

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

In the Matter of)	
)	OAH No. 12-0503-ADQ
M G)	Agency No.
)	Fraud Control Case No.
_____)	Food Stamp and Medicaid Programs

DECISION AND ORDER

I. Introduction

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

Ms. G’s hearing was held on July 5, 2012. Ms. G was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. G did not appear for the hearing and it was held in her absence.⁴

William Schwenke, an investigator employed by the Agency’s Fraud Control Unit, participated by telephone and represented the Agency. Marlana Waldrip and Heidi Barnes testified by telephone on behalf of the Agency. The hearing was recorded.

This decision concludes that Ms. G committed a first Intentional Program Violation of the Food Stamp and Medicaid programs.

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. 2.

³ Ex. 1, p. 3; Ex. 3.

⁴ The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. *See* 7 C.F.R. § 273.16(e)(4). 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 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 program, the hearing procedures required by the Food Stamp program are also used for the alleged Intentional Program Violation of the Medicaid program.

II. Facts

Ms. G was receiving Food Stamp and Medicaid benefits in May 2005.⁵ She applied to renew those benefits on May 6, 2005.⁶ As part of the application, Ms. G signed a statement, under penalty of perjury, that the information contained in the application was correct.⁷ The application contained a question asking about her income sources, which specifically mentioned Workers' Compensation income. Ms. G's answer to the question mentioned her Social Security income payments, but it did not identify her as receiving Workers' Compensation payments.⁸ However, at the time of her renewal application, she was receiving \$266.98 in Workers' Compensation payments every two weeks.⁹ She received Workers' Compensation payments, in varying amounts, continuously from January 2004 through May 2008.¹⁰

Ms. G's renewal application was approved.¹¹ The Food Stamp approval notice informed Ms. G that she was required to tell the Agency if her monthly household income exceeded \$2,554, and that her Food Stamp benefit amount was based upon her Social Security income, her public assistance income, and her husband's income.¹² The Medicaid renewal notice informed her that her eligibility was approved based upon her Social Security income and her husband's income.¹³ Ms. G's household received Food Stamp and Medicaid benefits from June 2005 through May 2006 as a result.¹⁴

Ms. G applied to renew her Food Stamp and Medicaid benefits on May 5, 2006.¹⁵ The application again contained a question asking about her income sources, specifically mentioning Workers' Compensation income. Again, Ms. G's answer to the question, made under penalty of perjury,¹⁶ mentioned her Social Security income payments, but omitted her Workers' Compensation payments.¹⁷ Ms. G's renewal application was approved.¹⁸ Her household received Food Stamp and Medicaid benefits from June 2006 through May 2007 as a result.¹⁹

⁵ Ex. 10, pp. 2, 4.

⁶ Ex. 7, pp. 1- 4.

⁷ Ex. 7, p. 4.

⁸ Ex. 7, p. 3.

⁹ Ex. 11, pp. 8 – 9; Ex. 12, pp. 6 – 7.

¹⁰ Exs. 12, 13, 14.

¹¹ Ex. 9, pp. 1, 3.

¹² Ex. 9, p. 1.

¹³ Ex. 9, p. 3.

¹⁴ Ex. 9, pp. 1, 3; Ex. 10, pp. 2, 4.

¹⁵ Ex. 7, pp. 10 – 14.

¹⁶ Ex. 7, p. 13.

¹⁷ Ex. 7, p. 12.

Ms. G applied to renew her Food Stamp and Medicaid benefits once more on May 23, 2007.²⁰ She supplied the Agency with a copy of an April 2007 bank statement on May 23, 2007, as part of her application.²¹ On June 6, 2007, the Agency eligibility technician (“ET”), who was processing Ms. G’s application, noticed that Ms. G had an April 13, 2007 deposit of \$495.87 on that bank statement.²² She investigated and found out that Ms. G was receiving Workers’ Compensation payments.²³ Ms. G told the ET in a telephone call that she knew that if she reported those payments, that she would not be eligible for public assistance benefits.²⁴ The Agency then initiated a fraud investigation which culminated in this case.²⁵

The Agency calculated that during the period from February 2006 through May 2007, Ms. G received \$3,646 in Food Stamp benefits and \$23,462.30 in Medicaid benefits that she was not entitled to receive.²⁶

III. Discussion

A. Food Stamp Program

In order to prevail, the Agency must prove by clear and convincing evidence²⁷ that Ms. G committed an Intentional Program Violation of the Food Stamp program: that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts”²⁸ with regard to either of her May 2005 or May 2006 renewal applications.²⁹ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.³⁰

The evidence is clear that Ms. G did not list her Workers’ Compensation income on either of her May 2005 or May 2006 renewal applications, despite there being an explicit

¹⁸ Ex. 9, pp. 5, 7.

¹⁹ Ex. 10, pp. 2, 4.

²⁰ Ex. 8, p. 4.

²¹ Ex. 14.

²² Waldrip testimony; Ex. 14.

²³ Ex. 8, p. 6; Waldrip testimony.

²⁴ Waldrip testimony.

²⁵ Ex. 6.

²⁶ Ex. 15.

²⁷ 7 C.F.R. § 273.16(e)(6).

²⁸ 7 C.F.R. § 273.16(c).

²⁹ The passage of time since the applications (May 2005 and May 2006) raises the issue of whether the Agency’s ability to pursue this Intentional Program Violation case is time-barred. However, the facts show that the Agency did not have the information placing it on notice of the Intentional Program Violations until May 23, 2007. This case was filed in June 2012, slightly more than five years after May 23, 2007. Because AS 09.10.120, a six year statute of limitations, applies, this case would not be time-barred until May 2013. *See Agen v. State, Dep’t of Revenue*, 945 P.2d 1215, 1219 (Alaska 1997).

³⁰ 7 C.F.R. § 273.10(e)(1)(i)(A).

question regarding Workers' Compensation payments on both of the applications. Ms. G admitted to Ms. Waldrip that she knew that if she reported her Workers' Compensation income, that she would not be eligible for public assistance benefits. This demonstrates that her omission was intentional. The Agency has therefore met its burden of proof and established that Ms. G made an intentional misrepresentation on both her 2005 and 2006 renewal applications. Ms. G has committed a first Intentional Program Violation of the Food Stamp program.

B. Medicaid Program

Unlike the Food Stamp program, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.³¹ When no standard of proof is specified, the general rule is that the "preponderance of the evidence" standard of proof applies.³² 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 46 (Food Stamp Program) if the facts involved arise from the same or related circumstances."³³ 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, 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;^[34]

Ms. G's admission she knew that she would not be eligible for public assistance benefits if she reported her Workers' Compensation income, satisfies both elements: she intentionally concealed her Workers' Compensation income for the purposes of maintaining her Medicaid benefits. The Agency has therefore met its burden of proof and established that Ms. G committed an Intentional Program Violation of the Medicaid program.

³¹ See 7 AAC 100.912.

³² *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

³³ 7 AAC 100.912(c).

³⁴ 7 AAC 100.912(e).

IV. Conclusion and Order

A. Food Stamp Program

Ms. G 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 period, and is required to reimburse the Agency for benefits that were overpaid as a result of the Intentional Program Violation.³⁵ The Food Stamp program disqualification period shall begin October 1, 2012.³⁶ This disqualification applies only to Ms. G, and not to any other individuals who may be included in her household.³⁷ For the duration of the disqualification period, Ms. G'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.³⁸

The Agency shall provide written notice to Ms. G 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.³⁹

If over issued Food Stamp benefits have not been repaid, Ms. G or any remaining household members are now required to make restitution.⁴⁰ If Ms. G disagrees with the Agency's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.⁴¹

B. Medicaid Program

Ms. G has committed an Intentional Program Violation of the Medicaid program. She is required to reimburse the Agency for Medicaid benefits she received as a result of her Intentional Program Violation. If she has not reimbursed the Agency, Ms. G is required to make restitution.⁴² If Ms. G disagrees with the Agency's calculation of the amount of overissuance to

³⁵ 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).

³⁶ 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).

³⁷ 7 C.F.R. § 273.16(b)(11).

³⁸ 7 C.F.R. § 273.11(c)(1).

³⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

⁴¹ 7 C.F.R. § 273.15.

⁴² 7 AAC 100.910(a)(1).

be repaid, she may request a hearing on that limited issue.⁴³

Dated this 13th day of August, 2012.

Signed

Lawrence A. Pederson
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 24th day of August, 2012.

By: Lawrence A. Pederson

Title/Agency: ALJ, OAH, DOA

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

⁴³ 7 AAC 100.912(f).