

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

In the Matter of	)	OAH No. 12-0823-ADQ
	)	Division No.
	)	Fraud Control Case No.
T M. S	)	Food Stamp and Temporary Assistance
_____	)	Programs

**DECISION AND ORDER**

**I. Introduction**

Until recently, T M. S was a recipient of Food Stamps<sup>1</sup> and Alaska Temporary Assistance benefits. On November 2, 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 (IPV) of the Food Stamp and Temporary Assistance programs.<sup>2</sup>

Ms. S's hearing took place on December 4, 2012. She participated telephonically and testified on her own behalf. Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Division, also testified for the Division. The hearing was recorded.

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

**II. Facts**

Ms. S has received Food Stamp and Temporary Assistance benefits in most months since 2001.<sup>3</sup> On October 4, 2011, she completed and turned in two forms in connection with those benefits: an Eligibility Review Form to continue Food Stamp benefits she was already receiving, and an Application for Service to re-start Temporary Assistance, which she had not been receiving since earlier that year.<sup>4</sup> Both forms asked for a listing of all people living with the applicant. On both forms, Ms. S wrote in her own name and the names of three children,

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<sup>1</sup> 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.

<sup>2</sup> Ex. 3.

<sup>3</sup> Ex. 10.

<sup>4</sup> Ex. 7; Holton testimony.

including K S-X.<sup>5</sup> Indeed, on the application form she entered K in two places, once when asked to list “people living in your home” and again when asked to list “children . . . in your household.”<sup>6</sup> In fact, however, K had left Ms. S’s home for Georgia in August, and she did not live with Ms. S during the 2011-2012 school year.<sup>7</sup>

Ms. S signed the both forms, certifying that the information they contained was correct.<sup>8</sup> She was interviewed as part of the renewal and application process, and during the interview an eligibility technician went over her rights and responsibilities, including the responsibility to report when people move into and out of the home.<sup>9</sup> Although the details of the discussion were not established, it appears that the number of people in the home was specifically discussed during the interview.<sup>10</sup>

Ms. S’s Food Stamps were renewed, and her Temporary Assistance application was approved, based on the information she supplied.<sup>11</sup> Benefits were paid through April of 2012 on the basis of this information.<sup>12</sup>

Ms. S says that she listed K on her applications in error, “out of habit.”<sup>13</sup> She says that on two occasions—one later in October, one in February—she went to the Division’s office and turned in change forms to remove K from the household roster.<sup>14</sup> She also says that in May she went in again and submitted a third change form to add K back to the household, since she had returned.<sup>15</sup> The Division has no record of receiving any of these forms.<sup>16</sup> Ms. S says that she made copies of the first two change forms, but she has lost them.<sup>17</sup>

In response to an anonymous tip in early April of 2012, the Division initiated a fraud investigation which culminated in this case.<sup>18</sup> In September of 2012 the Division’s Fraud

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<sup>5</sup> Ex. 7, pp. 1, 10.

<sup>6</sup> *Id.*, pp. 10, 15.

<sup>7</sup> Ex. 11; S testimony.

<sup>8</sup> Ex. 7, pp. 4, 16. Interestingly, she mistakenly dated one of the forms 00/00/04, which happens to be K’s birth date. This is suggestive that she was thinking about K when she signed the certification.

<sup>9</sup> Ex. 8; Holton testimony.

<sup>10</sup> Ex. 8, the case note on the interview, indicates a discussion of the household receiving four permanent fund dividends that month. This indicates that Ms. S mentioned K’s income as being income of a person in the household.

<sup>11</sup> Ex. 9.

<sup>12</sup> Ex. 10.

<sup>13</sup> S testimony.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Jennings testimony.

<sup>17</sup> S testimony.

<sup>18</sup> Exs. 1, 2.

Control Unit interviewed Ms. S. Initially, the investigator went over the two forms from October of 2011 with her, and then asked if K was a member of the household. Ms. S stated that she was. Only when the investigator showed Ms. S school records demonstrating that K had left Anchorage for the 2011-2012 school year did Ms. S go on to admit that the application had been inaccurate, but to insist that she had later submitted a change form.<sup>19</sup>

The Division calculated that during the period from October 2011 through April 2012, Ms. S received \$2,188 in Food Stamp and Temporary Assistance benefits that she was not entitled to receive.<sup>20</sup>

There is no evidence that Ms. S has ever previously been found to have committed an IPV in either program at issue in this case.

### **III. Discussion**

#### ***A. Food Stamp Program***

In order to prevail, the Division must prove that Ms. S 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” with regard to her eligibility.<sup>21</sup> It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s composition.<sup>22</sup>

The Division must prove these elements by clear and convincing evidence.<sup>23</sup> 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.”<sup>24</sup> Intent can be deduced from circumstantial evidence.<sup>25</sup>

In this case, there is no dispute that Ms. S filled out two forms on October 4, 2012 that falsely listed K as living with her, which is a matter relating to her eligibility. It has further been established that she withheld information about K’s absence during her live interview the same

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<sup>19</sup> Jennings testimony; Ex. 12.

<sup>20</sup> Ex. 13; Holton testimony.

<sup>21</sup> 7 C.F.R. § 273.16(c).

<sup>22</sup> *E.g.*, 7 C.F.R. § 273.10.

<sup>23</sup> 7 C.F.R. § 273.16(e)(6).

<sup>24</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>25</sup> 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 . . . .”

day. The only question is whether the two misstatements, as well as the failure to bring up K's absence when household membership was discussed, were intentional.

Several factors make it especially likely that they were. First is the number of misstatements and omissions: Ms. S wrote K's name and particulars down three times when asked to list people living with her—twice on one form and once on another—and then she continued to give a misimpression about household makeup through a live interview. It is difficult to accept that so many errors could result from ordinary inadvertence.

Second, the questions she was answering were crystal clear. This case is unlike some, where ambiguity or bureaucratic phrasing could cause someone not to realize what information is being asked for. A question asking for “the people living in your home” would not confuse the college-educated Ms. S.<sup>26</sup>

The third factor making it particularly likely that Ms. S acted deliberately on October 4, 2011 is the nature of the argument she offered in her defense. Ms. S says she submitted change forms to the Division to try to remove K from her household. She claims very specifically that she first did this in October 2011. If this is so, however, it demonstrates that Ms. S *knew* she had wrongly listed K on her application, and it is inconsistent with her contention that she listed K inadvertently out of habit. It confirms that when she signed and certified the two eligibility forms on October 4, and completed the follow-up interview, she was aware that she was misrepresenting K's presence in the home.

Because it is highly probable that Ms. S acted deliberately when she exaggerated the size of her household on October 4, 2011, the Division has proved the element of intentionality to the required level of certainty. The Division has therefore met its burden of proof and established that Ms. S deliberately misrepresented and subsequently concealed facts. Consequently, Ms. S has committed a first Intentional Program Violation of the Food Stamp program.

***B. Temporary Assistance Program***

To establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove that Ms. S intentionally misrepresented, concealed or withheld a material fact on her application “for the purpose of establishing or maintaining a family's eligibility for

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<sup>26</sup> See Ex. 7, p. 10.

Temporary Assistance benefits.”<sup>27</sup> As with Food Stamps, the Division must prove the elements of the IPV by clear and convincing evidence.<sup>28</sup> When broken down, there are four elements:

1. There must be a misrepresentation, concealment, or withholding of information.
2. The information must be material.
3. The misrepresentation, concealment, or withholding must be intentional.
4. The misrepresentation, concealment, or withholding must be for the purpose of establishing or maintaining eligibility.

Elements 1 and 3 have been established in Part III-A above. As to element 2, Temporary Assistance eligibility and benefit amounts are determined, in part, based upon a household’s composition.<sup>29</sup> The membership of the household income is therefore a material fact for the purpose of determining Temporary Assistance eligibility and benefit amounts. Ms. S’s intentional misrepresentations and nondisclosure regarding her child’s absence was therefore the misrepresentation of a material fact.

The Division must then prove that the intentional misrepresentation of the material fact was for the purpose of establishing or maintaining the household’s eligibility for Temporary Assistance benefits. Ms. S was aware, having received public assistance benefits for most months for the preceding ten years, that the amount of assistance a household receives is based, in part, on who is living in the household. In light of her undoubted awareness of this relationship, Ms. S’s misrepresentations and nondisclosure were surely for the purpose of obtaining a higher amount of those benefits than she would otherwise be entitled to receive.

The Division has therefore met its burden of proof and shown that Ms. S committed a first Intentional Program Violation of the Temporary Assistance program.

#### **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 period, and is required to reimburse the Division for benefits that were overpaid as a result of the

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<sup>27</sup> 7 AAC 45.580(n).

<sup>28</sup> 7 AAC 45.585(e).

<sup>29</sup> 7 AAC 45.520.

Intentional Program Violation.<sup>30</sup> The Food Stamp program disqualification period shall begin February 1, 2013.<sup>31</sup> This disqualification applies only to Ms. S, and not to any other individuals who may be included in her household.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. S or any remaining household members are now required to make restitution.<sup>35</sup> 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.<sup>36</sup>

**B. 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.<sup>37</sup> Because 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.<sup>38</sup> This disqualification applies only to Ms. S, and not to any other individuals who may be included in her household.<sup>39</sup> For the duration of the disqualification period, Ms. S's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. S must report her income and resources as they may be used in these determinations.<sup>40</sup>

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<sup>30</sup> 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).

<sup>31</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>32</sup> 7 C.F.R. § 273.16(b)(11).

<sup>33</sup> 7 C.F.R. § 273.11(c)(1).

<sup>34</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>35</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>36</sup> 7 C.F.R. § 273.15.

<sup>37</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>38</sup> 7 AAC 45.580(g).

<sup>39</sup> 7 AAC 45.580(e)(1).

<sup>40</sup> 7 AAC 45.580(e)(3).

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.<sup>41</sup>

If over-issued Temporary Assistance benefits have not been repaid, Ms. S or any remaining household members are now required to make restitution.<sup>42</sup> 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.<sup>43</sup>

Dated this 10<sup>th</sup> day of December, 2012.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
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 26<sup>th</sup> day of December, 2012.

By: *Signed* \_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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

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<sup>41</sup> 7 AAC 45.580(k).

<sup>42</sup> 7 AAC 45.570(b).

<sup>43</sup> 7 AAC 45.570(l).