

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

In the Matter of)	
)	OAH No. 17-1238-ADQ
U D. X)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

U D. X received Food Stamp¹ benefits and Alaska Temporary Assistance (ATAP) benefits in 2014 and 2016-17.² On December 7, 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 both programs when she recertified to continue receiving benefits without disclosing that she had a paying job.³

A hearing took place on January 9, 2018, with advance notice having been duly mailed to Ms. X's correct address. Ms. X was not present. At the appointed hearing time, a person was reached on Ms. X's telephone number of record, which was a cell phone. After pulling over to the side of the road, the person promised to relay to Ms. X that she could call in for her hearing, which would begin in ten minutes. No one called back. The hearing went forward in Ms. X's absence.⁴ Ken Cramer, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Exhibits 1-11 were admitted into evidence without objection and without restriction.

The record shows that Ms. X held back information about her job as a personal care attendant (PCA)/chore and respite worker in order to increase her Food Stamps and ATAP eligibility. This decision concludes that DPA proved by clear and convincing evidence that Ms. X committed a first Intentional Program Violation of the Food Stamp and ATAP programs. She must be barred from Food Stamps for twelve months and from ATAP for six months.

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 11, pp. 1-2.

³ Ex. 3.

⁴ 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

U X had experience in the Food Stamps and ATAP programs going back for some time.⁵ One may infer that she has familiarity with how the programs work. This case revolves primarily around Ms. X's recertifications for ATAP in December of 2016 and for Food Stamps in April of 2017. We will turn first to the ATAP recertification.

On December 27, 2016, Ms. X turned in an eligibility review form she had signed, under penalty of perjury, on December 22, 2016. The purpose of the form was to authorize a one-month extension of her ATAP benefits, which were expiring because she had been receiving them for five years.⁶ The form, which is found in the record at Exhibit 8, was completely filled out in what appears to be her own hand. In the block for listing employment for household members, "N/A" was written. Below it, the question, "Will anyone's job, wages or hours of work change soon?" is answered with an X in the "No" box.⁷ On January 3, 2017, Ms. X was formally interviewed in connection with this recertification, and no employment was mentioned; instead, she claimed to be medically disabled from working.⁸ She was approved for the extension based on a calculation that included no income from employment.⁹

Ms. X had in fact started work as a caregiver with the No Name Center on October 18, 2016, a job that continued uninterrupted until at least August of 2017.¹⁰ At the time of the December 2016 recertification, she had just earned \$788.92 for the month, and she was continuing to work.¹¹

Over the succeeding seven months, Ms. X worked continuously (with a possible short period of unpaid leave in mid-May), earning about \$1600 per month.¹² She disclosed nothing and continued to collect Food Stamps.¹³ Her ATAP timed out at the end of January, 2017. On April 24, 2017, she submitted her semi-annual recertification form for Food Stamps, again entering "N/A" in the block for employment and signing the form under penalty of perjury.¹⁴ Again she attended a live interview and reported no current employment, indicating only that she

⁵ Ex. 11, pp. 1-2. She had five years of history on ATAP. Ex. 8, p. 8.

⁶ Holton testimony; Ex. 8, p. 6.

⁷ Ex. 8, p. 3.

⁸ Ex. 8, p. 6.

⁹ Ex. 8, p. 8; Holton testimony.

¹⁰ Ex. 10.

¹¹ Ex. 10, p. 2.

¹² Ex. 10.

¹³ Ex. 11.

¹⁴ Ex. 9, p. 3.

might start a job soon once she completed some classes.¹⁵ Relying on this, DPA recertified her Food Stamps at a level based on “no countable income.”¹⁶

I am left with the firm conclusion that Ms. X deliberately chose not to jeopardize her ATAP and Food Stamps by disclosing her No Name Center job. She twice directly lied about that employment on sworn recertification forms, and twice attended interviews without disclosing it. There is no credible basis to believe that the failure to list or disclose it was an oversight.

DPA has calculated the resulting excessive benefits at \$433.00 in Food Stamps and \$113.00 in ATAP.¹⁷ This decision does not make a finding of fact regarding the exact amount of the overpayment.¹⁸

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁹ Alaska law likewise prohibits securing ATAP benefits by such means.²⁰

In this case, DPA seeks to establish an IPV in both benefit programs in which Ms. X was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.²¹ No evidence has been offered that Ms. 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 . . . concealed or withheld facts” in connection with the program.²²

¹⁵ Ex. 9, p. 6.

¹⁶ Ex. 9, p. 8.

¹⁷ Ex. 11.

¹⁸ The overpayment calculation is quite conservative. On questioning from the ALJ, Ms. Holton explained that this is because of restrictions on what kind of evidence the Fraud Control Unit is allowed to rely on in administrative disqualification cases. However, in the context of a simple recoupment, it is possible that additional overpayments might be identified for Food Stamps, notably in the January to April time span.

¹⁹ See, e.g., 7 U.S.C. § 2015(b).

²⁰ 7 AAC 45.580(n).

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

²² 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

Clear and convincing evidence shows that, through a falsified recertification application and in an associated interview, Ms. X intentionally concealed a job with substantial and regular income. Her direct misrepresentations and failures to report represent intentional concealment or withholding of facts. It follows that she has committed a first IPV.

B. Alaska Temporary Assistance Program

In order to establish an IPV of the Temporary Assistance Program, the Division must prove by clear and convincing evidence that Ms. X intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²³ As discussed above, Ms. X intentionally misrepresented and concealed her employment. Household income is an essential component in qualifying for ATAP benefits.²⁴ It is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. X would have intentionally misrepresented the fact that she was employed would have been to establish his eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that U 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

Ms. X 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.²⁵ The Food Stamp disqualification period shall begin March 1, 2018.²⁶ This disqualification applies only to Ms. X, and not to any other individuals who may be included in her household.²⁷ For the duration of the disqualification period, Ms. X’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for her

²³ 7 AAC 45.580(n).

²⁴ AS 47.27.025(a).

²⁵ 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).

²⁶ 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).

²⁷ 7 C.F.R. § 273.16(b)(11).

household. However, she must report her income and resources so that they can be used in these determinations.²⁸

DPA shall provide written notice to Ms. 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.²⁹

If over-issued Food Stamp benefits have not been repaid, Ms. X or any remaining household members are now required to make restitution.³⁰ If Ms. X disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.³¹

B. Alaska Temporary Assistance Program

Ms. X 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.³² If Ms. X is currently receiving Temporary Assistance benefits, her disqualification period shall begin March 1, 2018.³³ If Ms. X 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.³⁴ This disqualification applies only to Ms. X, and not to any other individuals who may be included in her household.³⁵ For the duration of the disqualification period, Ms. X's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. X must report her income and resources as they may be used in these determinations.³⁶

The Division shall provide written notice to Ms. X and the caretaker relative, if other than Ms. X, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁷

If over-issued Temporary Assistance benefits have not been repaid, Ms. X or any remaining household members are now required to make restitution.³⁸ If Ms. X disagrees with

²⁸ 7 C.F.R. § 273.11(c)(1).
²⁹ 7 C.F.R. § 273.16(e)(9)(ii).
³⁰ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
³¹ 7 C.F.R. § 273.15.
³² AS 47.27.015(e)(1); 7 AAC 45.580(d).
³³ 7 AAC 45.580(f).
³⁴ 7 AAC 45.580(g).
³⁵ 7 AAC 45.580(e)(1).
³⁶ 7 AAC 45.580(e)(3).
³⁷ 7 AAC 45.580(k).

DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³⁹

Dated this 19th day of January, 2018.

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 2nd day of February, 2018.

By: *Signed* _____
Name: Christopher Kennedy
Title: Commissioner's Delegate

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

³⁸ 7 AAC 45.570(b).

³⁹ 7 AAC 45.570(d).