefore, disqualified from participation in this program for a period of six months.<sup>25</sup> Her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.<sup>26</sup> This disqualification applies only to Ms. B, and not to any other individuals who may be included in her household.<sup>27</sup> For the duration of the disqualification period, Ms. B's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. B must report her income and resources as they may be used in these determinations.<sup>28</sup> The Division shall provide written notice to Ms. B and any remaining household members of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>29</sup>

If over-issued Temporary Assistance benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.<sup>30</sup> If Ms. B disagrees with the Division's calculation of the amount of the Temporary Assistance benefits to be repaid, she may request a separate hearing on that limited issue.<sup>31</sup>

Dated this 21st day of November, 2017.

*Signed* \_\_\_\_\_  
Kathleen A. Frederick  
Chief Administrative Law Judge

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<sup>25</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>26</sup> 7 AAC 45.580(g).

<sup>27</sup> 7 AAC 45.580(e)(1).

<sup>28</sup> 7 AAC 45.580(e)(3).

<sup>29</sup> 7 AAC 45.580 (k).

<sup>30</sup> 7 AAC 45.570(b).

<sup>31</sup> 7 AAC 45.570(l).

## 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 6<sup>th</sup> day of December, 2017.

By: Signed  
Name: Christopher Kennedy  
Title: Delegate

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