

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

In the Matter of)
)
K S II) OAH No. 18-0306-ADQ
) Agency No.
_____)

DECISION

I. Introduction

On a January 22, 2018 Food Stamp¹ recertification application, and a January 23, 2018 application for Temporary Assistance Benefits, K S sought public assistance benefits for a household consisting of himself and his son, F. After learning in February 2018 that F S had been in state custody and living in a foster home since a month before Mr. S’s applications, the Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation of these two programs.² This decision concludes that the Division proved by clear and convincing evidence that Mr. S committed his first Intentional Program Violation of the Food Stamp and Temporary Assistance programs. Accordingly, he is barred from receiving Food Stamps for 12 months, is barred from receiving Temporary Assistance for six months, and must pay restitution for overpaid amounts.

II. Facts

K S applied for ATAP benefits and filed to recertify his Food Stamp benefits in January 2018.³ On both applications, he listed his two-year-old son, F, as living with him.⁴

Mr. S signed the “statement of truth” provision at the end of each application.⁵ This provision provides that the statements in the application are “true and correct to the best of [the applicant’s] knowledge.” The statement also expressly acknowledges that Mr. S had read and understood the Rights and Responsibilities document provided to all applicants, including, specifically, understanding the “fraud penalties.”⁶

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. 1.

³ Ex. 8.

⁴ Ex. 8, pp. 2, 8.

⁵ Ex. 8, pp. 5, 17.

⁶ Ex. 8, pp. 5, 17; Ex. 7, p. 4; Holton testimony.

Mr. S attended an eligibility interview on January 25, 2018, in connection with his applications. He again represented that F lived with him.⁷

In fact, and unbeknownst to the Division, F had been in state custody and living in a foster home since December 22, 2017.⁸

The Division approved Mr. S's benefit applications and calculated his benefit amounts based on his reported household composition – including the presence of F in the home.⁹ As a result of Mr. S's misrepresentations about his household composition, he was overpaid \$192 in Food Stamp benefits and \$821 in ATAP benefits to which he was not otherwise entitled.¹⁰

In February 2018, the Division received information indicating that F was in state custody.¹¹ To determine whether Mr. S might be receiving benefits to which he was not entitled, the Division queried OCS further.¹² OCS responded that F had been taken into emergency custody in December 2017, and has been in foster care since that time.¹³

On April 3, 2018, the Division initiated this Administrative Disqualification case against Mr. S, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program and the ATAP program in connection his January applications.¹⁴ A hearing was scheduled for May 4, 2018, and the Division sent Mr. S advance notice of the hearing via both first class and certified mail.¹⁵ Mr. S retrieved the certified mailing, and spoke to the Division investigator about it on April 6, 2018.¹⁶ However, Mr. S then did not retrieve the second certified mailing the Division sent regarding this matter, nor did he appear for the hearing.¹⁷

The hearing convened on May 4, 2018 as scheduled. Mr. S did not attend the hearing and could not be reached at the telephone number he had provided to the Division.¹⁸ As allowed by the applicable regulations, the hearing went forward in his absence.¹⁹ The Division was

⁷ Ex. 9, p. 1; testimony of Amanda Holton.

⁸ Ex. 10; Jennings testimony.

⁹ Ex. 5, pp. 3-4, 9; Holton testimony.

¹⁰ Ex. 11, 12; Holton testimony.

¹¹ Holton testimony.

¹² Ex. 10; Jennings testimony.

¹³ Ex. 10, p. 3; Jennings testimony.

¹⁴ Ex. 3.

¹⁵ Ex. 3; Jennings testimony.

¹⁶ Jennings testimony.

¹⁷ Ex. 6; Jennings testimony.

¹⁸ The number was not in service.

¹⁹ Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4). The same

represented at the hearing by Wynn Jennings, an investigator employed by DPA’s Fraud Control Unit. Mr. Jennings and Amanda Holton, a Division Eligibility Technician, testified on behalf of the Division. Exhibits 1-12 were admitted into evidence without objection and without restriction.

III. Discussion

A. Food Stamps

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.²⁰ In this case, the Division seeks to establish an IPV, and to do so it must prove the elements of that IPV by clear and convincing evidence.²¹

No evidence has been offered that Mr. S has ever been found to have committed a prior IPV, and therefore both alleged IPV’s will be evaluated on the assumption that this is a first-time violation. Other than certain exceptions not alleged to apply here, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.²²

Both eligibility and benefit levels are determined based upon household composition.²³ False statements about household composition are, therefore, considered to have been made for the purpose of acquiring benefits.²⁴ It is clear and undisputed that throughout the recertification process Mr. S made false statements about his household composition, falsely claimed his son was living with him at a time when F was, in fact, in foster care. He did this multiple times, first by listing F as a “person who lives with you” on the application, then again saying F lived with him in the follow-up eligibility interview.²⁵ Plainly, given F’s custody status, this was a misrepresentation.

The remaining issue is whether the misrepresentation was intentional. As Mr. S did not testify, the answer to this question must be found through the totality of the surrounding

regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

²⁰ See, e.g., 7 U.S.C. § 2015(b).

²¹ 7 C.F.R. § 273.16(e)(6).

²² 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

²³ 7 C.F.R. § 273.1; 7 C.F.R. § 273.8; 7 C.F.R. § 273.9.

²⁴ 7 C.F.R. § 273.16(c).

²⁵ Ex. 8, p. 1; Ex. 9, p. 1.

circumstances. In this case, it is not a close question. There can be no serious question that Mr. S knew, when he made these statements, that they were untrue. He knew that F did not live with him, but rather, having been taken into emergency custody weeks earlier, was now living with a foster home. Under these circumstances, there is simply no credible way to see his statements to the contrary as anything other than a material misrepresentation. The evidence is thus sufficient to meet the standard of “clear and convincing,” and is thus sufficient to constitute an IPV.

B. ATAP

It is likewise illegal to seek ATAP benefits by making false or misleading statements or by concealing or withholding facts.²⁶ In seeking to establish an IPV in the ATAP program, the Division must prove the elements of that IPV by clear and convincing evidence,²⁷ *i.e.*, that Mr. S intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²⁸

Again, no evidence has been offered that Mr. S has ever been found to have committed a prior ATAP IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation. A first-time IPV in the ATAP program results in a six-month disqualification.²⁹

As discussed in the previous section, it is clear (1) that Mr. S claimed that F was living with him at a time when F was in fact living in a foster home, (2) that he did so to receive benefits, and (3) that he did so knowing the facts he was stating were not true at the time he stated them. Because ATAP benefits are only available where a household contains a minor, biologically-related child, whether there is a dependent child living in the home is clearly a material fact for the purpose of determining ATAP eligibility.³⁰ Mr. S clearly knew at the time of his application that F was not, in fact, living in his home. Mr. S has therefore committed a first IPV of the ATAP program.

IV. Conclusion and Order

A. Food Stamps

Mr. S has committed a first time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month

²⁶ 7 AAC 45.580(n).

²⁷ 7 AAC 45.585(e).

²⁸ 7 AAC 45.580(n).

²⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁰ AS 47.27.020(a); 7 AAC 45.195; 7 AAC 45.225.

period.³¹ The Food Stamp disqualification period shall begin August 1, 2018.³² This disqualification applies only to Mr. S, and not to any other individuals who may be included in his household.³³ For the duration of the disqualification period, Mr. S's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources so that they can be used in these determinations.³⁴

The Division shall provide written notice to Mr. S 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.³⁵

If over-issued Food Stamp benefits have not been repaid, Mr. S is now required to make restitution.³⁶ If Mr. S disagrees with the Division's calculation of the benefits amount to be repaid, he may request a hearing on that limited issue.³⁷

B. ATAP

Mr. S has committed a first time ATAP Intentional Program Violation. He is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.³⁸ If Mr. S is currently receiving ATAP benefits, his disqualification period shall begin as provided in 7 AAC 45.580(f)(1). If Mr. S is not currently an ATAP recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, ATAP benefits.³⁹

This disqualification applies only to Mr. S, and not to any other individuals who may be included in his household.⁴⁰ For the duration of the disqualification period, Mr. S's needs will not be considered when determining ATAP eligibility and benefit amounts for his household.

³¹ 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).

³² See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995); *Matter of K.L.B.*, OAH No. 14-1488-ADQ (Commissioner of Health and Social Services, December 2014).

³³ 7 C.F.R. § 273.16(b)(11).

³⁴ 7 C.F.R. § 273.11(c)(1).

³⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁷ 7 C.F.R. § 273.15.

³⁸ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁹ 7 AAC 45.580(g).

⁴⁰ 7 AAC 45.580(e)(1).

However, Mr. S must report his income and resources as they may be used in these determinations.⁴¹

The Division shall provide written notice to Mr. S and any other household members of the ATAP benefits they will receive, if any, during the period of disqualification.⁴²

If over-issued Temporary Assistance benefits have not been repaid, Mr. S is now required to make restitution.⁴³ If Mr. S disagrees with the Division's calculation of the benefits amount to be repaid, he may request a hearing on that limited issue.⁴⁴

Dated: May 15, 2018

Signed
Cheryl Mandala
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 30th day of May, 2018.

By: Signed
Name: Cheryl Mandala
Title: Administrative Law Judge/OAH

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

⁴¹ 7 AAC 45.580(e)(3).

⁴² 7 AAC 45.580(k).

⁴³ 7 AAC 45.570(b).

⁴⁴ 7 AAC 45.570(l).