

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

In the Matter of	)	
	)	
M S. B	)	OAH No. 13-0128-ADQ
	)	DPA Case No.
	)	Fraud Control Case No.
_____	)	ATAP and SNAP programs

**DECISION AND ORDER**

**I. Introduction**

M B is a former recipient of Alaska Temporary Assistance Program (ATAP) benefits and a former applicant for Supplemental Nutrition Assistance Program (SNAP)<sup>1</sup> benefits. On February 1, 2012 the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against Ms. B, alleging that she committed first time Intentional Program Violations (IPVs) of both the ATAP and SNAP programs. Based on the evidence presented, Ms. B committed a first Intentional Program Violation of the ATAP and SNAP programs by failing to report certain employment and income to the Division.

**II. Facts**

On May 24, 2011, Ms. B completed, signed, and submitted an eligibility review form for ATAP and SNAP benefits.<sup>2</sup> As part of the application Ms. B signed a statement that the information contained in the application was correct.<sup>3</sup> The application contained a question asking whether anyone in Ms. B's household was working and receiving income from employment or self-employment.<sup>4</sup> Ms. B answered the question "N/A" (not applicable).<sup>5</sup> However, Ms. B had actually been employed by No Name Services, LLC since May 7, 2011, or before, and she remained employed by No Name Services at least through June 30, 2012.<sup>6</sup> Ms. B received paychecks from

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<sup>1</sup> 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.

<sup>2</sup> Ex. 7, pp. 1- 4.

<sup>3</sup> Ex. 7, p. 4.

<sup>4</sup> Ex. 7, p. 2.

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

<sup>6</sup> Ex. 11, p. 2; Ex. 12, p. 1.

her employer on May 17, 2011, (just one week prior to the submission of her eligibility review form), and on May 31, 2011 (just one week after the submission of her eligibility review form).<sup>7</sup>

Ms. B's May 24, 2011 renewal application was approved as to ATAP benefits.<sup>8</sup> She subsequently received and redeemed ATAP benefits for the months of June, July, and August 2011, in the total amount of \$2,359.00.<sup>9</sup> This amount was \$1,640.00 more than the amount of ATAP benefits Ms. B would have been paid had she reported her true income during this period.<sup>10</sup>

The Division became aware of Ms. B's unreported employment and income when it received a statement from her employer on July 11, 2011.<sup>11</sup> The Division then initiated a fraud investigation which culminated in this case.<sup>12</sup>

The Division notified Ms. B of its filing of this case, and of her hearing date, on February 1, 2013.<sup>13</sup> Ms. B's hearing was held on March 6, 2013. Ms. B did not attend or otherwise participate. Dean Rogers, an investigator employed by the Division's Fraud Control Unit, attended the hearing, represented the Division, and testified on its behalf. Eligibility technician Amanda Holton also attended the hearing and testified on behalf of the Division. On March 7, 2013, the Office of Administrative Hearings (Office) notified Ms. B of her right to seek a supplemental hearing by showing good cause for her failure to participate in the original hearing. Ms. B did not do so, and the record closed on March 18, 2013.

### **III. Discussion**

#### **A. Alaska Temporary Assistance Program**

In order to prove an Intentional Program Violation of ATAP, the Division must prove by clear and convincing evidence<sup>14</sup> that Ms. B intentionally misrepresented, concealed or withheld a material fact on her May 24, 2011, eligibility review form "for the purpose of establishing or maintaining [her] family's eligibility for ATAP benefits . . . or for increasing or preventing a reduction in the amount of the benefit."<sup>15</sup>

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<sup>7</sup> Ex. 12, p. 1.

<sup>8</sup> Ex. 10, p. 1. Ms. B did not receive SNAP benefits based on her May 24, 2011 renewal application because she was already receiving SNAP benefits as part of her mother S's SNAP case / household (Ex. 8, p. 1).

<sup>9</sup> Ex. 9, p. 1; Ex. 13, p. 1.

<sup>10</sup> Ex. 13, p. 1.

<sup>11</sup> Ex. 2, p. 1.

<sup>12</sup> Ex. 2, p. 1.

<sup>13</sup> Ex. 1, p. 3; Ex. 3, p. 2; Ex. 4, p. 1.

<sup>14</sup> 7 AAC 45.585(e).

<sup>15</sup> 7 AAC 45.580(n).

Initially, it is clear that Ms. B did not report her employment with or income from No Name Services, LLC on her May 24, 2011 eligibility review form. This constitutes misrepresentation by omission, concealment, and/or withholding.

The next issue is whether the misrepresentation was intentional. Ms. B did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence. Her misrepresentation could theoretically have been merely negligent. However, Ms. B had significant prior experience with ATAP. Accordingly, it is reasonable to infer that she knew the importance of truthfully and accurately reporting her employment and income on benefit applications and renewal forms.<sup>16</sup> Also, Ms. B had recently received a paycheck, making it less likely that her failure to report the income was unintentional. Finally, it would be hard to miss the "Statement of Truth" provision directly above the review form's signature line. Together, these factors constitute clear and convincing evidence that Ms. B's failure to report her employment and income was intentional.

The next item the Division must prove is that Ms. B's intentional misrepresentation or concealment of her income involved a material fact. A fact is deemed material if proof of its existence or non-existence would affect disposition of the case under applicable law.<sup>17</sup>

ATAP eligibility and benefit levels are based in large part on a household's income.<sup>18</sup> Ms. B's failure to report the employment income at issue was material because it had the effect of decreasing her reported income, thereby increasing the amount of ATAP benefits for which her household was eligible. By misrepresenting or concealing her receipt of the employment income at issue, Ms. B prevented that income from being counted for eligibility and benefit level purposes. The Division has therefore shown that the facts misrepresented or concealed by Ms. B were material.

Finally, the Division must prove that the intentional misrepresentation or concealment of the material fact was made for the purpose of establishing or maintaining the household's eligibility for ATAP benefits.<sup>19</sup> The only conceivable reason Ms. B would have intentionally concealed her employment income would have been to establish ATAP eligibility or to receive ATAP benefits in

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<sup>16</sup> Ex. 10, pp. 8 - 10.

<sup>17</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986). Research indicates that the Alaska Supreme Court has not yet stated its own generally applicable definition of materiality.

<sup>18</sup> 7 AAC 45.470; 7 AAC 45.525.

<sup>19</sup> 7 AAC 45.580(n).

a higher amount than that to which she would otherwise have been entitled. Accordingly, the Division has established this final element of its ATAP IPV case.<sup>20</sup>

In summary, the Division has demonstrated by clear and convincing evidence that Ms. B committed an Intentional Program Violation as defined by the Alaska Temporary Assistance Program regulations.<sup>21</sup> This is Ms. B's first Intentional Program Violation with regard to the Alaska Temporary Assistance Program.<sup>22</sup>

***B. Supplemental Nutrition Assistance Program***

In order to prove that Ms. B committed an Intentional Program Violation of SNAP, the Division must prove by clear and convincing evidence<sup>23</sup> that Ms. B “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to her May 24, 2011 eligibility review form, and that this misrepresentation / concealment was intentional.<sup>24</sup>

Initially, it is clear that Ms. B did not report her employment with or income from No Name Services, LLC on her May 24, 2011 eligibility review form. This constitutes misrepresentation by omission, concealment, and/or withholding.

The last issue is whether Ms. B's misrepresentation was intentional. The misrepresentation was intentional for the reasons previously discussed in Section III(A) at page 3, above with regard to Ms. B's ATAP IPV.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. B committed an Intentional Program Violation as defined by the Supplemental Nutrition Assistance Program regulations. This is Ms. B's first Intentional Program Violation with regard to the Supplemental Nutrition Assistance Program.<sup>25</sup>

**IV. Conclusion and Order**

***A. Alaska Temporary Assistance Program***

Ms. B 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.<sup>26</sup> If Ms. B is currently receiving Alaska Temporary

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<sup>20</sup> Had she appeared at the hearing and testified, Ms. B might have adequately explained why this income was not reported. Absent her testimony, it is necessary to draw reasonable inferences from the available evidence. Here, those inferences establish an IPV by clear and convincing evidence.

<sup>21</sup> 7 AAC 45.580(n).

<sup>22</sup> Dean Rogers hearing testimony.

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

<sup>24</sup> 7 C.F.R. § 273.16(c).

<sup>25</sup> Dean Rogers hearing testimony.

<sup>26</sup> A.S. 47.27.015(e)(1).

Assistance Program benefits, her disqualification period shall begin on June 1, 2013.<sup>27</sup> If Ms. B 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.<sup>28</sup> This disqualification applies only to Ms. B, and not to any other individuals who may be included in her household.<sup>29</sup> For the duration of the disqualification period, Ms. B's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. B must report her income and resources as they may be used in these determinations.<sup>30</sup> The Division shall provide written notice to Ms. B and the caretaker relative, if other than Ms. B, of the Alaska Temporary Assistance Program benefits they will receive during the period of disqualification.<sup>31</sup>

If over-issued Alaska Temporary Assistance Program benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.<sup>32</sup> If Ms. B disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.<sup>33</sup>

**B. Supplemental Nutrition Assistance Program**

Ms. B 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.<sup>34</sup> The SNAP disqualification period shall begin June 1, 2013.<sup>35</sup> This disqualification applies only to Ms. B and not to any other individuals who may be included in her household.<sup>36</sup> For the duration of the disqualification period, Ms. B's needs will not be considered when determining SNAP eligibility and benefit amounts for her household. However, Ms. B must report her income and resources as they may be used in these determinations.<sup>37</sup> The Division shall provide written notice to Ms. B 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>38</sup>

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

<sup>28</sup> 7 AAC 45.580 (g).

<sup>29</sup> 7 AAC 45.580(e)(1).

<sup>30</sup> 7 AAC 45.580(e)(3).

<sup>31</sup> 7 AAC 45.580(k).

<sup>32</sup> 7 AAC 45.570(a).

<sup>33</sup> 7 AAC 45.570(l).

<sup>34</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>35</sup> 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 (9<sup>th</sup> Cir. 1995).

<sup>36</sup> 7 C.F.R. § 273.16(b)(11).

<sup>37</sup> 7 C.F.R. § 273.11(c)(1).

<sup>38</sup> 7 C.F.R. § 273.16(e)(9)(ii).

If over-issued SNAP benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.<sup>39</sup> If Ms. B 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>40</sup>

Dated this 19th day of March, 2013.

*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 2<sup>nd</sup> day of April, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

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

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<sup>39</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>40</sup> 7 C.F.R. § 273.15.