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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-11
 S. M.,)
) Division Case No.
 Intentional Program Violation -)
 Food Stamp, 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 S. M. (Recipient) on February 3, 2012, claiming she committed an Intentional Program Violation with regard to the Food Stamp¹, Temporary Assistance, and Medicaid programs. (Ex. 2) The Recipient was sent notice, on February 3, 2012, that an Administrative Disqualification Hearing was scheduled for March 13, 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 notices sent to the Recipient (both by certified mail and standard first class mail) were not received by the Recipient. The Recipient was reached by telephone on March 13, 2012 and she explained that although the Division had sent the hearing notices to the correct address, she was having difficulty receiving her mail because she was not residing at her mailing address. The hearing was rescheduled to April 3, 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

¹ Congress amended the Food Stamp Act in 2008. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). However, the common usage refers to the program as the Food Stamp program, which usage this decision also follows.

requirements of the Food Stamp (7 C.F.R. § 273.16(e)(3)), Temporary Assistance (7 AAC 45.585(a)), and the Medicaid programs.²

The Recipient's hearing began on March 13, 2012 and was continued until April 3, 2012. William Schwenke, Investigator with the Division of Public Assistance Fraud Control Unit, appeared telephonically on both dates; he represented the Division and testified on its behalf. Jennifer Heath, an Eligibility Technician employed by the Division, attended telephonically on both dates and testified on behalf of the Division. S T and K P both attended telephonically on April 3, 2012 and testified on the Division's behalf.

The Recipient appeared telephonically on both hearing dates. She represented herself and testified on her own behalf. M. H. attended telephonically on April 3, 2012 and testified on the Recipient's behalf.

STATEMENT OF ISSUES³

1. Did the Recipient commit an Intentional Program Violation of the Food Stamp program by telling the Division during a June 7, 2006 application interview that her children were living with her, when they were not living with her?
2. Did the Recipient commit an Intentional Program Violation of the Temporary Assistance program by telling the Division during a June 7, 2006 application interview that her children were living with her, when they were not living with her?
3. Did the Recipient commit an Intentional Program Violation of the Medicaid program by telling the Division during a June 7, 2006 application interview that her children were living with her, when they were not living with her?

FINDINGS OF FACT

The following facts were established by clear and convincing evidence:

1. The Recipient received Food Stamp benefits from the State of Alaska continuously from July 2004 through August 2006. (Ex. 8, pp. 1 – 2)

² 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 of both the Temporary Assistance and Food Stamp programs, notice satisfying the Temporary Assistance and Food Stamp programs' notice requirements also constitutes adequate notice for the Medicaid program.

³ The issues are a rephrasing of the Division's allegation, as contained in its February 3, 2012 “Advance Notice of Your Administrative Disqualification Hearing”, that the Recipient had committed an Intentional Program Violation with regard to the Food Stamp, Temporary Assistance, and Medicaid programs by “intentionally misrepresent[ing] a child's presence in/absence from the household; specifically, she failed to declare during a June 7, 2006 application interview that her children . . . did not live in her home since May 31, 2006.” See (Ex. 2, p. 2)

2. The Recipient received Temporary Assistance benefits from the State of Alaska continuously from June 2004 through December 2004, and from June 2006 through August 2006. (Ex. 8, p. 3)
3. The Recipient received Medicaid benefits from the State of Alaska continuously from June 25, 2004 through August 2006. (Ex. 8, pp. 4 – 8) She received Medicaid benefits under the Family Medicaid category. (Ex. 6)
4. It is undisputed that on or about May 30, 2006, the Recipient's three minor children left the State of Alaska for a visit with their grandmother, Ms. S., who resides outside the State of Alaska.
5. On June 1, 2006, the Division received an application dated May 30, 2006 for Food Stamp, Temporary Assistance, and Medicaid benefits from the Recipient. (Ex. 7) The application stated that the Recipient's three minor children resided with her. (Ex. 7, p. 2) The application contained the language that the Recipient had read and understood the rights and responsibilities portion of the form, and that her "statements made on the application and during my interview for assistance regarding the persons in my home . . . are correct to the best of my knowledge." (Ex. 7, p. 5) The application was signed by the Recipient "[u]nder penalty of perjury or unsworn falsification." *Id.*
6. The Recipient's application contained a "Rights and Responsibilities" section that notified her that she was subject to prosecution if she "knowingly give[s] false, incorrect, or incomplete information to get or try to get public assistance benefits you are not eligible for." (Ex. 7, p. 10) The "Rights and Responsibilities" section is attached to an application and is given to an applicant as part of the normal practice in processing an application. (Heath testimony)
7. The Recipient participated in an in-person interview with a Division Eligibility Technician on June 7, 2006, where she was advised of, and stated that she understood, her "Rights and Responsibilities." (Ex. 9, p. 1; Heath testimony) In that interview, the Recipient informed the Eligibility Technician that she had three children living with her. *Id.*
8. On June 8, 2006, the Division sent the Recipient written notices that her application for Food Stamp, Temporary Assistance, and Medicaid benefits had been approved. (Ex. 10) Those same notices informed the Recipient that if she was receiving Temporary Assistance benefits, she was required to notify the Division within five days of the date a child left her home. *Id.* Those same notices informed the Recipient that if she was receiving Medicaid benefits, she was required to notify the Division within ten days of the date a child left her home. *Id.*
9. It is undisputed that the Recipient's three children stayed with their grandmother and did not ever return to the State of Alaska after they left on or about May 30, 2006.
10. Ms. Heath, the Division's Eligibility Technician, who interviewed the Recipient on June 7, 2006, testified telephonically that the Claimant did not inform her that the children were not living with her during the June 7, 2006 interview. She further testified that the Recipient did not notify the Division that her children had left the home. There was nothing in Ms. Heath's telephonic demeanor to suggest she was not credible.

11. Ms. S., the Recipient's mother and the grandmother of the Recipient's children, telephoned the Division on July 26, 2006, and notified the Division that the Recipient's children had been living with her all summer. (Ex. 6) On August 1, 2006, Division records indicate that the Recipient provided it with a signed statement that she and her children were living together in a tent. (Ex. 6) The Division did not introduce a copy of the signed statement into evidence.

12. S. S., who is the Recipient's mother and grandmother of the minor children, testified telephonically as follows:

- a. The Recipient's children moved in with her on May 31, 2006, and that they lived with her since⁴, have not visited with their mother, and did not return to Alaska.
- b. The children were originally only supposed to visit for the summer through the first of August, 2006 and then return to Alaska.
- c. The children came to visit without a return plane ticket.
- d. The Recipient was kicked out of her home and was living in a tent in July. The Recipient called her and wanted her to return the children and she "could not do that."

13. The Recipient testified telephonically as follows:

- a. She had been living in No Name in an apartment, not a tent.
- b. Her children were only supposed to visit their grandmother for a short time period, approximately ten days, and that she had health issues which kept them from returning immediately. She kept receiving excuses about when her children would return. Then she finally found out that her mother did not intend to return the children to her during the second week of August, when her mother informed her that she had started the children in school.
- c. She did not intend to commit fraud and stopped receiving benefits after she found out the children were not returning to her.

14. While there was nothing in the Recipient or Ms. S.'s telephonic demeanor to suggest either of them were not credible, they were clearly antagonistic toward each other.

15. K P testified telephonically as follows:

- a. The Recipient's mother (Ms. S.) is one of her best friends. She has known the Recipient since the Recipient was a young child.
- b. She was living in No Name, where the Recipient and her children lived. She picked the children up and took them to the airport on May 30, 2006 to leave to visit their grandmother.

⁴ One of the granddaughters is now an adult and no longer lives with the grandmother. (S. testimony)

16. Although there was nothing otherwise in Ms. P's telephonic demeanor to suggest that she was not credible, her response to the Recipient's question regarding whether the Recipient had been told that the children were going live with their grandmother or whether the Claimant had been told that the children were going for a visit was vague:

Ah, to my. I do not remember that. I know they were going there. As far as I know, they were going to stay because all their stuff went with them that they had. And as I think they were planning on going down there until May. be [the Recipient] got her stuff in order and come back but that never happened.

17. M. H. is a close friend of the Recipient who sees her almost every day. She testified telephonically as follows:

- a. She was a witness to a phone call between the Recipient, her mother, and Ms. P. She understood that the children were only going to visit their grandmother for a short visit.
- b. The visit was only supposed to be less than two weeks. The Recipient started having health problems and the visit got extended.
- c. She was called by the Recipient after the Recipient found out that the children were not being returned to the Recipient. The Recipient was very upset.

There was nothing in Ms. H.'s telephonic demeanor to suggest that she was not credible.

18. The Division calculated the Recipient received a total of \$796 in Food Stamp benefits to which she was not entitled in the months of July and August 2006. (Ex. 13)

19. The Division calculated the Recipient received a total of \$1,088 in Temporary Assistance benefits to which she was not entitled in the months of July and August 2006. (Ex. 13)

20. The Division calculated the Recipient received a total of \$8,754.41 in Medicaid benefits to which she was not entitled in the months of July and August 2006. (Ex. 13)

21. The Recipient has no prior history of Food Stamp, Temporary Assistance, of Medicaid program violations. (Schwenke testimony)

PRINCIPLES OF LAW

This case is one where the Division alleges the Recipient committed an Intentional Program Violation of the Food Stamp, Temporary Assistance, and Medicaid programs.

A. Food Stamp Program

The Division has the burden of proof by clear and convincing evidence in Food Stamp Intentional Program Violation cases. 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is stronger than a preponderance of evidence but weaker than evidence beyond a reasonable doubt. "If clear and convincing proof is required, there must be induced a belief that the truth of the asserted facts is highly probable." *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

The amount of Food Stamp benefits a household receives is based, in part, upon how many people are in the household. 7 C.F.R. § 273.10(e)(2)(ii)(A).

The Food Stamp regulations define an Intentional Program Violation as follows:

(c) *Definition of intentional Program violation.* Intentional Program violations shall consist of having intentionally:

(1) made a false or misleading statement, or misrepresented, concealed or withheld facts;

7 C.F.R. § 273.16(c). (Emphasis in original).

A person who commits a first Intentional Program Violation against the Food Stamp program is disqualified from receiving Food Stamp benefits for a 12 month period. 7 C.F.R. § 273.16(b)(1)(i). In addition, the Recipient and other household members are required to reimburse the Division for any over issued benefits. 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii)

B. 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 M. apply for Temporary Assistance. AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

(b) When determining if a child is living in the home of a caretaker relative, the department will consider the location of the child to be the primary determining factor. Except in the case of a temporary absence of the child or caretaker relative from the usual place of residence, the child’s home is the place where the child resides more than half of the time in a month.

7 AAC 45.225(b). “[A] child is considered to be living with a caretaker relative during a month only if the child and the caretaker relative are both in the home for at least one day of the month.” 7 AAC 45.225(f). “[T]he child and caretaker relative are eligible to receive [Temporary Assistance] benefits even though the child or the caretaker relative is absent for an entire month or longer” due to medical care requiring a stay in a hospital or other institution, court ordered visitation, or education/training not available in the home community.⁵ 7 AAC 45.225(f).

The Alaska Temporary Assistance program’s definition of an Intentional Program Violation is slightly different from the Food Stamp program’s definition of an Intentional Program Violation:

(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

⁵ See 7 AAC 45.225(f) for other conditions that must be satisfied in order to qualify for these exceptions.

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).

C. Medicaid Program

Unlike the Food Stamp and Temporary Assistance programs, 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 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 Food Stamp Intentional Program Violation, based upon the same factual allegations, this Decision will use the higher Food Stamp Intentional Program Violation “clear and convincing evidence” standard of proof, rather than the lower general “preponderance of the evidence” standard of proof.⁶

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;

⁶ The Medicaid regulations do not require application of the “clear and convincing evidence” standard to Medicaid Intentional Program Violation cases. It is being applied in this Food Stamp, Temporary Assistance and Medicaid Intentional Program Violation case because it is a joint case with common facts involving all three programs. The application of the “clear and convincing evidence” standard to this Medicaid Intentional Program Violation case does not prejudice the Recipient. Because the “clear and convincing evidence” standard imposes a higher evidentiary burden on the Division than the “preponderance of the evidence standard”, its application is actually to the Recipient’s benefit.

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

The Division alleges that the Recipient committed an Intentional Program Violation with regard to the Food Stamp, Temporary Assistance and Medicaid programs. The Division has the burden of proof by clear and convincing evidence. The underlying factual issue is whether the Recipient made an intentional misrepresentation to the Division, during her June 7, 2006 interview, that her children were living with her. The factual issue and its application to each of the three applicable public assistance programs are addressed below.

A. Facts

The undisputed facts of this case are that the Recipient’s children left Alaska on or about May 30, 2006 to visit with their maternal grandmother. Despite this, the Recipient listed the children as living with her on her May 30, 2006 application for Food Stamp, Temporary Assistance, and Medicaid benefits. She then told the Division’s Eligibility Technician on June 7, 2006, that the children were living with her. The children ended up staying with their grandmother and did not return to live with the Recipient.

Based upon those facts, the Division has alleged that the Recipient intentionally misrepresented that the children lived with her during her June 7, 2006 interview. The Recipient argued and testified that she did not intentionally misrepresent that the children were living with her because she thought the children were only going to visit their grandmother for a short time period, approximately ten days.

In order to resolve the factual issue of whether the Recipient’s undisputed June 7, 2006 misrepresentation was intentional, it is necessary to address the credibility of the various witnesses. This credibility determination is complicated by the passage of time. The events in this case took place in May through August 2006. The Division did not file this case until February 2012, almost six years later.

First, all of the witnesses were telephonic. It was not possible to physically see the witnesses to evaluate their expressions or body language. Second, none of the witnesses were inherently less than credible based on their telephonic demeanor. The only witness who provided vague or imprecise answers was Ms. P. However, that could easily be explained due to the passage of time. In addition, while there was certainly some hostility between the Recipient and the maternal grandmother, that hostility is understandable given that the maternal grandmother took custody of the Recipient’s children from her. Finally, all of the witnesses with the exception of the Division’s Eligibility Technician, Ms. Heath, had a personal bias.

The Recipient has both an economic motive, disqualification from future public assistance benefits and restitution requirements, and a personal motive, based upon the loss of her children to her mother, to be less than candid. Ms. H., who testified the children were originally only

going to visit the maternal grandmother for less than two weeks, is the Recipient's close personal friend and therefore has a personal motivation to be less than candid.

The maternal grandmother, Ms. S., has a personal motive, based upon her animosity to the Recipient, to be less than candid. Her testimony was that the children were coming to visit originally until the beginning of August. Ms. P, has a personal motive to be less than candid due to her close friendship with Ms. S. Ms. P's testimony stated that she did not recall whether the Recipient had been told that the children were going down to stay with the grandmother instead of merely visiting her, and that the children were going to visit their grandmother for an indefinite period until the Recipient had her life in order.

Finally, the grandmother testified that the children came to visit her without a return plane ticket. None of the other witnesses disputed this piece of testimony.

Taking all of these factors into account, the picture that emerges is that the Recipient sent her children to visit their maternal grandmother for the summer. Because the children went down without a return plane ticket, the Recipient and Ms. H.'s testimony that the visit was expected to be for only a short period (ten days per the Recipient, less than two weeks per Ms. H.) is simply not credible. If the visit was indeed planned for a duration of two weeks or less, it would have been reasonable for the children to have return plane tickets. Due to the lack of a return plane ticket, the grandmother's testimony that the children were going down for a planned visit until the first part of August is credible.⁷

It is clear that the Recipient made a misrepresentation to the Division during her June 7, 2006 interview regarding the persons in her household. She argued that this was not an intentional statement because her children were only expected to be gone for a short visit of approximately ten days. However, her argument does not pass muster for the following reasons:

1. At the time of her June 7, 2006 interview, the Recipient had been receiving public assistance benefits continuously since July 2004. On May 30, 2006, only a week before her June 7, 2006 interview, she signed an application where she stated she understood that statements made by her regarding persons in her home, both on the application, and any required interview, were required to be correct. Based upon her history of receiving public assistance benefits and her May 30, 2006 application, the Recipient was aware that she was required to provide truthful information to the Division during her interview regarding the persons who lived with her.
2. The children were not living with her and she affirmatively misrepresented they were living with her when she should have disclosed that they were temporarily not living with her.
3. Assuming that her misrepresentation was justified due to the short nature of the expected visit, the evidence shows that the children were not going to be gone for

⁷ Ms. P's testimony actually suggests that the grandmother was planning to keep the children indefinitely until the Recipient "got her stuff in order." However, the grandmother's testimony established that the "official" plan was for a limited visitation until the first part of August 2006.

a short period of time of less than two weeks, but were actually expected to be gone until the first part of August 2006, a period of approximately two months from their departure date of May 30, 2006. This meant that the Recipient knew her children were not living with her and would not be living with her for two entire benefit months (June and July 2006) at the time she told the Division that her children were living with her.

Consequently, the Division has met its burden of proof and established by clear and convincing evidence that the Recipient made an intentional misrepresentation, during her June 7, 2006 interview with the Division, by telling the Division that her children were living with her, when they were not.

B. Food Stamp Program.

Did the Recipient commit an Intentional Program Violation of the Food Stamp program by telling the Division during a June 7, 2006 application interview that her children were living with her, when they were not living with her?

As discussed above, the Recipient made an intentional misrepresentation during her June 7, 2006 interview, that her children were living with her when they were not. Because she made an intentional misrepresentation as part of the Food Stamp application process, she has committed a Food Stamp program Intentional Violation, as defined in federal regulation 7 C.F.R. § 273.16(c). The Division has therefore met its burden of proof, by clear and convincing evidence, and established the Recipient committed an Intentional Program Violation with regard to the Food Stamp program.

This is the Recipient's first Intentional Program Violation with regard to the Food Stamp program.

C. Temporary Assistance Program

Did the Recipient commit an Intentional Program Violation of the Temporary Assistance program by telling the Division during a June 7, 2006 application interview that her children were living with her, when they were not living with her?

As discussed above, the Recipient intentionally misrepresented that her children were living with her when they were not. However, unlike the Food Stamp program, in order to establish a Temporary Assistance Intentional Program Violation, the Division must prove not only that an intentional misrepresentation has been made, but also that the intentional misrepresentation must be of a material fact made "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." 7 AAC 45.580(n).

In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child living in her 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 May 30, 2006, she was a previous Temporary Assistance benefit recipient for the period from June 2004 through December 2004. As a previous Temporary Assistance benefit recipient, she was aware that having dependent children in her home was an eligibility requirement for those benefits.

The only conceivable purpose behind her intentional misrepresentation of her children's presence in her household was to establish her eligibility for the Temporary Assistance program, and to receive a Temporary Assistance monthly benefit for which she 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 her children were not living with her. This intentional misrepresentation of a material fact was made for the purpose of establishing her eligibility for Temporary Assistance benefits and receiving a benefit that she 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.

D. Medicaid Program.

Did the Recipient commit an Intentional Program Violation of the Medicaid program by telling the Division during a June 7, 2006 application interview that her children were living with her, when they were not living with her?

As discussed above, the Recipient intentionally misrepresented that her children were living with her when they were not. Like the Temporary Assistance Intentional Program Violation, in order to establish a Medicaid Intentional Program Violation, the Division must prove not only that an intentional misrepresentation has been made but also that intentional misrepresentation must be of a material fact made "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* AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a). 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.

When the Recipient applied for Medicaid benefits on May 30, 2006, she had been receiving Family Medicaid benefits since June 25, 2004. She was therefore aware that having dependent children in her home was an eligibility requirement for those benefits.

The only conceivable purpose behind her intentional misrepresentation regarding where her children were living was to have the Division believe that she had the children living with her, when they were not living with her, and therefore establish her continuing eligibility for the Family Medicaid benefits.

The Division has therefore met its burden of proof, by clear and convincing evidence, and established that the Recipient intentionally misrepresented a material fact, that the children were living with her when they were not. This intentional misrepresentation of a material fact was made for the purpose of establishing and maintaining her 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

A. Food Stamp Program.

1. The Recipient was aware of her obligation, as a Food Stamp recipient, to truthfully report what persons were residing in her household, as part of the Food Stamp application process.

2. During her June 7, 2006 eligibility interview, the Recipient intentionally stated her children were living with her when they were not. This was an intentional misrepresentation. Therefore, the Division has established, by clear and convincing evidence, that the Recipient committed a first Intentional Program Violation as defined by the applicable Food Stamp program regulations.

B. Temporary Assistance Program.

1. The Recipient was aware of her obligation, as a Temporary Assistance applicant, to truthfully report what persons were residing in her household, as part of the Temporary Assistance application process.

2. During her June 7, 2006 eligibility interview, the Recipient intentionally stated her children were living with her when they were not. This was an intentional misrepresentation of a material fact made for the purposes of establishing her Temporary Assistance eligibility. Therefore, the Division has established, by clear and convincing evidence, that the Recipient committed a first Intentional Program Violation as defined by the applicable Temporary Assistance regulations.

C. Medicaid Program.

1. The Recipient was aware of her obligation, as a Family Medicaid recipient, to truthfully report what persons were residing in her household, as part of the Medicaid application process.

2. During her June 7, 2006 eligibility interview, the Recipient intentionally stated her children were living with her when they were not. This was an intentional misrepresentation of a material fact made for the purposes of establishing and maintaining her Family Medicaid eligibility. Therefore, the Division has established, by clear and convincing evidence, that the Recipient committed an Intentional Program Violation as defined by the applicable Medicaid regulations.

DECISION

The Division has met its burden of proof, and shown by clear and convincing evidence, that the Recipient committed a first Intentional Program Violation with regard to the Food Stamp, Temporary Assistance, and Medicaid programs.

A. **Food Stamp Program.**

IT IS HEREBY ORDERED that, because this is her first Food Stamp Intentional Program Violation, the Recipient is penalized as follows:

The Recipient is disqualified from participation in the Food Stamp Program for a period of 12 months. The Food Stamp program disqualification period shall begin July 1, 2012. 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995). This disqualification applies only to the Recipient, and not to any other individuals who may be included in her household. 7 C.F.R. § 273.16(b)(11). For the duration of the disqualification period, the Recipient's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, the Recipient must report her income and resources as they may be used in these determinations. 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to the Recipient 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. 7 C.F.R. § 273.16(e)(9)(ii)

If overissued Food Stamp benefits have not been repaid, the Recipient or any remaining household members are now required to make restitution. 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii). If the Recipient disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a fair hearing. 7 C.F.R. § 273.15.

B. **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, her disqualification period shall begin July 1, 2012. If the Recipient 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. 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 her 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 her household. However, the Recipient must report her 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).

