

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

In the Matter of)	OAH No. 12-0368-ADQ
)	Division No.
C S)	Fraud Control Case No.
)	Food Stamp, Temporary Assistance
_____)	and Medicaid Programs

DECISION AND ORDER

I. Introduction

C S is a former Food Stamp¹, Temporary Assistance and Medicaid recipient. On September 4, 2012, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed a first time Intentional Program Violation of the Food Stamp, Temporary Assistance, and Medicaid programs.²

Ms. S’s hearing was held on October 11, 2012. Ms. S was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. S did not appear for the hearing and it was held in her absence.⁴ Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division. Amanda Holton, a Division Eligibility Technician, testified for the Division. The hearing was recorded.

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (“SNAP”). The program is still commonly referred to as the Food Stamp program.

² Ex. 3, pp. 4 - 22.

³ Ex. 1, p. 3; Ex. 4.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). 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.

The Alaska Medicaid Intentional Program Violation regulation, 7 AAC 100.912, does not contain specific procedures 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 the Food Stamp and Temporary Assistance programs, the hearing procedures required by those programs are also used for the alleged Intentional Program Violation of the Medicaid program.

This decision concludes that Ms. S committed a first Intentional Program Violation of the Food Stamp, Temporary Assistance, and Medicaid programs.

II. Facts

Ms. S has received Food Stamp, Temporary Assistance, and Family Medicaid benefits intermittently since 2003.⁵ She was receiving Food Stamp benefits for a multiple person household and Family Medicaid benefits in April 2012.⁶ She then applied for Temporary Assistance benefits on April 24, 2012. That application stated that there were five people in her household, Ms. S and her four minor children. As part of the application, Ms. S signed a statement that the information contained in the application was correct.⁷ However, at the time of her application, she did not have custody of any children. All four of the identified minor children had been living primarily with their father since early February 2012, with Ms. S's visitation limited to "[t]hree out of every four weekends."⁸

Ms. S's application was approved.⁹ She then received Temporary Assistance benefits for a five person family beginning in April 2012, and continued to receive both Food Stamp benefits for a multiple person household and Family Medicaid benefits.¹⁰

On July 27, 2012, the Division was informed that Ms. S did not have custody of her minor children.¹¹

The Division calculated that during the period from April through August 2012, Ms. S received \$1,297 in Food Stamp benefits, \$1,440 in Temporary Assistance benefits, and \$266.98 in Medicaid benefits that she was not entitled to receive.¹²

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹³ that Ms. S intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."¹⁴ It must be noted that

⁵ Ex. 10.

⁶ Ex. 10, pp. 4, 9.

⁷ Ex. 7, pp. 2, 4, 7.

⁸ Ex. 11, pp. 7 – 8.

⁹ Ex. 9.

¹⁰ Ex. 10, pp. 1, 4, 8 – 10.

¹¹ Ex. 2.

¹² Ex. 12.

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. § 273.16(c).

Food Stamp eligibility and benefit amounts are determined based, in part, on the number of persons residing in the Food Stamp household.¹⁵

The uncontradicted evidence shows that Ms. S listed her four children as living with her on her April 24, 2012 Temporary Assistance application. It is also uncontradicted that those same children were actually residing with their father at the time. Ms. S was therefore fully aware that her children were not living with her when she completed the application. Consequently, Ms. S intentionally misrepresented that her children were living with her on her application, when they were not. While the April 24, 2012 application was for Temporary Assistance and not Food Stamps, the effect that this intentional misrepresentation had with regard to the Food Stamp program is that Ms. S continued to receive Food Stamp benefits for a multiple person household, whereas if she had disclosed her actual household composition, her Food Stamp benefits would have been decreased to those for a one-person household.

The Division has therefore met its burden of proof and established that Ms. S made an intentional misrepresentation on her April 24, 2012 Temporary Assistance application which affected her Food Stamp benefits. As a result, she committed a first Intentional Program Violation of the Food Stamp program.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence¹⁶ that Ms. S intentionally misrepresented, concealed or withheld a material fact on her April 24, 2012 application “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”¹⁷ As discussed above, Ms. S intentionally misrepresented that her children were living with her when they were not. In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child living in her home.¹⁸ Whether there is a dependent child living in the home is therefore a material fact for the purpose of determining Temporary Assistance eligibility.

The Division must then prove that the intentional misrepresentation of the material fact was for the purposes of establishing or maintaining the household’s eligibility for Temporary Assistance benefits. Ms. S was aware, having received Temporary Assistance benefits

¹⁵ 7 C.F.R. § 273.10(e)(2)(i) and (ii)(A).

¹⁶ 7 AAC 45.585(e).

¹⁷ 7 AAC 45.580(n).

¹⁸ AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

intermittently since 2003, that having dependent children in her home was an eligibility requirement for those benefits. Based upon her awareness of this eligibility requirement, the only reason Ms. S would have intentionally misrepresented the presence of children in her home would have been to establish her eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that Ms. S intentionally misrepresented a material fact: 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. Ms. S has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

C. **Medicaid Program**

Unlike the Food Stamp and Temporary Assistance programs, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.¹⁹ When no standard of proof is specified, the general rule is that the “preponderance of the evidence” standard of proof applies.²⁰ However, the 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) or 7 AAC 46 (Food Stamp Program) if the facts involved arise from the same or related circumstances.”²¹ Because this case also involves alleged Food Stamp and Alaska Temporary Assistance Intentional Program Violations, based upon the same factual allegations, this decision will use the higher Food Stamp and Temporary Assistance Intentional Program Violation “clear and convincing evidence” standard of proof, instead of the lower “preponderance of the evidence” standard of proof.

The Alaska Medicaid program defines an Intentional Program Violation as follows:

- (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;^[22]

¹⁹ See 7 AAC 100.912.

²⁰ 2 AAC 64.290(e); *Amerada Hess Pipeline Corp. v. Alaska Pub. Util. Comm’n*, 711 P.2d 1170, 1179 n.14 (Alaska 1986).

²¹ 7 AAC 100.912(c).

²² 7 AAC 100.912(e).

As discussed above, the Recipient intentionally misrepresented that her children were living with her when they were not. As with 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 the misrepresentation was of a material fact and was made “for the purpose of establishing and maintaining an individual’s eligibility for Medicaid benefits.”²³

Ms. S was receiving Medicaid benefits under the Family Medicaid category.²⁴ In order for a household to qualify for Family Medicaid, among other requirements, there must be a dependent child residing in the household.²⁵ Whether there is a dependent child living in the home is therefore a material fact for the purposes of determining Family Medicaid eligibility.

While the April 24, 2012 application was for Temporary Assistance and not Family Medicaid, an effect that this intentional misrepresentation regarding dependent children had is that Ms. S continued to receive Family Medicaid benefits. If she had disclosed that her household did not contain any dependent children, she would have lost her eligibility for Family Medicaid benefits. When Ms. S applied for Temporary Assistance benefits on April 24, 2012, she was aware, having received Family Medicaid benefits intermittently since 2003, that having dependent children in her home was an eligibility requirement for those benefits. Based upon her awareness of this eligibility requirement, the only reason Ms. S would have intentionally misrepresented the presence of children in her home would have been to establish her eligibility for Family Medicaid benefits.

The Division has therefore met its burden of proof, by clear and convincing evidence, and established that Ms. S intentionally misrepresented a material fact. This misrepresentation was made for the purpose of establishing and maintaining her eligibility for Family Medicaid benefits. Ms. S therefore committed an Intentional Program Violation as defined by the Medicaid regulations.

IV. Conclusion and Order

A. Food Stamp Program

Ms. S has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12 month

²³ 7 AAC 100.912(e)(1).

²⁴ See AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

²⁵ 7 AAC 100.110(a).

period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.²⁶ The Food Stamp program disqualification period shall begin January 1, 2013.²⁷ This disqualification applies only to Ms. S, and not to any other individuals who may be included in her household.²⁸ For the duration of the disqualification period, Ms. S's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.²⁹

The Division shall provide written notice to Ms. S 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.³⁰

If over-issued Food Stamp benefits have not been repaid, Ms. S or any remaining household members are now required to make restitution.³¹ If Ms. S disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³²

B. The Alaska Temporary Assistance Program

Ms. S has 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.³³ If Ms. S is currently receiving Temporary Assistance benefits, her disqualification period shall begin January 1, 2013.³⁴ If Ms. S 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.³⁵ This disqualification applies only to Ms. S, and not to any other individuals who may be included in her household.³⁶ For the duration of the disqualification period, Ms. S's needs will not be considered when determining ATAP eligibility

²⁶ 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).

²⁷ 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 7 C.F.R. § 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).

²⁸ 7 C.F.R. § 273.16(b)(11).

²⁹ 7 C.F.R. § 273.11(c)(1).

³⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

³² 7 C.F.R. § 273.15.

³³ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁴ 7 AAC 45.580(f).

³⁵ 7 AAC 45.580(g).

³⁶ 7 AAC 45.580(e)(1).

and benefit amounts for her household. However, Ms. S must report her income and resources as they may be used in these determinations.³⁷

The Division shall provide written notice to Ms. S and the caretaker relative, if other than Ms. S, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁸

If over-issued Temporary Assistance benefits have not been repaid, Ms. S or any remaining household members are now required to make restitution.³⁹ If Ms. S disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.⁴⁰

C. Medicaid Program

Ms. S has committed an Intentional Program Violation of the Medicaid program. She is required to reimburse the Division for Medicaid benefits she received as a result of her Intentional Program Violation. If she has not reimbursed the Division, Ms. S is required to make restitution.⁴¹ If Ms. S disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.⁴²

Dated this 8th day of November, 2012.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁷ 7 AAC 45.580(e)(3).

³⁸ 7 AAC 45.580(k).

³⁹ 7 AAC 45.570(b).

⁴⁰ 7 AAC 45.570(l).

⁴¹ 7 AAC 100.910(a)(1).

⁴² 7 AAC 100.910(f).

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 23rd day of November, 2012.

By: Signed
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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