

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

In the Matter of)	
)	OAH No. 13-0532-ADQ
M J)	DPA/FCU No.
)	Agency No.

DECISION AND ORDER

I. Introduction

M J applied for and received Food Stamps, Alaska Temporary Assistance, and Medicaid benefits. The Division of Public Assistance (division) determined that Mr. J committed Intentional Program Violations (IPV) by not reporting a change in who was living in his household. Mr. J was granted a hearing to contest that determination.

Mr. J did not appear at the time scheduled for his hearing. He also could not be reached at the telephone number available for him. He was sent a notice giving him ten days in which to contact the Office of Administrative Hearings to provide an explanation for why he was not available for the hearing.¹ Mr. J did not respond to that notice.

In Mr. J' absence, and pursuant to 7 AAC 45.585(b), the division presented its evidence. Based on that evidence, the division has proven by clear and convincing evidence that Mr. J committed an intentional program violation.

II. Facts

On August 23, 2011, Mr. J filed an application for services, requesting Medicaid, Food Stamps, and Temporary Assistance.² He listed his daughter, B J as a member of the household. In signing the application, Mr. J certified the information in the application was true and correct.³ He also certified that he understood the rights and responsibilities section of the application.⁴

On January 4, 2012, Mr. J completed an Eligibility Review Form to continue Food Stamp, Temporary Assistance, and Medicaid benefits.⁵ He again listed B as a member of his household.⁶

¹ 7 AAC 45.585(c).
² Exhibit 8.
³ Exhibit 8, page 8.
⁴ *Id.*
⁵ Exhibit 9.

A statement of Rights and Responsibilities is part of every application, and is discussed with the applicant during each eligibility interview.⁷ This document states that a recipient of Temporary Assistance or Family Medicaid must report if someone moves out of the household.⁸ This report must be made within ten days for Medicaid recipients and within five days for those receiving Temporary Assistance.⁹

In October of 2011, B left Alaska to live with her mother in Maryland, and was enrolled in high school there.¹⁰ At no time did Mr. J notify the division that B had left the household.¹¹

Eligibility Technician Amanda Holton reviewed the information from Mr. J' application and from the agency's files and determined the amount of benefits he received, and the amount he was actually eligible to receive after B left the home. Beginning in December 2011 through March 2012, Mr. J received an overpayment of Food Stamp benefits totaling \$328, an overpayment of Temporary Assistance benefits totaling \$2,049, and Medicaid benefits he was not entitled to receive totaling \$2,034.11.¹²

III. Discussion

The division has accused Mr. J of three different Intentional Program Violations. Recipients of Temporary Assistance benefits are required to report within five days if a dependent child will be absent from the home for more than one month.¹³ It is an Intentional Program Violation for a recipient to intentionally misrepresent, conceal, or withhold material information.¹⁴ The division has the burden of proving the violation by clear and convincing evidence.¹⁵ A person who is found to have committed an intentional violation is disqualified from receiving Temporary Assistance benefits for six months for a first time violation.¹⁶

⁶ Exhibit 9, page 1. The directions state: "List all persons who live with you." Exhibit 9, page 1 (emphasis in original).

⁷ Testimony of Eligibility Technician Amanda Holton.

⁸ Exhibit 7, page 1.

⁹ *Id.*

¹⁰ Exhibit 14, page 4 – 6; Exhibit 14, page 2 – 3.

¹¹ Testimony of Eligibility Technician Amanda Holton.

¹² Testimony of Ms. Holton; Exhibit 16.

¹³ 7 AAC 45.271(a).

¹⁴ 7 AAC 45.580(n).

¹⁵ 7 AAC 45.585(d).

¹⁶ AS 47.27.015(e0(2)).

For Food Stamp recipients, an intentional program violation is defined to include having intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts[.]”¹⁷ In order to prevail, the division must prove this violation by clear and convincing evidence.¹⁸ A person who is found to have committed an intentional program violation is disqualified from receiving food stamps for 12 months for a first time violation,¹⁹ and must repay any benefits wrongfully received.²⁰

For Medicaid benefits, an Intentional Program Violation also includes intentionally misrepresenting, concealing, or withholding a material fact.²¹ Whether B remained in Mr. J’ household was a material fact because he would not be eligible for Family Medicaid without her presence in the home.²² The Medicaid regulations do not contain a burden of proof standard. Thus, the general rule that proof must be by a preponderance of the evidence would be applied.²³ However, for all three alleged violations, the central fact in dispute is whether Mr. J intentionally failed to report his daughter’s absence from the household. Proof of that fact by clear and convincing evidence would necessarily include proof by a preponderance of the evidence. Proof of a Medicaid program violation allows the division to seek recovery of excess expenditures pursuant to 7 AAC 100.910.

The division has proven by clear and convincing evidence that B left the household in October, and that Mr. J did not report her departure. In addition, the division has proven by clear and convincing evidence that Mr. J claimed she was still in the home in January even though she had left the previous October. The more difficult question is whether the division has proven by clear and convincing evidence that Mr. J intentionally withheld that information and misrepresented B’s presence on the Eligibility Review Form. To meet this standard, the division must show that it is *highly probable* that Mr. J intended to withhold or misrepresent the information.²⁴ It is possible to infer Mr. J’ state of mind from the circumstantial evidence. It is particularly telling that he included B’s name on the

¹⁷ 7 C.F.R. 273.16(c)(1).

¹⁸ 7 C.F.R. § 273.16(e)(6).

¹⁹ 7 C.F.R. 273.16(b)(1).

²⁰ 7 C.F.R. 273.16(b)(12).

²¹ 7 AAC 100.912(e)(1)(B).

²² 7 AAC 100.110(a).

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

²⁴ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

Eligibility Review Form more than two months after she had left the household. Absent any explanation from him as to why he believed she was still living in his household, it is highly probable that Mr. J intended to provide inaccurate information. From this, it can also be inferred that he intentionally failed to inform the division when she left the household in October.

IV. Conclusion and Order

Mr. J committed a first time Intentional Program Violation in regards to three programs: Temporary Assistance, Food Stamps, and Medicaid.

Mr. J is disqualified from participation in the Temporary Assistance program for a period of six months.²⁵ If Mr. J is currently receiving Temporary Assistance benefits, his disqualification period shall begin on August 1, 2013.²⁶ If Mr. J is not currently receiving Temporary Assistance benefits, his disqualification period shall be postponed until he applies for, and is found eligible for, Temporary Assistance benefits.²⁷ This disqualification applies only to Mr. J, and not to any other individuals who may be included in his household.²⁸ For the duration of the disqualification period, Mr. J' needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for his household. However, Mr. J must report his income and resources as they may be used in these determinations.²⁹

Mr. J is disqualified from receiving Food Stamp benefits for a 12 month period, and required to reimburse the division for benefits that were overpaid as a result of the intentional program violation.³⁰ The Food Stamp disqualification period shall begin August 1, 2013.³¹ This disqualification applies only to Mr. J, and not to any other individuals who may be included in his household.³² For the duration of the disqualification period, Mr. J' needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household.

²⁵ AS 47.27.015(e)(1); 7 AAC 45.580(d).

²⁶ 7 AAC 45.580(f).

²⁷ 7 AAC 45.580(g).

²⁸ 7 AAC 45.580(e)(1).

²⁹ 7 AAC 45.580(e)(3).

³⁰ 7 C.F.R. § 273.16(b)(1); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³¹ 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).

³² 7 C.F.R. § 273.16(b)(11).

However, he must report his income and resources as they may be used in these determinations.³³

The division shall provide written notice to Mr. J 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.³⁴

If over-issued Food Stamp benefits have not been repaid, Mr. J or any remaining household members are now required to make restitution.³⁵ If Mr. J disagrees with the division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.³⁶

Mr. J is required to reimburse the division for Medicaid benefits he received as a result of his Intentional Program Violation. If he has not reimbursed the division, Mr. J is required to make restitution.³⁷ If Mr. J disagrees with the division's calculation of the amount of over issuance to be repaid, he may request a hearing on that limited issue.³⁸

Dated this 5th day of June, 2013.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

³³ 7 C.F.R. § 273.11(c)(1).
³⁴ 7 C.F.R. § 273.16(e)(9)(ii).
³⁵ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
³⁶ 7 C.F.R. § 273.15.
³⁷ 7 AAC 100.910(a)(1).
³⁸ 7 AAC 100.910(f).

Adoption

The undersigned, by delegation from of 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 21st day of June, 2013.

By: Signed
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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