

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

In the Matter of:)	
)	OAH No. 12-0608-ADQ
V C)	Former OHA Case No
)	FCU Case No.
_____)	DPA Case No.

DECISION AND ORDER

I. Introduction

The issues in this case are whether V C committed Intentional Program Violations (IPVs) of (1) the Alaska Temporary Assistance Program (ATAP); and/or (2) the Supplemental Nutrition Assistance Program¹ (SNAP) by failing to inform the Division of Public Assistance (Division or DPA) of her receipt of certain child support payments made directly to her by her former husband.

Ms. C's hearing was held on June 6, 2012. The hearing was recorded. Ms. C was provided advance notice of the hearing by both certified mail and standard First Class mail.² Ms. C did not appear for her hearing, however, and it was therefore held in her absence.³

The Division was represented at hearing by Kandi Stewart, an investigator employed by the Division's Fraud Control Unit. Cammie Lafon, a DPA Eligibility Technician, and E C, Ms. C's ex-husband, testified on behalf of the Division. All offered testimony and exhibits were admitted into evidence. The record was closed at the conclusion of the hearing.

This decision concludes that the Division proved by clear and convincing evidence that Ms. C committed IPVs of both benefit programs (ATAP and SNAP).

II. Facts

Ms. C began receiving ATAP and SNAP benefits in November 2007.⁴ At that time Ms. C was separated from her husband and he was paying her rent.⁵ The couple initiated divorce

¹ In 2008 Congress amended the Food Stamp Act, at which time Congress changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 1, p. 3; Ex. 3.

³ Once proper notice has been given, the SNAP and ATAP program regulations allow a hearing to be held without the participation of the household member alleged to have committed the Intentional Program Violation. *See* 7 CFR § 273.16(e)(4) (SNAP); 7 AAC § 45.585 (ATAP).

⁴ Ex. 9.

proceedings during this period.⁶ On December 20, 2007, the Superior Court ordered that Mr. C pay Ms. C interim child support of \$1,179.39 per month, and that Mr. C also pay Ms. C \$1,000.00 of his monthly military housing allowance.⁷ During a hearing on February 21, 2008, the Superior Court changed Mr. C's monthly payments to Ms. C to \$1,100.00 for child support and \$1,000.00 of his military housing allowance for the month of March 2008 only; beginning April 1, 2008 the child support payment was changed to \$1,472.19.⁸ Mr. C made numerous support payments to Ms. C from October 2007 through February 29, 2008.⁹ He also made child support payments to Ms. C during the months of April 2008 forward.¹⁰

On February 28, 2008 Ms. C applied to renew her ATAP and SNAP benefits.¹¹ In her application Ms. C stated that she did not receive child support payments and that Mr. C covered her rent of \$1,550 in lieu of child support.¹² That application was signed under penalty of perjury.¹³

On March 1, 2008 Ms. C submitted a "Change Report Form" to the Division stating that she had lost her job. That form did not indicate that she received any child support.¹⁴ Ms. C's renewal application was subsequently approved for both ATAP and SNAP benefits; the eligibility determination considered certain earned income reported by Ms. C, but did not consider the unreported child support income.¹⁵

Ms. C received ATAP benefits for the months of March through May 2008 in the total amount of \$3,098.¹⁶ Ms. C also received SNAP benefits for the months of March through May 2008 in the total amount of \$1,042.¹⁷

⁵ Ex. 10, p. 3.

⁶ See Ex. 19.

⁷ Ex. 19, p. 4.

⁸ Ex. 19, p. 13.

⁹ Mr. C paid Ms. C \$1,650.00 on October 2, 2007; \$300.00 on October 15, 2007; \$250.00 on December 4, 2007; \$1,511.84 on December 28, 2007; \$1,900 on February 1, 2008; and \$2,100.00 on February 29, 2008. See Ex. 16 at pp. 2 - 8; Ex. 17 at pp. 4, 14, 15, and 47; and Ex. 18 at pp. 19, 24, and 28. In addition, Mr. C made rental payments on behalf of Ms. C during this period; these payments, in the amount of \$1,550.00 each, were made directly to a real estate company on November 1, 2007, December 1, 2007, and January 2, 2008, See Ex. 17, pp. 9, 15, and 23.

¹⁰ Ex. 15, p. 1.

¹¹ Ex. 7, pp. 1 - 10.

¹² Ex. 7, p. 3.

¹³ Ex. 7, p. 4.

¹⁴ Ex. 8.

¹⁵ Ex. 11, pp. 1 - 5.

¹⁶ Ex. 9, p. 1.

¹⁷ Ex. 9, p. 2.

III. Discussion

A. The Supplemental Nutritional Assistance Program (SNAP)

In order to prevail, the Division must prove by clear and convincing evidence¹⁸ that Ms. C committed an Intentional Program Violation of SNAP: that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts”¹⁹ with regard to her SNAP benefits.

SNAP eligibility and benefits are based in large part on a household’s income.²⁰ It is undisputed that Ms. C did not list her child support income on her February 28, 2008 application. Her statement on the application that Mr. C was covering her rent in lieu of child support is clearly incorrect; at the February 21, 2008 hearing the court ordered Mr. C to pay Ms. C *both* child support *and* a portion of his military housing allowance, and his receipts and bank records indicate that he in fact did so. Indeed, the court hearing setting the child support amount was held on February 21, 2008, only a week prior to Ms. C’s February 28, 2008 application for benefits.

It is also undisputed that Ms. C did not inform the Division of her child support income on her March 1, 2008 report of change. However, the court order for child support was also in effect at the time of that report.

Based on the foregoing it is clear that Ms. C failed to inform the Division of her child support income on her initial application and on her report of change. The remaining issue is whether her failure to inform the Division of this income was intentional.

Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. However, Ms. C failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.²¹ Based on the amount and number of payments made by Mr. C to Ms. C, there is simply no way that the fact she was receiving these payments could have slipped her mind. Likewise, given the clarity of the Division’s application and renewal forms regarding the need to report all income, there is

¹⁸ 7 C.F.R. § 273.16(e)(6).

¹⁹ 7 C.F.R. § 273.16(c).

²⁰ 7 C.F.R. § 273.10(e)(1)(i)(A).

²¹ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct”

simply no way that Ms. C could have completed the forms without being consciously aware that she was omitting important information as to the amount of her income. The evidence is therefore clear and convincing that Ms. C's failure to disclose her receipt of the child support payments at issue was intentional.

In summary, the Division has met its elevated burden of proof and established that Ms. C intentionally misrepresented, on her February 28, 2008 application and on her March 1, 2008 report of change, that she was not receiving child support. Ms. C therefore committed a first Intentional Program Violation of SNAP.

B. The Alaska Temporary Assistance Program (ATAP)

In order to demonstrate that Ms. C committed an Intentional Program Violation of ATAP, the Division must prove, by clear and convincing evidence,²² that Ms. C intentionally misrepresented, concealed or withheld a material fact on her February 2008 application or failed to report a change in her income “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits . . . or for increasing or preventing a reduction in the amount of the benefit.”²³

ATAP eligibility and benefit amounts are determined based in large part on a household’s income.²⁴ ATAP counts child support payments as part of a household’s income.²⁵

The discussion regarding Ms. C’s SNAP IPV in Section III(A), above demonstrates that Ms. C misrepresented, concealed, or failed to disclose, on her February 28, 2008 application and on her March 1, 2008 report of change,²⁶ that she was receiving child support. The same discussion in Section III(A), above also demonstrates that Ms. C’s failure to disclose her receipt of the child support payments at issue was intentional. Thus, the first two elements of an ATAP IPV have been proven.

The next element the Division must prove in order to establish an ATAP IPV is that Ms. C’s intentional misrepresentation involved a material fact.²⁷ Courts differ on whether it is

²² 7 AAC 45.585(e).

²³ 7 AAC 45.580(n). *Also see* 7 AAC 45.270 (ATAP recipients are required to notify the Division within 10 days of the date they become aware of the fact that their unearned income changes by \$25 or more.

²⁴ 7 AAC 45.470; 7 AAC 45.525.

²⁵ 7 AAC 45.400(f).

²⁶ *See* February 29, 2008 check in the amount of \$2,100.00 at Ex. 18, p. 28.

²⁷ Research indicates that the Alaska Supreme Court has not yet stated its own *generally applicable* definition of materiality. In the context of motions for summary judgment, the United States Supreme Court has stated that a fact is deemed material if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In the context of summary adjudication

necessary to prove the amount of benefits which a welfare recipient would have been entitled to receive, had he or she properly declared the unreported income, in order to show that the nondisclosure or concealment was intentional.²⁸

ATAP bases its financial eligibility and benefit levels in large part on the income of the household members.²⁹ For those courts following the less onerous definition of materiality, this fact alone would be sufficient. However, in this case the Division went further and calculated that, as a result of her concealment or withholding of her income from child support, Ms. C received \$1,042.00 in SNAP benefits and \$3,098.00 in ATAP benefits that she was not legally entitled to receive.³⁰ This evidence satisfies even the most rigorous definition of materiality.

In summary, by withholding / failing to disclose her receipt of child support Ms. C effectively omitted her child support income from being counted for eligibility and benefit level purposes. Ms. C's concealment of her child support income was therefore material.

The last element that the Division must prove in order to establish an ATAP IPV is that Ms. C's concealment or failure to report her receipt of child support to the Division was for the purpose of establishing or maintaining her eligibility for ATAP benefits, or for increasing or preventing a reduction in the amount of her ATAP benefits.³¹ This again requires a determination of Ms. C's intent. For the reasons previously stated in Section III(A) at page 4, above, there was no reason for Ms. C not to report the circumstances at issue here other than to maintain her eligibility for ATAP benefits and/or to prevent a reduction in the amount of her ATAP benefits. The Division has thus carried its burden and proven the fourth and last element of its ATAP IPV case against Ms. C by clear and convincing evidence.³² This is Ms. C's first Intentional Program Violation of the Alaska Temporary Assistance Program.

IV. Conclusion and Order

A. The Supplemental Nutritional Assistance Program (SNAP)

the Alaska Supreme Court has stated that a material fact is one which, if other than as asserted, will make a difference in the outcome of the case. *See Sonneman v. State*, 960 P.2d 632, 635-636 (Alaska 1998), *citing Whaley v. State*, 438 P.2d 718, 720 (Alaska 1968).

²⁸ *See State v. Edmondson*, 2000 WL 770510 (Ohio App. 2nd Dist. 2000) (holding that it is not necessary to prove that an overpayment occurred); *see also People v. Hunter*, 315 N.E.2d 436, 358 N.Y.S.2d 360 (N.Y. 1974) (holding that proof must be introduced to show the amount of assistance, if any, to which the recipient would have been entitled had the true amount of income been reported).

²⁹ 7 AAC 45.470; 7 AAC 45.525.

³⁰ *See Affidavit of M G* at Ex. 13, pp. 1-2.

³¹ 7 AAC 45.580(n).

³² 7 AAC 45.580(n).

Ms. C has committed a first time SNAP Intentional Program Violation. She is therefore disqualified from receiving SNAP benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³³ The SNAP disqualification period shall begin November 1, 2012.³⁴ This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.³⁵ For the duration of the disqualification period, Ms. C's needs will not be considered when determining SNAP eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.³⁶

The Division shall provide written notice to Ms. C 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.³⁷

If over-issued SNAP benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.³⁸ If Ms. C disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.³⁹

B. The Alaska Temporary Assistance Program (ATAP)

Ms. C has committed a first time ATAP Intentional Program Violation. She is therefore disqualified from participation in ATAP for a period of six months. If Ms. C is currently receiving ATAP benefits, her disqualification period shall begin November 1, 2012. If Ms. C is not currently an ATAP recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.⁴⁰ This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.⁴¹ For the duration of the disqualification period, Ms. C's needs will not be considered when determining ATAP eligibility

³³ 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).

³⁴ 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).

³⁵ 7 C.F.R. § 273.16(b)(11).

³⁶ 7 C.F.R. § 273.11(c)(1).

³⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁹ 7 C.F.R. § 273.15.

⁴⁰ AS 47.27.015(e); 7 AAC 45.580(c) and (d); 7 AAC 45.580(f) and (g).

⁴¹ 7 AAC 45.580(e)(1).

and benefit amounts for her household. However, Ms. C must report her income and resources as they may be used in these determinations.⁴²

The Division shall provide written notice to Ms. C and the caretaker relative, if other than Ms. C, of the Temporary Assistance benefits they will receive during the period of disqualification.⁴³

If over-issued ATAP benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.⁴⁴ If Ms. C disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.⁴⁵

Dated this 7th day of September, 2012.

Signed

Jay Durych
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 18th day of September, 2012.

By: *Signed*

Name: Jay D. Durych
Title: Administrative Law Judge

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

⁴² 7 AAC 45.580(e)(3).

⁴³ 7 AAC 45.580(k).

⁴⁴ 7 AAC 45.570(a).

⁴⁵ 7 AAC 45.570(l).