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

In the Matter of	)	OAH No. 13-0149-ADQ
	)	Division No.
U S	)	Fraud Control Case No.
	)	Temporary Assistance and
	)	Medicaid Programs

DECISION

I. Introduction

U S applied for Temporary Assistance and Medicaid benefits in July 2012. Her application was approved. On February 6, 2013, 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 of the Temporary Assistance and Medicaid programs.[1] The initial allegation was that Ms. S had misrepresented that her two children, N and O, were residing with her on her application. At hearing, the Division clarified that it was only alleging a violation of the Temporary Assistance and Medicaid programs with regard to N.

Ms. S's hearing was held on March 13, April 2, and April 12, 2013. Ms. S was provided advance notice of the hearing by both certified mail and standard First Class mail.[2] Ms. S represented herself and testified on her own behalf. D C, K A, and K Q testified on Ms. S's behalf.

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, a Division Eligibility Technician, testified for the Division. H T also testified for the Division. The hearing was recorded.

This decision concludes that Ms. S did not commit an Intentional Program Violation of the Temporary Assistance and Medicaid programs.

II. Facts

Ms. S applied for Food Stamp, Temporary Assistance, and Medicaid benefits on July 17, 2012. She wrote on her application that her household consisted of herself, her minor daughter

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1 Ex. 3.

2 Ex. 1, p. 3; Ex. 4.

N, and her son O, who was only there part time. Ms. S signed a statement certifying that the information contained in her application was correct.[3]

Ms. S participated in an interview with the Division on July 17, 2012. During that interview, she told an Eligibility Technician that her household consisted of her, her daughter, and her son, but that her son was there less than half of the time.[4]

Ms. S's application was approved.[5]

H T, Ms. S's ex-husband, contacted the Division on November 19, 2012 and informed it that both N and O had resided with him since 2006.[6] Mr. T has had court ordered primary physical custody of both children since September 2006.[7] Ms. S has visitation, which includes extended visitation during the summer.[8] Mr. T testified telephonically as follows. N and O were living with him. Ms. S only had visitation with N for a couple of weeks in July 2012. Both children then went to visit family in California for three weeks starting the end of July 2012. Both children returned to his home after they returned from California, and Ms. S has not had extended visitation with the children since the return from California.

Ms. S testified in person as follows. N, who is a teenager, was living with Mr. T, her father. Mr. T asked Ms. S to take N in January 2012. Ms. S was then living in No Name. N came to live with her in January 2012. Ms. S and N moved from No Name into a friend's home in July 2012. Ms. S applied for public assistance benefits in July 2012 after she was laid off from work. N continued to live with her mother during this time. During this time period, O was in and out of Ms. S's home. N and O went to visit Ms. S's mother in California at the end of July 2012. The children returned two days before school started. N went to her father's home for several weeks while the No Name Fair was in progress, because Ms. S was working at the No Name. N returned to her mother's home after the No Name ended. N was going to a school whose location required Ms. S to drive her to school. Ms. S got a DUI in October 2012, which meant that Ms. S could no longer drive N to school. Ms. S's boyfriend was her third party court ordered custodian and she and N moved in with Ms. S's boyfriend, who then drove N to school until November 2012, when N moved back in with her father. Ms. S spoke to Mr. T about filing

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3 Ex. 7, pp. 1 - 2, 8.
4 Ex. 8, p. 1.
5 Ex. 8, p. 3; Ex. 10.
6 Ex. 2.
7 Ex. 11, pp. 5 – 11.
8 Ex. 11, p. 7.

for custody modification when N first moved in with her. He would not agree and she did not attempt to obtain a change in custody or child support when N was living with her because she has a history of difficult interaction with the children's father and she could not afford to hire an attorney. Ms. S was a credible witness based upon observation of her demeanor, and the consistency of her testimony.

Ms. S's testimony regarding N's stay with her was corroborated by the telephonic testimony of three persons. K A is a close friend of Ms. S. He testified telephonically as follows. Ms. S and N moved into his home with him in July 2012, and N spent the nights there. After N returned from her California trip and her short stay at her father's home, N again lived with her mother at Mr. A's home until Ms. S and N moved into Ms. S's boyfriend's home. Mr. A visited Ms. S several times at the boyfriend's home and saw N there.

D C is a friend of both Mr. A and Ms. S. He testified telephonically that he was a frequent visitor to Mr. A's home (at least once a week), and that N was usually there when he came to visit.

K Q is Ms. S's boyfriend. He testified telephonically as follows. He began dating Ms. S in early July 2012 when she was living at No Name. Ms. S then moved to her friend's home. N was living with her mother all during this time. In the fall, about the time of the first snowfall, Ms. S and N moved into his home with him. He would drive N to school. Then in mid-November, Mr. T demanded that N move back in with him and N moved back to her father's home.

Based upon the credible testimony of Ms. S, as corroborated by the testimony of K A, D C, and K Q, it is more likely than not true that N was residing with her mother at the time of her July 2012 application, and continued to reside with her mother, with the exception of her temporary absence from the home during the California visit and No Name, until early to mid-November.

The Division calculated that during July through December 2012, Ms. S received $3,175 in Temporary Assistance benefits, and $11in Medicaid benefits that she was not entitled to receive.[9]

[9] Ex. 13; Ms. Holton testimony.

III. Discussion

A. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence[10] 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 ATAP benefits."[11]

The Division's case against Ms. S is based upon its allegation that Ms. S misrepresented that she had N in her home on her application, when N was actually not residing there. As discussed above, it is more likely than not true that N was residing with her mother at the time of the July 2012 application, and continued to reside with her mother, with the exception of her temporary absence from the home during the California visit and No Name, until early to mid-November. As a result, the Division, which has the burden of proof, did not prove by clear and convincing evidence that Ms. S misrepresented N's presence in her home. Consequently, the Division has not shown that Ms. S committed an Intentional Program Violation of the Temporary Assistance program.

B. Medicaid Program

Unlike the Temporary Assistance program, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.[12] When no standard of proof is specified, the general rule is that the "preponderance of the evidence" standard of proof applies.[13]

The Alaska Medicaid program defines an Intentional Program Violation as follows:

> (1) "intentional program violation" means an action that
>
> (A) an individual takes for the purpose of establishing and maintaining an individual's eligibility for Medicaid benefits; and
>
> (B) intentionally misrepresents, conceals, or withholds a material fact;[14]

As discussed above, it is more likely than not true that N was residing with her mother at the time of her July 2012 application and continued to reside with her mother, with the exception

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10 7 AAC 45.585(e) (Temporary Assistance regulations in effect prior to April 4, 2013; Accord 7 AAC 45.585(d), Temporary Assistance regulations in effect as of April 4, 2013).

11 7 AAC 45.580(n).

12 *See* 7 AAC 100.912.

13 2 AAC 64.290(e); *Amerada Hess Pipeline Corp. v. Alaska Pub. Util. Comm'n*, 711 P.2d 1170, 1179 n.14 (Alaska 1986).

14 7 AAC 100.912(e).

of her temporary absence from the home during the California visit and No Name, until early to mid-November. As a result, the Division, which has the burden of proof, did not prove by a preponderance of the evidence that Ms. S misrepresented N's presence in her home. Consequently, the Division has not shown that Ms. S committed an Intentional Program Violation of the Medicaid program.

IV. Conclusion

The Division had the burden of proof in this case. It did not meet its burden of proof and failed to establish that Ms. S misrepresented the presence of her daughter N in her home on her July 17, 2012 application. As a result, Ms. S did not commit either a Temporary Assistance or a Medicaid Intentional Program Violation.

Dated this 3rd day of May, 2013.

Signed
Lawrence A. Pederson
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 17th day of May, 2013.

By: *Signed*
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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