

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

In the Matter of)	
)	
Z A. C)	OAH No. 13-0181-ADQ
)	DPA Case No.
_____)	FCU Case No.

DECISION AND ORDER

I. Introduction

Z C is a former recipient of Alaska Temporary Assistance Program (ATAP) benefits and Supplemental Nutrition Assistance Program (SNAP)¹ benefits. On February 15, 2013, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against Ms. C, alleging that she committed first time Intentional Program Violations (IPVs) of both the ATAP and SNAP programs. Based on the evidence presented, Ms. C committed a first Intentional Program Violation of the ATAP and SNAP programs by failing to report to the Division that her three children were removed from her household.

II. Facts

On July 17, 2012, Ms. C completed, signed, and submitted an application for ATAP benefits.² In her application she reported that her household consisted of herself and three minor children.³ As part of the application Ms. C signed a statement that the information contained in her application was correct.⁴ The application included an informational form titled "Your Rights and Responsibilities."⁵ The form expressly stated that "[i]t is very important that you report certain changes," and that "[i]f you get Alaska Temporary Assistance and a child leaves your home, you must report this within 5 days."⁶

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, at 1 - 10.

³ Ex. 7, at 2.

⁴ Ex. 7, at 10.

⁵ Ex. 7, at 11 - 14.

⁶ Ex. 7, at 11.

The next day (July 18, 2012), Ms. C participated in a public assistance eligibility interview.⁷ During the eligibility interview she confirmed that she had reviewed the change reporting requirements and had no questions about them.⁸

On July 19, 2012 the Division mailed a notice to Ms. C stating that her ATAP application had been approved.⁹ The notice also reminded Ms. C that she was required "to tell [the Division] about changes in your family's situation."¹⁰ Ms. C subsequently received and redeemed ATAP benefits for the months of July through December 2012.¹¹

On November 20, 2012, the Office of Children's Services (OCS) removed Ms. C's three children from her household and placed them in foster care.¹² The children remained in foster care at least through January 24, 2013.¹³

At some time between December 7, 2012, and January 11, 2013 the Division became aware, through OCS, that Ms. C's children had been removed from her home.¹⁴ On January 11, 2013, the Division received from Ms. C an eligibility review form for ATAP and SNAP benefits.¹⁵ Ms. C reported on the eligibility review form that her household still consisted of herself and her three minor children.¹⁶ She hand-wrote on the form "[a]ll information is the same," "[t]here have been no changes since last review," and "there have been zero changes since last review."¹⁷

The Division conducted an eligibility review with Ms. C on January 11, 2013.¹⁸ At the beginning of the interview the Division's eligibility technician reviewed change reporting requirements with Ms. C.¹⁹ Ms. C indicated that she understood the requirements and had no questions.²⁰ The Division representative then questioned Ms. C regarding her household's current composition.²¹ Ms. C initially stated that her children were living with her.²² When pressed, Ms. C stated that her children were at her father's home, that they were just visiting him, and that they

⁷ Ex. 8, at 1.
⁸ Ex. 8, at 1.
⁹ Ex. 9, at 1.
¹⁰ Ex. 9, at 1.
¹¹ Ex. 11, at 1.
¹² Ex. 10.
¹³ Ex. 10, at 2.
¹⁴ Ex. 8, at 2.
¹⁵ Ex. 7, pat 15 - 18.
¹⁶ Ex. 7, at 15.
¹⁷ Ex. 7, at 15.
¹⁸ Ex. 8, at 2.
¹⁹ Ex. 8, at 2.
²⁰ Ex. 8, at 2.
²¹ Ex. 8, at 2.
²² Ex. 8, at 2.

would be returning to her home the next week.²³ When informed that the Division was aware that her children had been removed from her home by OCS, Ms. C stated that she wasn't sure, but she thought her children might be returned to her the next week.²⁴ The Division subsequently initiated a fraud investigation which culminated in this case.²⁵

The Division notified Ms. C of its filing of this case, and of her hearing date, on February 15, 2013.²⁶ The Office of Administrative Hearings (Office) separately mailed a notice of hearing to Ms. C on the same date.

Ms. C's hearing was held on March 19, 2013. Ms. C did not attend or otherwise participate. Wynn Jennings, an investigator employed by the Division's Fraud Control Unit (FCU), attended the hearing, represented the Division, and testified on its behalf. Division employees Angel Romero and Amanda Holton also attended the hearing. The record closed at the end of the hearing on March 19, 2013.

III. Discussion

A. Alaska Temporary Assistance Program

To prove an Intentional Program Violation (IPV) of ATAP, the Division must prove by clear and convincing evidence²⁷ that Ms. C intentionally misrepresented, concealed, or withheld a material fact “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.”²⁸ The Division asserts that Ms. C committed an ATAP IPV in two ways: (1) by failing to timely inform the Division that OCS removed her children from her home on November 20, 2012;²⁹ and (2) by falsely representing, on her January 11, 2013 eligibility review form, and during the subsequent interview, that her children were still living in her home.³⁰

The first element of an IPV is whether Ms. C misrepresented or withheld information about the composition of her household. The testimony at hearing was that the Division has no record of any contact with Ms. C, before her January 11, 2013 eligibility review interview. Ms. C has not

²³ Ex. 8, at 2.

²⁴ Ex. 8, at 2.

²⁵ Ex. 2, at 1.

²⁶ Ex. 1, at 3; Ex. 3, at 2; Ex. 4, at 1.

²⁷ 7 AAC 45.585(e).

²⁸ 7 AAC 45.580(n).

²⁹ Under 7 AAC 45.270(a), ATAP recipients are required to report the movement of any related person into or out of the household within ten days, and under 7 AAC 45.271(a), a caretaker relative is required to report a dependent child's absence from the home within five days after the date that it becomes clear that the dependent child will be absent from the home for more than one month.

³⁰ Ex. 3, at 2.

participated in this case, and there is no evidence (or even assertion) that she reported the removal of her children to the Division before being confronted with this information during her January 11, 2013 eligibility review interview. On these facts, the evidence is clear and convincing that Ms. C withheld information by failing to timely report OCS's removal of her children from her household.

The evidence of misrepresentation in the context of Ms. C's renewal application and interview is even stronger. Ms. C clearly listed the names of her three children on the renewal application as being current members of her household. This constitutes an overt misrepresentation. Likewise, during her interview, Ms. C overtly misrepresented that her children were still in her home. The Division has thus proven at least two instances of misrepresentation, and one instance of withholding information, by Ms. C.

The next issue is whether Ms. C's withholding and misrepresentation of the facts were intentional. Although Ms. C did not testify, her state of mind can be inferred from circumstantial evidence.³¹ Ms. C had previously applied for and received ATAP benefits on-and-off for seven years.³² Accordingly, it is reasonable to infer that she knew the importance of truthfully and accurately reporting her household's current composition on initial applications, renewal forms, and change reports.³³ Also, the "Statement of Truth" provision directly above the signature lines of the applications and eligibility review forms is hard to miss. Finally, her intent to mislead in filling out the forms is confirmed by her conduct at the January 11, 2013 interview. Initially, she was dishonest when she was questioned about her household. She told the truth only after she was informed that the interviewer was aware that her children were out of the household. This indicates a deliberate intent to mislead, both in filling out the forms and in the interview. Together, these factors constitute clear and convincing evidence that Ms. C's failure to report that her children were no longer in her home, and her overt misrepresentations on this issue, were intentional.

The Division must also prove that Ms. C's intentional misrepresentations regarding her household's composition involved a material fact. A fact is material if proof of its existence or non-existence would affect the outcome of the case under applicable law.³⁴

ATAP eligibility and benefit levels are based in large part on the number of minor children in a household: the more children, the higher the benefit level.³⁵ Ms. C's failure to report that her

³¹ Cf., e.g., *Disciplinary Matter Involving Triem*, 929 P.2d 634, 648 (Alaska 1996) ("it is permissible to infer that an accused intends the natural and probable consequences of his or her knowing actions").

³² Ex. 11, at 1.

³³ Ex. 10, at 8 - 10.

³⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (defining "material fact" for purposes of summary judgment to be a fact "that might affect the outcome of the suit under the governing law.").

children were no longer residing with her was material because it affected her household's ATAP benefits level. She kept the benefits of a four person household, when her benefits *should* have decreased, or ceased entirely, once her children were removed from her home.³⁶ The Division has thus shown, clearly and convincingly, that the facts misrepresented or withheld by Ms. C were material.

Finally, the Division must prove that the intentional misrepresentation or withholding of a material fact was made for the purpose of establishing or maintaining the household's eligibility for ATAP benefits.³⁷ The purpose of reporting (or, in this case, not reporting) a change in household, filling out the forms for renewal, and participating in an interview, is to maintain ATAP benefits. Ms. C's intentional withholding and misrepresentation of the facts kept her eligible for ATAP, and kept her ATAP benefits high. Accordingly, the Division has established this final element of its ATAP IPV case.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. C committed an Intentional Program Violation as defined by the Alaska Temporary Assistance Program regulations.³⁸ This is Ms. C's first known Intentional Program Violation of the Alaska Temporary Assistance Program.³⁹

B. Supplemental Nutrition Assistance Program

In order to prove that Ms. C committed an Intentional Program Violation of SNAP, the Division must prove by clear and convincing evidence⁴⁰ that Ms. C “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to her January 11, 2013, eligibility review form, and that this misrepresentation/concealment was intentional.⁴¹

As previously discussed in Section III(A) at page 4 of this decision, the Division has proved that Ms. C misrepresented the composition of her household in her renewal application and interview. Ms. C clearly listed the names of her three children on the renewal application as being current members of her household. This constitutes an overt misrepresentation. Likewise, during her interview, Ms. C overtly misrepresented that her children were still in her home. The Division has thus proven at least two instances of misrepresentation by Ms. C relevant to her SNAP benefits.

³⁵ 7 AAC 45.520.

³⁶ 7 AAC 45.195; 7 AAC 45.210; 7 AAC 45.225; 7 AAC 45.335.

³⁷ 7 AAC 45.580(n).

³⁸ 7 AAC 45.580(n).

³⁹ Ex. 1, at 8; Wynn Jennings hearing testimony.

⁴⁰ 7 C.F.R. § 273.16(e)(6).

⁴¹ 7 C.F.R. § 273.16(c).

And, Ms. C's misrepresentations were clearly intentional as discussed in Section III(A) at page 4 of this decision, with regard to Ms. C's ATAP IPV.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. C committed an Intentional Program Violation as defined by the Supplemental Nutrition Assistance Program regulations. This is Ms. C's first known Intentional Program Violation of the Supplemental Nutrition Assistance Program.⁴²

IV. Conclusion and Order

A. Alaska Temporary Assistance Program

Ms. C 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.⁴³ If Ms. C is currently receiving Alaska Temporary Assistance Program benefits, her disqualification period shall begin on June 1, 2013.⁴⁴ If Ms. C 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.⁴⁵ This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.⁴⁶ For the duration of the disqualification period, Ms. C's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. C must report her income and resources, which may be used in these determinations.⁴⁷ The Division shall provide written notice to Ms. C and the caretaker relative, if other than Ms. C, of the Alaska Temporary Assistance Program benefits the household will receive during the period of disqualification.⁴⁸

If over-issued Alaska Temporary Assistance Program benefits have not been repaid, Ms. C is now required to make restitution.⁴⁹ If Ms. C disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.⁵⁰

⁴² Ex. 1, p. 8; Wynn Jennings hearing testimony.

⁴³ A.S. 47.27.015(e)(1).

⁴⁴ 7 AAC 45.580(f).

⁴⁵ 7 AAC 45.580 (g).

⁴⁶ 7 AAC 45.580(e)(1).

⁴⁷ 7 AAC 45.580(e)(3).

⁴⁸ 7 AAC 45.580(k).

⁴⁹ 7 AAC 45.570(a).

⁵⁰ 7 AAC 45.570(l).

B. Supplemental Nutrition Assistance Program

Ms. C 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.⁵¹ The SNAP disqualification period shall begin June 1, 2013.⁵² This disqualification applies only to Ms. C and not to any other individuals who may be included in her household.⁵³ For the duration of the disqualification period, Ms. C's needs will not be considered when determining SNAP eligibility and benefit amounts for her household. However, Ms. C must report her income and resources, which may be used in these determinations.⁵⁴ The Division shall provide written notice to Ms. C 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.⁵⁵

If over-issued SNAP benefits have not been repaid, Ms. C is now required to make restitution.⁵⁶ If Ms. C disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.⁵⁷

Dated this 11th day of April, 2013.

Signed

Jay Durych
Administrative Law Judge

⁵¹ 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).

⁵² 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).

⁵³ 7 C.F.R. § 273.16(b)(11).

⁵⁴ 7 C.F.R. § 273.11(c)(1).

⁵⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

⁵⁷ 7 C.F.R. § 273.15.

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 25th day of April, 2013.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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