

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

In the Matter of)	
)	OAH No. 12-0609-ADQ
F H)	Former OHA Case No.
)	DPA Fraud Control Case No.
_____)	ATAP and SNAP programs

DECISION AND ORDER

I. Introduction

F H received Alaska Temporary Assistance Program (ATAP) and Supplemental Nutrition Assistance Program (SNAP)¹ benefits in 2011. On January 30, 2012, the Department of Health and Social Services, Division of Public Assistance (DPA or Division) initiated this Administrative Disqualification case against Ms. H, alleging that she had committed a first time Intentional Program Violation of both the ATAP and SNAP programs. This decision concludes that Ms. H committed a first Intentional Program Violation of the ATAP and SNAP programs by failing to declare certain child support payments received directly by her.

II. Facts

Ms. H was the single parent of two minor children in 2011. She applied for ATAP and SNAP benefits on February 15, 2011 because her husband had left her and she did not have a job.² As part of the application Ms. H signed a statement, under penalty of perjury, that the information contained in the application was correct.³ The application contained a question asking whether she received child support. Ms. H answered the question “no.”⁴ However, Ms. H had been receiving monthly child support payments for her oldest child in the amount of at least \$468.92 per month, paid directly to her by the State of Nevada, since December 2010; these payments continued through September 2011.⁵

¹ Congress amended the Food Stamp Act in 2008. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (“SNAP”). This decision uses the new (“SNAP”) terminology.

² Ex. 7, pp. 1- 8; H testimony.

³ Ex. 7, p. 8.

⁴ Ex. 7, p. 4.

⁵ Ms. H received a minimum of two child support checks per month in the amount of \$234.46 from the State of Nevada each month during this time period. *See* Ex. 13, pp. 3 – 5.

Ms. H's application was approved.⁶ She subsequently received ATAP benefits for the months of February and March 2011 in the total amount of \$972.⁷ She also received SNAP benefits for the months of February through July 2011 in the total amount of \$1,397.⁸

Ms. H applied to renew her SNAP benefits on July 22, 2011. Ms. H again stated that she had two minor children in her household and that she did not receive child support payments. This application was also signed under penalty of perjury.⁹ As part of the application process Ms. H provided the Division with a copy of a bank statement dated May 31, 2011 which showed deposits from the State of Nevada.¹⁰ The DPA eligibility technician who was processing Ms. H's application asked Ms. H about the deposits, and Ms. H informed her that the payments were child support payments for her son, which she had been receiving for eight years.¹¹ The eligibility technician then initiated a fraud investigation which culminated in this case.¹²

Ms. H's hearing was held on March 22, 2012 and June 20, 2012. She participated telephonically, represented herself, and testified on her own behalf. Dean Rogers, an investigator employed by the DPA Fraud Control Unit, participated in person and represented the Division. Dwynda Kelly, Shenandoah Elyard, and Michael Giovanelli (all DPA employees) testified telephonically on behalf of the Division. The hearing was recorded.

Ms. H acknowledged at hearing that she did not list the child support payments at issue on either her February or July applications. However, she testified that these omissions were not intentional. She stated that she was under a great deal of stress due to her family situation, and that this affected how she completed the applications. She stated that she informed the eligibility technician when she applied for benefits that she was not seeking financial assistance for her oldest son because she received child support for him. She stated that the eligibility technician told her that she had to list her oldest child on the application anyway. Finally, she stated that she did not view the child support as income because she used it to pay for transportation expenses for the child's visitation with her ex-husband.¹³

Ms. H's testimony was not credible for several reasons. First, her applications were carefully filled out. For example, on her February application, she initially wrote down \$20,000 for

⁶ Ex. 9.

⁷ Ex. 16, p. 2.

⁸ Ex. 16, p. 1.

⁹ Ex. 10, pp. 1- 4.

¹⁰ Ex. 11, p. 1.

¹¹ Ex. 12; Elyard testimony.

¹² Ex. 2.

¹³ H testimony.

the value of her car, which was then crossed out and \$17,000 substituted; as to her utility costs, she made sure to specify that she incurred both internet and cable charges.¹⁴ Second, the “Your Rights and Responsibilities” attachment to the application form, which Ms. H acknowledged having read as part of the application, explicitly states that “[a]ny child support payments given or paid to you while receiving Alaska Temporary Assistance benefits must be reported and turned over to the State immediately.”¹⁵ Thus, she was explicitly notified that *all* child support income needed to be reported.

III. Discussion

A. Supplemental Nutrition Assistance Program

In order to prove that Ms. H committed an Intentional Program Violation of SNAP, the Division must prove by clear and convincing evidence¹⁶ that Ms. H “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to either her February or July applications, and that this was done intentionally.¹⁷

SNAP eligibility and benefits are based in large part on a household’s income.¹⁸ It is undisputed that Ms. H failed to list her child support on either her February or July applications. Her testimony that she did not intentionally omit her child support payments from those applications was not credible for the reasons discussed above. The Division has therefore met its burden of proof and established that Ms. H intentionally misrepresented that she was not receiving child support on both her February and July 2011 benefit applications. Ms. H therefore committed a first Intentional Program Violation of SNAP.

B. Alaska Temporary Assistance Program

In order to prove that Ms. H committed an Intentional Program Violation of ATAP, the Division must prove by clear and convincing evidence¹⁹ that Ms. H intentionally misrepresented, concealed or withheld a material fact on either her February or July applications “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.”²⁰

¹⁴ Ex. 7, pp. 5 – 6.

¹⁵ Ex. 7, p. 10.

¹⁶ 7 C.F.R. § 273.16(e)(6).

¹⁷ 7 C.F.R. § 273.16(c).

¹⁸ 7 C.F.R. § 273.10(e)(1)(i)(A).

¹⁹ 7 AAC 45.585(e).

²⁰ 7 AAC 45.580(n).

ATAP eligibility and benefit levels are based in large part on a household's income.²¹ Under ATAP, child support payments are counted as part of a household's income.²² It is undisputed that Ms. H did not list her child support on either her February or July applications. Her testimony that she did not intentionally omit her child support payments from those applications was not credible for the reasons discussed above. The Division has therefore shown that Ms. H intentionally misrepresented that she was not receiving child support.

The next item the Division must prove is that Ms. H's intentional misrepresentation involved a material fact. The child support payments were material because (as noted above) ATAP bases its financial eligibility and benefit levels in large part on the income of the household members.²³ By misrepresenting her receipt of child support, Ms. H effectively omitted her child support income from being counted for eligibility and benefit level purposes. The Division has therefore shown that Ms. H intentionally concealed a material fact (*i.e.*, her receipt of child support income).

Finally, the Division must prove that the intentional misrepresentation of the material fact was made for the purposes of establishing or maintaining the household's eligibility for ATAP. The only reason Ms. H would have intentionally concealed her child support income would have been to establish ATAP eligibility or to receive ATAP benefits in a higher amount than that to which she would otherwise have been entitled. Accordingly, the Division has established this final element of its case.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. H committed an Intentional Program Violation as defined by the Alaska Temporary Assistance Program regulations.²⁴ This is Ms. H's first Intentional Program Violation with regard to the Alaska Temporary Assistance Program.

IV. Conclusion and Order

A. Supplemental Nutrition Assistance Program

Ms. H has committed a first time Intentional Program Violation of SNAP. 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 to her as a result of her Intentional Program Violation.²⁵

²¹ 7 AAC 45.470; 7 AAC 45.525.

²² 7 AAC 45.400(f).

²³ 7 AAC 45.470; 7 AAC 45.525.

²⁴ 7 AAC 45.580(n).

²⁵ 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).

The SNAP disqualification period shall begin October 1, 2012.²⁶ This disqualification applies only to Ms. H and not to any other individuals who may be included in her household.²⁷ For the duration of the disqualification period, Ms. H's needs will not be considered when determining SNAP eligibility and benefit amounts for her household. However, Ms. H must report her income and resources as they may be used in these determinations.²⁸

The Division shall provide written notice to Ms. H 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.²⁹

If over-issued SNAP benefits have not been repaid, Ms. H or any remaining household members are now required to make restitution.³⁰ If Ms. H disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³¹

B. Alaska Temporary Assistance Program

Ms. H has committed a first time Intentional Program Violation of the Alaska Temporary Assistance Program. She is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.³² If Ms. H is currently receiving Alaska Temporary Assistance Program benefits, her disqualification period shall begin October 1, 2012.³³ If Ms. H is not currently receiving Alaska Temporary Assistance Program benefits, her disqualification period shall be postponed until she applies for and is found eligible for ATAP benefits.³⁴ This disqualification applies only to Ms. H, and not to any other individuals who may be included in her household.³⁵ For the duration of the disqualification period, Ms. H's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. H must report her income and resources as they may be used in these determinations.³⁶

²⁶ 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).

²⁷ 7 C.F.R. § 273.16(b)(11).

²⁸ 7 C.F.R. § 273.11(c)(1).

²⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

³¹ 7 C.F.R. § 273.15.

³² A.S. 47.27.015(e)(1).

³³ 7 AAC 45.580(f).

³⁴ 7 AAC 45.580 (g).

³⁵ 7 AAC 45.580(e)(1).

³⁶ 7 AAC 45.580(e)(3).

The Division shall provide written notice to Ms. H and the caretaker relative, if other than Ms. H, of the Alaska Temporary Assistance Program benefits they will receive during the period of disqualification.³⁷

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

Dated this 3rd day of August, 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 14th day of August, 2012.

By: Jay Durych

Title/Agency: ALJ, OAH, DOA

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

³⁷ 7 AAC 45.580(k).

³⁸ 7 AAC 45.570(a).

³⁹ 7 AAC 45.570(l).