

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

In the Matter of)	OAH No. 13-0221-ADQ
)	Division No.
N F)	Fraud Control Case No.
)	Food Stamp, Temporary Assistance,
_____)	and Medicaid Programs

DECISION AND ORDER

I. Introduction

N F applied for Food Stamp¹, Temporary Assistance, and Medicaid benefits in January 2013. Her application was approved. On February 22, 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 these three programs.²

Ms. F’s hearing was held on March 26, 2013. Ms. F was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. F did not appear for the hearing and it was held in her absence.⁴ Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division. Michele Rogovin, a Division Investigator, and Amanda Holton, a Division Eligibility Technician, testified for the Division. G F also testified for the Division. The hearing was recorded.

¹ 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.

² Ex. 3.

³ Ex. 1, p. 3; Ex. 4.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

The Alaska Medicaid Intentional Program Violation regulation, 7 AAC 100.912, does not contain specific procedures for Intentional Program Violation hearings. However, it states that “the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance program) or 7 AAC 46 (Food Stamp program) if the facts involved arise from the same or related circumstances.” 7 AAC 100.912(c). Because this case also involves an alleged Intentional Program Violation of the Food Stamp and Temporary Assistance programs, the hearing procedures required by those programs are also used for the alleged Intentional Program Violation of the Medicaid program.

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

II. Facts

Ms. F applied for Food Stamp, Temporary Assistance, and Medicaid benefits on January 9, 2013. She wrote on her application that her household consisted of herself and two minor children. She provided a mailing address, but no residence address. Ms. F stated on her application that her household's only income was from her part-time work as a hairdresser. Ms. F signed a statement certifying that the information contained in her application was correct.⁵

Ms. F participated in a telephone interview with the Division on January 17, 2013. During that interview, she told an Eligibility Technician that she was separated from her husband, who is the children's father, and that she and the children were living at a friend's home. However, at the time of her application, the children were living fulltime with their father, where they continue to reside. Ms. F was also residing part-time with her husband.⁶ Mr. F is employed fulltime and earns \$48,000 per year in gross yearly salary, along with additional bonus and commission income.⁷ Ms. F's income and work expenses were also discussed at the interview.⁸

Ms. F's application was approved.⁹ She was issued Food Stamp, Temporary Assistance and Medicaid benefits starting in January 2013.¹⁰

Mr. F contacted the Division both telephonically (January 22, 2013) and by email (January 23, 2013) and informed it that the two children were living with him "100% of the time."¹¹ A Division investigator went to the location where Ms. F said she was living on January 27, 2013. Ms. F was not there and the investigator was told Ms. F stayed there occasionally, but did not live there. That same investigator went to Mr. F's home on January 28, 2013 and found Ms. F staying there.¹²

⁵ Ex. 7, pp. 1 - 3, 8.

⁶ G F testimony.

⁷ G F testimony; Ex. 12.

⁸ Ex. 8, pp. 1 - 2.

⁹ Ex. 10, pp. 1 - 7.

¹⁰ Ex. 9.

¹¹ Ex. 2, p. 1.

¹² Ex. 11; Michele Rogovin testimony.

The Division calculated that during January through March 2013, Ms. F received \$1,631 in Food Stamp benefits, \$1,492 in Temporary Assistance benefits, and \$136.27 in Medicaid benefits that she was not entitled to receive.¹³

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁴ that Ms. F intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁵

Ms. F listed her two children as living only with her on her application, when she was staying with her husband at least part-time and her children were staying at her husband’s home fulltime. She did not list her husband as part of her household or his income in her application.

Food Stamp eligibility and benefit amounts are based in part on a household's size and income.¹⁶ When Ms. F misrepresented her household's composition, this had the effect of causing Food Stamp benefits to be issued without taking her husband’s presence in the household and his income into account. Ms. F was fully aware that she was at her husband’s at least part-time, and that her children were there fulltime, when she completed the application. Consequently, Ms. F intentionally misrepresented her household composition and income.

The Division has therefore met its burden of proof and established that Ms. F made an intentional misrepresentation on her January 9, 2013 application for Food Stamp benefits. As a result, she committed a first Intentional Program Violation of the Food Stamp program.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence¹⁷ that Ms. F 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.”¹⁸ As discussed above, Ms. F intentionally misrepresented her household composition and income. Temporary Assistance eligibility and benefit amounts are determined, in part, based upon a household’s size and

¹³ Ex. 12.

¹⁴ 7 C.F.R. § 273.16(e)(6).

¹⁵ 7 C.F.R. § 273.16(c).

¹⁶ 7 C.F.R. § 273.10(e)(1)(i)(A).

¹⁷ 7 AAC 45.585(e).

¹⁸ 7 AAC 45.580(n).

income.¹⁹ The number of persons in a household and their income are therefore material facts for the purpose of determining Temporary Assistance eligibility and benefit amounts. Ms. F's intentional misrepresentation regarding her household composition and income 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. F was aware through the application process that a household's composition and income are used to determine eligibility. Based upon her awareness that household composition and income were eligibility factors, the only reason Ms. F would have intentionally misrepresented her household composition and income would have been to establish her eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that Ms. F intentionally misrepresented a material fact for the purpose of establishing her eligibility for Temporary Assistance benefits. Ms. F has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

C. Medicaid Program

Unlike the Food Stamp and Temporary Assistance programs, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.²⁰ When no standard of proof is specified, the general rule is that the "preponderance of the evidence" standard of proof applies.²¹ However, the Medicaid regulations specifically provide that "the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance Program) or 7 AAC 46 (Food Stamp Program) if the facts involved arise from the same or related circumstances."²² Because this case also involves alleged Food Stamp and Alaska Temporary Assistance Intentional Program Violations, based upon the same factual allegations, this decision will use the higher Food Stamp and Temporary Assistance Intentional Program Violation "clear and convincing evidence" standard of proof, instead of the lower "preponderance of the evidence" standard of proof.

¹⁹ 7 AAC 45.470(c); 7 AAC 45.525.

²⁰ See 7 AAC 100.912.

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

²² 7 AAC 100.912(c).

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;^[23]

As discussed above, the Recipient intentionally misrepresented her household composition and income. As with the Temporary Assistance Intentional Program Violation, in order to establish a Medicaid Intentional Program Violation, the Division must prove not only that an intentional misrepresentation has been made, but also that the misrepresentation was of a material fact and was made “for the purpose of establishing and maintaining an individual’s eligibility for Medicaid benefits.”²⁴

Family Medicaid, like Food Stamps and Temporary Assistance, has financial eligibility requirements based upon household income and size.²⁵ Household composition and income are therefore material facts for the purposes of determining Family Medicaid eligibility.

Ms. F was aware through the application process that a household’s composition and income were used to determine eligibility. Based upon her awareness that household composition and income were eligibility factors, the only reason Ms. F would have intentionally misrepresented her household composition and income would have been to establish her eligibility for Family Medicaid benefits.

The Division has therefore met its burden of proof, by clear and convincing evidence, and established that Ms. F intentionally misrepresented a material fact. This misrepresentation was made for the purpose of establishing and maintaining her eligibility for Family Medicaid benefits. Ms. F therefore committed an Intentional Program Violation as defined by the Medicaid regulations.

IV. Conclusion and Order

A. Food Stamp Program

Ms. F 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

²³ 7 AAC 100.912(e).

²⁴ 7 AAC 100.912(e)(1).

²⁵ 7 AAC 100.190.

Intentional Program Violation.²⁶ The Food Stamp program disqualification period shall begin June 1, 2013.²⁷ This disqualification applies only to Ms. F, and not to any other individuals who may be included in her household.²⁸ For the duration of the disqualification period, Ms. F'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.²⁹

The Division shall provide written notice to Ms. F 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.³⁰

If over-issued Food Stamp benefits have not been repaid, Ms. F or any remaining household members are now required to make restitution.³¹ If Ms. F disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³²

B. The Alaska Temporary Assistance Program

Ms. F 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.³³ If Ms. F is currently receiving Temporary Assistance benefits, her disqualification period shall begin June 1, 2013.³⁴ If Ms. F 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.³⁵ This disqualification applies only to Ms. F, and not to any other individuals who may be included in her household.³⁶ For the duration of the disqualification period, Ms. F's needs will not be considered when determining ATAP eligibility

²⁶ 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).

²⁷ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th 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).

²⁸ 7 C.F.R. § 273.16(b)(11).

²⁹ 7 C.F.R. § 273.11(c)(1).

³⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

³² 7 C.F.R. § 273.15.

³³ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁴ 7 AAC 45.580(f).

³⁵ 7 AAC 45.580(g).

³⁶ 7 AAC 45.580(e)(1).

and benefit amounts for her household. However, Ms. F must report her income and resources as they may be used in these determinations.³⁷

The Division shall provide written notice to Ms. F and the caretaker relative, if other than Ms. F, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁸

If over-issued Temporary Assistance benefits have not been repaid, Ms. F or any remaining household members are now required to make restitution.³⁹ If Ms. F disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.⁴⁰

C. Medicaid Program

Ms. F has committed an Intentional Program Violation of the Medicaid program. She is required to reimburse the Division for Medicaid benefits she received as a result of her Intentional Program Violation. If she has not reimbursed the Division, Ms. F is required to make restitution.⁴¹ If Ms. F disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.⁴²

Dated this 23rd day of April, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁷ 7 AAC 45.580(e)(3).

³⁸ 7 AAC 45.580(k).

³⁹ 7 AAC 45.570(b).

⁴⁰ 7 AAC 45.570(l).

⁴¹ 7 AAC 100.910(a)(1).

⁴² 7 AAC 100.910(f).

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 7th 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.]