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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS
ADMINISTRATIVE DISQUALIFICATION HEARING**

In the Matter of)
) Case No. 12-ADH-09
 T. O.,)
) Division Case No.
 Intentional Program Violation -)
 Temporary Assistance and Medicaid Programs.) Fraud Control Case No.
 _____)

DECISION

STATEMENT OF THE CASE

The Division of Public Assistance (Division) initiated this Administrative Disqualification case against T. O. (Recipient) on January 26, 2012, claiming he committed an Intentional Program Violation with regard to the Temporary Assistance and Medicaid programs. (Ex. 2) The Recipient was sent notice, on January 26, 2012, that an Administrative Disqualification Hearing was scheduled for February 28, 2012 at 2:00 p.m. *Id.* The notice of hearing was sent by certified mail, return receipt requested, and standard first class, postage prepaid, mail to the Recipient. (Ex. 1, p. 2; Ex. 2; Schwenke testimony)

The hearing notice sent to the Recipient by standard first class mail was not returned to the Division. (Schwenke testimony). The U.S. Postal Service attempted delivery of the hearing notice sent to the Recipient by certified mail, return receipt requested, on January 30, 2012. (Ex. 3) The Recipient was reached by telephone on February 28, 2012 and he verified that the notices were sent to the correct address, although he stated he did not receive them. The hearing was rescheduled to March 27, 2012 at the Claimant's request; the hearing notice and the Division's hearing documents, including all exhibits, were resent to the Claimant. Based on the evidence presented at hearing, the Division has complied with the advance notice requirements of the Temporary Assistance (7 AAC 45.585(a)) and the Medicaid programs.¹

¹ The Alaska Medicaid program Intentional Program Violation regulation, 7 AAC 100.912, does not contain specific notice requirements for Intentional Program Violation hearings. However, it states that "the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance Program) or 7 AAC 46 (Food Stamp Program) if the facts involved arise from the same or related circumstances." 7 AAC 100.912(c). Because this case also involves an alleged Intentional Program Violation

The Recipient's hearing was held on February 28, 2012, March 27, 2012, and April 11, 2012. William Schwenke, Investigator with the Division of Public Assistance Fraud Control Unit, appeared telephonically; he represented the Division and testified on its behalf. B G, a former Eligibility Technician employed by the Division, attended telephonically on March 27, 2012 and testified on behalf of the Division. Donya Owens, Casey Campbell-Boyer, and Rachel Forsythe all attended telephonically on March 27, 2012 and testified on the Division's behalf.

The Recipient appeared telephonically. He represented himself and testified on his own behalf.

STATEMENT OF ISSUES

1. Did the Recipient commit an Intentional Program Violation of the Temporary Assistance program by telling the Division during a December 11, 2007 application interview that his children were living with him, when they were not?
2. Did the Recipient commit an Intentional Program Violation of the Medicaid program by not informing the Division of the fact that his children moved out of his home on or about November 23, 2007?

FINDINGS OF FACT

The following facts were established by clear and convincing evidence:

1. The Recipient applied for Medicaid benefits for his four person household, composed of himself, his domestic partner, and their two minor children, on August 1, 2007. (Exs. 7, pp. 1 – 10)
2. The Recipient's August 1, 2007 application contained a "Rights and Responsibilities" section that notified him that he was required to notify the Division within 10 days of the date someone moved in or out of his home. (Ex. 7, p. 9) The application included an acknowledgement that the Recipient had read and understood the rights and responsibilities portion of the form. (Ex. 7, p. 5) The Recipient signed the application "[u]nder penalty of perjury or unsworn falsification." *Id.*
3. The Recipient participated in an in-person eligibility interview with a Division Eligibility Technician on August 31, 2007. (Ex. 10, p. 1; G testimony) At the beginning of the interview, the Eligibility Technician explained to him that he was required to notify the Division within 10 days of the date someone moved in or out of his home. *Id.* During that interview, the Recipient told the Eligibility Technician that his domestic partner was no longer living with him, and asked if she would still be eligible for Medicaid benefits. (Ex. 10, p. 1) The Eligibility Technician told the Recipient that his domestic partner would be eligible for Medicaid benefit only if she had a child living with her. *Id.*
4. The Recipient was approved for Family Medicaid benefits on August 31, 2007. (Ex. 10, p. 3) The Division sent him written notice on September 4, 2007 notifying him that he was

of the Temporary Assistance program, notice satisfying the Temporary Assistance program's notice requirements also constitutes adequate notice for the Medicaid program.

approved for Medicaid benefits and that he was required to notify the Division within 10 days of the date someone moved in or out of his home. (Ex. 11, pp. 1 – 3)

5. The Recipient applied for Temporary Assistance benefits for his three person household, composed of himself and his two minor children, on November 13, 2007. (Ex. 8, pp. 1 – 13) That application contained a “Rights and Responsibilities” section that notified him that he was required to notify the Division within 10 days of the date someone moved in or out of his home. (Ex. 8, p. 10) The application included an acknowledgement that the Recipient had read and understood the rights and responsibilities portion of the form. (Ex. 8, p. 9) The Recipient signed the application “[u]nder penalty of perjury or unsworn falsification.” *Id.*

6. The Recipient and his domestic partner were residing together, along with their two minor children, during the first part of November 2007. (Owens testimony) The domestic partner left the Recipient’s household on November 18, 2007. *Id.* She did not take the two children with her when she left on November 18, 2007. *Id.* She took the children from the Recipient’s home on November 23, 2007, the day after Thanksgiving. *Id.* She obtained an *ex parte* domestic violence temporary restraining order against the Recipient, which awarded her temporary custody of the two children, on November 26, 2007. (Ex. 14, pp. 1 – 6)

7. The Recipient participated in an in-person eligibility interview with a Division Eligibility Technician on December 11, 2007. (Ex. 10, p. 5; G testimony) At the beginning of the interview, the Eligibility Technician told him that he was required to notify the Division within 10 days of the date someone moved in or out of his home. *Id.* During that interview the Recipient told the Eligibility Technician the two children were living with him. *Id.*

8. The Division sent the Recipient notice on December 24, 2007 that his November 13, 2007 Temporary Assistance application was approved. (Ex. 11, pp. 4 – 6)

9. The Recipient’s two minor children were not residing with him at the time of his December 11, 2007 Temporary Assistance application, nor did he have visitation with the children until 2008.² The Recipient did not tell the Division that the children were not residing with him. (G testimony)

10. The Division calculated the Recipient received a total of \$3,142 in Temporary Assistance benefits to which he was not entitled in the months of December 2007 through April 2008. (Ex. 17)

11. The Division calculated the Recipient received a total of \$3,873.08 in Medicaid benefits to which he was not entitled in the months of December 2007 through April 2008. (Ex. 17)

12. The Recipient has no prior history of Temporary Assistance or Medicaid program violations. (Schwenke testimony)

² There were some slight inconsistencies in the evidence regarding where exactly the Recipient’s domestic partner and the children lived right after the children left the Recipient’s home in November 2007. Regardless, the uncontradicted evidence shows that the two children left the Recipient’s home on November 23, 2007 and that the Recipient did not have visitation until 2008. In addition, the children’s mother was granted full legal and primary physical custody, with limited visitation to the Recipient, on October 17, 2008. (Ex. 16, pp. 1 – 10)

PRINCIPLES OF LAW

A. Temporary Assistance Program

The Division has the burden of proof by clear and convincing evidence in Temporary Assistance Intentional Program Violation cases. 7 AAC 45.585(e).

Temporary Assistance is a public assistance program that provides “cash assistance . . . to needy children and their families.” AS 47.27.005. Parents, or caretaker relatives, who have physical custody of dependent children may apply for Temporary Assistance. AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a). Whether a dependent child (or children) is residing in a caretaker relative/parent’s home is a material fact in determining eligibility for Temporary Assistance benefits. *See* 7 AAC 45.225(b).

The Alaska Temporary Assistance program’s defines an Intentional Program Violation as follows:

(n) As used in this section, “intentional program violation” means an action taken by an individual *for the purpose of establishing or maintaining a family’s eligibility* for ATAP benefits or for benefits under the former AFDC program or *for increasing or preventing a reduction in the amount of the benefit*, that intentionally misrepresents, conceals, or withholds a material fact.

7 AAC 45.580(n). (Emphasis supplied).

A person who commits a first Intentional Program Violation against the Temporary Assistance program is barred from receiving Temporary Assistance benefits for a 6 month period. AS 47.27.015(e)(1); 7 AAC 45.580(d). In addition, the Recipient or any remaining household members are required to reimburse the Division for over-issued benefits. 7 AAC 45.570(a).

B. Medicaid Program

Unlike the Temporary Assistance program, the Alaska Medicaid regulations do not specify a particular standard of proof to be used in Intentional Program Violation cases. *See* 7 AAC 100.912. When no standard of proof is specified, the general rule is that the “preponderance of the evidence” standard of proof applies. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). However, the Alaska Medicaid regulations specifically provide that “the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance Program) . . . if the facts involved arise from the same or related circumstances.” 7 AAC 100.912(c). Because this case also involves an alleged Temporary Assistance Intentional Program Violation, based upon the same factual allegations, this Decision will use the higher Temporary Assistance Intentional Program Violation “clear and convincing evidence” standard of proof, rather than the lower general “preponderance of the evidence” standard of proof.

The Medicaid program provides medical coverage for financially eligible households that have minor children in them. 7 AAC 100.002(a)(1); 7 AAC 100.100. This Medicaid coverage category is referred to as Family Medicaid. *Id.* In order for a household to qualify for Family Medicaid, among other requirements, there must be a dependent child residing in the household.

7 AAC 100.110(a). A Family Medicaid recipient is required to notify the Division within 10 days of the date a child leaves the recipient's home. 7 AAC 100.900(a).

The Alaska Medicaid program's definition of an Intentional Program Violation is virtually identical to the Temporary Assistance program's definition of an Intentional Program Violation:

(1) "intentional program violation" means an action that

(A) an individual takes for the purpose of establishing and maintaining an individual's eligibility for Medicaid benefits; and

(B) intentionally misrepresents, conceals, or withholds a material fact;

7 AAC 100.912(e).

The Division is required to recover from an individual who is determined to have committed an Intentional Program Violation "that resulted in Medicaid expenditures to which the individual was not entitled." 7 AAC 100.910(a)(1)(A); 7 AAC 100.912(a)(2).

ANALYSIS

A. Temporary Assistance Program

Did the Recipient commit an Intentional Program Violation of the Temporary Assistance program by telling the Division during a December 11, 2007 application interview that his children were living with him, when they were not?

In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child living in his home. AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a). Whether there is a dependent child living in the home is therefore a material fact for the purpose of determining Temporary Assistance eligibility.

When the Recipient applied for Temporary Assistance benefits on November 13, 2007, his two minor children were living with him. That situation changed on November 23, 2007, when his children left the home. However, the Recipient informed the Division that the children were living with him during his December 11, 2007 application interview. This was a clear intentional misrepresentation by the Recipient, especially given the fact that the children's mother had been awarded temporary custody of the children, by court order in a domestic violence proceeding, just two weeks early on November 26, 2007.

The Recipient's intentional misrepresentation of his children's presence in his household established his eligibility for the Temporary Assistance program, which allowed him to receive a Temporary Assistance monthly benefit for which he was not eligible.

The Division has therefore met its burden of proof, by clear and convincing evidence, and established that the Recipient intentionally misrepresented a material fact, being the fact his children were not living with him, receiving a benefit that he was not entitled to receive. The Recipient therefore committed an Intentional Program Violation as defined by the Alaska Temporary Assistance regulations. 7 AAC 45.580(n).

This is the Recipient's first Intentional Program Violation with regard to the Temporary Assistance program.

B. Medicaid Program.

Did the Recipient commit an Intentional Program Violation of the Medicaid program by not informing the Division of the fact that his children moved out of his home on or about November 23, 2007?

In order to establish a Medicaid Intentional Program Violation, the Division must prove not only that a Medicaid applicant/recipient has "intentionally misrepresent[ed], conceal[ed], or with[held] a material fact" but also that intentional misrepresentation/concealment/withholding is done "for the purpose of establishing and maintaining an individual's eligibility for Medicaid benefits." 7 AAC 100.912(e)(1).

The Recipient was receiving Medicaid benefits under the Family Medicaid category. *See* 7 AAC 100.002(a)(1). In order for a household to qualify for Family Medicaid, among other requirements, there must be a dependent child residing in the household. 7 AAC 100.110(a). Whether there is a dependent child living in the home is therefore a material fact for the purposes of determining Family Medicaid eligibility.

The Recipient applied for Medicaid benefits on August 1, 2007. During his August 31, 2007 eligibility interview he specifically asked the Division's Eligibility Technician whether his domestic partner would be eligible for Medicaid benefits and was told that she would only be eligible if she had a child living with her. The Recipient was therefore aware that his Medicaid eligibility was dependent upon having a child living with him. The Recipient was also aware that he was required to notify the Division within ten days of the date someone left his household, having been informed of that requirement on several occasions. However, when the Recipient's children moved out of his home on November 23, 2007, he did not notify the Division within ten days that the children had left his home. Instead, he affirmatively misrepresented that the children were still living with him during his December 11, 2007 eligibility interview, which was more than ten days after the date the children left his home.

The Division has therefore met its burden of proof, by clear and convincing evidence, and established that the Recipient intentionally withheld/concealed a material fact, the fact that his children had moved out of his household. This intentional withholding/concealment of a material fact was made for the purpose of establishing and maintaining the Recipient's eligibility for Family Medicaid benefits. The Recipient therefore committed an Intentional Program Violation as defined by the Medicaid regulations. 7 AAC 100.912(e)(1).

CONCLUSIONS OF LAW

1. The Division has established, by clear and convincing evidence, that the Recipient committed a first Intentional Program Violation of the Temporary Assistance program.
2. The Division has established, by clear and convincing evidence, that the Recipient committed an Intentional Program Violation of the Medicaid program.

ORDER

A. Alaska Temporary Assistance Program

The Recipient shall be disqualified from participation in the Alaska Temporary Assistance Program for a period of six months. If the Recipient is currently receiving Temporary Assistance, his disqualification period shall begin August 1, 2012. If the Recipient is not currently a Temporary Assistance recipient, his disqualification period shall be postponed until he applies for and is found eligible for Temporary Assistance benefits. AS 47.27.015(e); 7 AAC 45.580(c) and (d); 7 AAC 45.580(f) and (g). This disqualification applies only to the Recipient, and not to any other individuals who may be included in his household. 7 AAC 45.580(e)(1). For the duration of the disqualification period, the Recipient's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for his household. However, the Recipient must report his income and resources as they may be used in these determinations. 7 AAC 45.580(e)(3).

The Division shall provide written notice to the Recipient and the caretaker relative, if other than the Recipient, of the Temporary Assistance benefits they will receive during the period of disqualification. 7 AAC 45.580(k).

If over-issued Temporary Assistance benefits have not been repaid, the Recipient or any remaining household members are now required to make restitution. 7 AAC 45.570(a). If the Recipient disagrees with the Division's calculation of the amount of over-issuance to be repaid, he may request a fair hearing. 7 AAC 45.570(l).

B. Medicaid Program.

The Alaska Medicaid program requires that the Division recover Medicaid expenditures made on behalf of an individual who has committed an Intentional Program Violation "that resulted in Medicaid expenditures to which the individual was not entitled." 7 AAC 100.910(a)(1)(A); 7 AAC 100.912(a)(2). If over-issued Medicaid benefits have not been repaid, the Recipient is now required to make restitution. If the Recipient disagrees with the Division's calculation of the amount of over-issuance to be repaid, he may request a fair hearing. 7 AAC 100.910(f).

APPEAL RIGHTS

This decision is the final order in this proceeding. No further administrative appeal procedure exists after this decision. **However, the Recipient may appeal to the Superior Court for the State of Alaska within thirty (30) days of the date this decision was mailed.** See Alaska Rules of Appellate Procedure 601 and 602.

DATED: June 4, 2012.

/Signed/
Larry Pederson
Hearing Authority

