

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

In the Matter of)	OAH No. 13-0328-ADQ
)	Division No.
E N)	Fraud Control Case No.
)	Food Stamp, Temporary Assistance,
_____)	and Medicaid Programs

DECISION AND ORDER

I. Introduction

E N applied for Food Stamp¹, Temporary Assistance, and Medicaid benefits in October 2012. Her application was approved. On March 14, 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. N’s hearing was held on April 17, 2013. Ms. N was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. N represented herself and testified on her own behalf. Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented the Division. Amanda Holton, a Division Eligibility Technician, testified for the Division. C N also testified for the Division. The hearing was recorded.

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

II. Facts

E N is less than 60 years old. She and C N have several minor children together. L is one of those children. L was living in Mississippi with Ms. N. In June 2011, L moved from Mississippi to live with Mr. N in No Name. Ms. N then moved to No Name in April 2012. L has continued to live with Mr. N since Ms. N’s move. However, Ms. N has had L for overnight visitation.⁴

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. 2.

³ Ex. 1, p. 3; Ex. 3.

⁴ Mr. N testimony.

Mr. N testified that L's visitation with Ms. N has not been for more than two to three days at a time.⁵ Ms. N testified that L stayed with her a great deal of the time during the summer of 2012, but that stopped when fall began. She did not recall how many times he spent the night at her home in September 2012, but agreed that he spent less than half of the nights in her home during each of the months of October and November 2012. She would have liked him to spend more time in her home, but was unable to because Mr. N objected.⁶

Ms. N applied for Food Stamp, Temporary Assistance, and Medicaid benefits on October 3, 2013. She wrote on her application that her household consisted of three persons: Ms. N, another adult, and L. Ms. N signed a statement certifying that the information contained in her application was correct.⁷ She signed the application anticipating that L would be spending more time in her household.⁸ Ms. N's application was approved for Food Stamp, Temporary Assistance, and Medicaid benefits.⁹

Mr. N contacted the Division on December 6, 2012, and notified it that L was living with him.¹⁰

The Division calculated that during October 2012 through March 2013, Ms. N received \$1,203 in Food Stamp benefits, \$3,657 in Temporary Assistance benefits, and \$12.45 in Medicaid benefits that she was not entitled to receive.¹¹

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 evidence¹² that Ms. N intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."¹³

Food Stamp eligibility and benefit amounts are based in part on a household's size.¹⁴ Ms. N's application listed L as being part of her household, despite the fact he was living in Mr. N's household over fifty percent of the time. This had the effect of causing Food Stamp benefits to

⁵ Mr. N testimony.

⁶ Ms. N testimony.

⁷ Ex. 7, pp. 2, 8.

⁸ Ms. N testimony.

⁹ Ex. 8, 10.

¹⁰ Ex. 1, p. 2.

¹¹ Ex. 13.

¹² 7 C.F.R. § 273.16(e)(6).

¹³ 7 C.F.R. § 273.16(c).

¹⁴ 7 C.F.R. § 273.10(e)(1)(i)(A).

be issued for a three person household, when there were actually only two persons in the household. Ms. N was fully aware that her son was primarily residing at Mr. N's home when she completed the application. Ms. N's anticipation that L would primarily reside with her in the future does not change the fact that he was not when she completed the application. Consequently, Ms. N intentionally misrepresented that L was residing in her home when he was primarily residing at Mr. N's home.

The Division has therefore met its burden of proof and established that Ms. N made an intentional misrepresentation on her October 3, 2012 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 evidence¹⁵ that Ms. N 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."¹⁶ As discussed above, Ms. N intentionally misrepresented that L lived with her when he was not.

In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child residing in his or her home for more than half the time.¹⁷ Whether there is a dependent child primarily residing in the home is therefore a material fact for the purpose of determining Temporary Assistance eligibility.

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. Because Ms. N would have only been eligible for Temporary Assistance if L was primarily residing with her for more than half the time, her intentional misrepresentation regarding his presence in her home was therefore made for the purpose of establishing her eligibility for Temporary Assistance benefits. Ms. N has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

¹⁵ 7 AAC 45.585(d).

¹⁶ 7 AAC 45.580(n).

¹⁷ AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a) and (b).

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.¹⁸ When no standard of proof is specified, the general rule is that the “preponderance of the evidence” standard of proof applies.¹⁹ 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.”²⁰ 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.

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;^[21]

As discussed above, Ms. N intentionally misrepresented that L was residing in her home when he was primarily residing with Mr. N. 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.”²²

Ms. N is under 60 years old. There is no evidence that she is disabled, pregnant, or has breast or cervical cancer.²³ Accordingly, her only Medicaid eligibility category would be the Family Medicaid category. In order for a household to qualify for Family Medicaid, among

¹⁸ See 7 AAC 100.912.

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

²⁰ 7 AAC 100.912(c).

²¹ 7 AAC 100.912(e).

²² 7 AAC 100.912(e)(1).

²³ See 7 AAC 100.002 for a list of Medicaid coverage categories.

other requirements, there must be a dependent child residing in the household.²⁴ If a child is staying in two different households, the household where the child resides most of the time is the eligible household.²⁵ Whether there is a dependent child primarily residing in the home is therefore a material fact for the purposes of determining Family Medicaid eligibility.

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 Family Medicaid benefits. Because Ms. N would have only been eligible for Family Medicaid if L was primarily residing with her, her misrepresentation regarding his presence in her home was therefore made for the purpose of establishing her eligibility for Family Medicaid benefits. The Division has therefore met its burden of proof and established that Ms. N intentionally misrepresented a material fact for the purpose of establishing her eligibility for Family Medicaid benefits. Ms. N therefore committed an Intentional Program Violation as defined by the Medicaid regulations.

IV. Conclusion and Order

A. Food Stamp Program

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

²⁴ 7 AAC 100.110(a).

²⁵ 7 AAC 100.110(f).

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).

The Division shall provide written notice to Ms. N 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. N or any remaining household members are now required to make restitution.³¹ If Ms. N 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. N 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. N is currently receiving Temporary Assistance benefits, her disqualification period shall begin July 1, 2013.³⁴ If Ms. N 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. N, and not to any other individuals who may be included in her household.³⁶ For the duration of the disqualification period, Ms. N's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. N must report her income and resources as they may be used in these determinations.³⁷

The Division shall provide written notice to Ms. N and the caretaker relative, if other than Ms. N, 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. N or any remaining household members are now required to make restitution.³⁹ If Ms. N disagrees with

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).

³⁷ 7 AAC 45.580(e)(3).

³⁸ 7 AAC 45.580(k).

³⁹ 7 AAC 45.570(b).

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. N 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. N is required to make restitution.⁴¹ If Ms. N 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 8th 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 22nd 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.]

⁴⁰ 7 AAC 45.570(l).

⁴¹ 7 AAC 100.910(a)(1).

⁴² 7 AAC 100.910(f).