

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

In the Matter of	)	OAH No. 12-1036-ADQ
	)	Division No.
	)	Fraud Control Case No.
E M P	)	Temporary Assistance Program
_____	)	

**DECISION AND ORDER**

**I. Introduction**

Until recently, E M P was a recipient of Alaska Temporary Assistance benefits. On December 31, 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 Temporary Assistance program.<sup>1</sup>

Ms. P's hearing took place on February 6, 2012. Although notices of the hearing had been sent to her last known address and to her e-mail address, Ms. P did not appear and could not be reached by telephone. The hearing went forward in her absence.<sup>2</sup> Dean Rogers, 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. Exhibits 1-12 were admitted without objection or limitation. The hearing was recorded.

This decision concludes that Ms. P committed a first Intentional Program Violation of the Temporary Assistance program.

**II. Facts**

E P moved to Alaska in 2012; prior to that she had lived in Washington, where she received public assistance (apparently including Temporary Assistance) from that state.<sup>3</sup> On June 7, 2012, she completed and turned in an Application for Services requesting Medicaid,

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<sup>1</sup> Ex. 3.

<sup>2</sup> Once proper notice has been given, the Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 AAC 45.585(c). The same regulation sets out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

<sup>3</sup> Ex. 8, p. 2.

Food Stamps, and Alaska Temporary Assistance.<sup>4</sup> Ms. P listed her son K Q as one of the people living in her home.<sup>5</sup> In an interview with an eligibility technician, the presence of K in the home was discussed and Ms. P was required to prove her relationship to him, a step that would convey to her the importance of the child's presence or absence in determining benefits.<sup>6</sup>

Ms. P was subsequently approved for Alaska Temporary Assistance on the basis of this application.<sup>7</sup> She received benefits from June through November, 2012, on the basis of a household containing K as a resident.<sup>8</sup>

At the time of her application, Ms. P was told repeatedly and clearly that she must promptly report any changes to her household composition. The Division conveyed this information orally in the interview, through written instructions given to her with the application and discussed during the interview, and in the letter approving her application.<sup>9</sup> These instructions specifically told her that when a child leaves the home, the departure must be reported to the agency within five days.<sup>10</sup>

K was the only child present at the time, although another child apparently joined the household later in the summer and was included in benefit calculations for later months.<sup>11</sup> Ms. P apparently notified the agency of that household change, which was to her benefit.

In August of 2012, K moved out of the household.<sup>12</sup> He enrolled in school in Washington in early September and remained there for the semester.<sup>13</sup> Ms. P did not report K's departure to the Division, and the Division did not learn of it until it received a fraud complaint.<sup>14</sup>

The Division calculated that during the period from September 2012 through November 2012, Ms. P received \$887 in Temporary Assistance benefits that she was not entitled to receive, on account of the erroneous inclusion of K in her household in those months.<sup>15</sup>

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

<sup>5</sup> Ex. 7, pp. 2, 7.

<sup>6</sup> Ex. 8.

<sup>7</sup> Ex. 12.

<sup>8</sup> Holton testimony.

<sup>9</sup> Ex. 7, p. 9, Ex. 8, p.1, Ex. 12, pp. 1, 2, 5; Holton testimony.

<sup>10</sup> Ex. 7, p. 9; Ex. 12, p. 5.

<sup>11</sup> Holton testimony; Ex. 9.

<sup>12</sup> Ex. 2; Rogers testimony.

<sup>13</sup> Ex. 10.

<sup>14</sup> Ex. 1, pp. 5-6; Ex. 2; Rogers testimony.

<sup>15</sup> Ex. 11; Holton testimony.

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

### **III. Discussion**

To establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove that Ms. P intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for Temporary Assistance benefits.”<sup>16</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.

The Division must prove these elements by clear and convincing evidence.<sup>17</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>18</sup>

Element 1 is established because information—the fact that K moved out in August—was withheld. As to element 2, Temporary Assistance eligibility and benefit amounts are determined, in part, based upon a household’s composition.<sup>19</sup> The membership of the household is therefore a material fact for the purpose of determining Temporary Assistance eligibility and benefit amounts.

The third element, intentionality, must be deduced from circumstantial evidence, since Ms. P did not attend the hearing.<sup>20</sup> Here, the instructions to report changes in household makeup were so clear, and the information was so plainly central to determining benefits, that a failure to report K’s departure would almost certainly have to be an intentional omission.

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<sup>16</sup> 7 AAC 45.580(n).

<sup>17</sup> 7 AAC 45.585(e).

<sup>18</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>19</sup> 7 AAC 45.520.

<sup>20</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 . . . .”

Finally, the Division must 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. P was aware, both from the application process in June of 2012 and from having received public assistance benefits previously, that both eligibility and the amount of assistance a household receives are based, in part, on who is living in the household. Indeed, she apparently reported a change in household composition—the arrival of a second child during the summer—when it was to her benefit. In light of her undoubted awareness of the relationship between who is in the household and her benefit amount, Ms. P's nondisclosure was almost certainly 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, by clear and convincing evidence, that Ms. P committed a first Intentional Program Violation of the Temporary Assistance program.

#### **IV. Conclusion and Order**

Ms. P has committed a first Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of six months.<sup>21</sup> Because Ms. P 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>22</sup> This disqualification applies only to Ms. P, and not to any other individuals who may be included in her household.<sup>23</sup> For the duration of the disqualification period, Ms. P's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. P must report her income and resources as they may be used in these determinations.<sup>24</sup>

The Division shall provide written notice to Ms. P and the caretaker relative, if other than Ms. P, of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>25</sup>

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<sup>21</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>22</sup> 7 AAC 45.580(g).

<sup>23</sup> 7 AAC 45.580(e)(1).

<sup>24</sup> 7 AAC 45.580(e)(3).

<sup>25</sup> 7 AAC 45.580(k).

If over-issued Temporary Assistance benefits have not been repaid, Ms. P or any remaining household members are now required to make restitution.<sup>26</sup> If Ms. P 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>27</sup>

Dated this 20<sup>th</sup> day of February, 2013.

Signed  
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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 6<sup>th</sup> day of March, 2013.

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>26</sup> 7 AAC 45.570(b).

<sup>27</sup> 7 AAC 45.570(l).