

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

In the Matter of)
)
 N J)
_____)

OAH No. 13-0726-ADQ
DPA/FCU No.
Agency No.

DECISION and ORDER

I. Introduction

N J received Alaska Temporary Assistance (ATAP) and Food Stamp¹ benefits for several years, through April of 2013. On May 24, 2013, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the ATAP and Food Stamp programs.²

A hearing convened in this case on June 26, 2013, with Ms. J having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. J did not attend the hearing and could not be reached at the telephone number she has provided to the program.⁴ The hearing went forward in her absence.⁵

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

This decision concludes that DPA proved by clear and convincing evidence that Ms. J committed a first Intentional Program Violation of both programs. She must be barred from Food Stamps for twelve months and from ATAP for six months.

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 3.

³ Ex. 1, p. 3; Ex. 3; Ex. 4. She did not claim the certified mail.

⁴ The administrative law judge left messages for Ms. J to call the Office of Administrative Hearings as soon as possible.

⁵ Once proper notice has been given, the Food Stamps and ATAP 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); 7 AAC 45.585(c). 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. In this case, an extra step was taken: Ms. J was mailed a notice on July 8, 2013 giving her ten days to show good cause for failing to appear. She did not respond to that notice.

II. Facts

Ms. J received Food Stamps and ATAP benefits continuously from March of 2010 through the events at issue in this case.⁶ As part of a routine eligibility review, she completed and signed an eligibility review form, dating it January 28, 2013.⁷ On the form, she listed two sons, L and C, as living with her.⁸ She appears either to have back-dated the form or to have delayed in submitting it, as it was not received by DPA until February 25, 2013.⁹

L and C had been attending No Name Elementary School in Anchorage. In early February of 2013 their enrollment ended.¹⁰ On February 4, 2013, Ms. J executed affidavits for the Denver School District attesting that each son was residing, with her permission, with X L. J in Denver.¹¹

Ms. J attended an eligibility interview on March 11, 2013 in connection with the eligibility form she submitted on February 25. She said her household consisted of herself, L, and C.¹² This interview, as well as written materials distributed with the application, covered the illegality of giving false or incomplete information to get benefits.¹³

DPA re-approved Food Stamp and ATAP benefits for Ms. J.¹⁴ Benefits were issued and redeemed in March and April of 2013,¹⁵ months in which L and C clearly did not reside in the home. Ms. J should not have received any ATAP benefits for these months (since there must be children in the household to be eligible for ATAP), and her Food Stamp benefit should have been lower.¹⁶ DPA has calculated the excessive benefits as \$1,260 in ATAP and \$776 in Food Stamps.¹⁷

The absence of the two boys was reported to DPA by the Child Support Services Division in April of 2013.¹⁸ A fraud investigation, and this proceeding, ensued.

⁶ Ex. 9; Holton testimony.

⁷ Ex. 7.

⁸ Ex. 7, p. 1.

⁹ *Id.*

¹⁰ The official date of disenrollment is February 8, 2013, although it is not clear that they attended class after the fall semester of 2012. *See* Ex. 11.

¹¹ Ex. 10.

¹² Holton testimony; Ex. 8.

¹³ Holton testimony; Ex. 7, p. 8.

¹⁴ Ex. 8.

¹⁵ Holton testimony; Ex. 9.

¹⁶ Holton testimony.

¹⁷ Ex. 12.

¹⁸ Ex. 10, p. 1.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁹ Alaska law likewise prohibits securing ATAP benefits by such means.²⁰

In this case, DPA seeks to establish an IPV in both benefit programs in which Ms. J was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.²¹ No evidence has been offered that Ms. J 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.

A. Food Stamp Program

Except for someone with prior IPV's in his or her record, someone who falls in the ten-year provision discussed above, or someone who has used food stamps in a drug or weapons transaction, 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

It is clear that Ms. J claimed that her sons were living with her at a time when they were in fact living with their father in Colorado. While it is possible that they were living with her when she signed her eligibility form (assuming it is correctly dated), they certainly were no longer in her home when she reiterated the information on that form at her eligibility interview in March of this year. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. J failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Household composition is a central focus of any eligibility interview. It simply cannot have slipped Ms. J's mind that her sons had moved away and the household composition she was describing was fictional. The evidence is therefore clear and convincing that Ms. J's misrepresentation was intentional. She has therefore committed a first IPV.

¹⁹ See, e.g., 7 U.S.C. § 2015(b).

²⁰ 7 AAC 45.580(n).

²¹ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

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

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 evidence that Ms. J intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²³ As discussed above, Ms. J intentionally misrepresented that her children were living with her when they were not. In order to qualify for ATAP benefits, an applicant must have a dependent child living in her home.²⁴ Whether there is a dependent child living in the home is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. J would have intentionally misrepresented the presence of children in her home would have been to establish her eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that Ms. J intentionally misrepresented a material fact: the fact her children were not living with her. This intentional misrepresentation of a material fact was made for the purpose of establishing her eligibility for ATAP benefits. Ms. J has therefore committed a first IPV of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. J has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.²⁵ The Food Stamp disqualification period shall begin October 1, 2013.²⁶ This disqualification applies only to Ms. J, and not to any other individuals who may be included in her household.²⁷ For the duration of the disqualification period, Ms. J’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for her

²³ 7 AAC 45.580(n).

²⁴ AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

²⁵ 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).

²⁶ 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 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).

²⁷ 7 C.F.R. § 273.16(b)(11).

household. However, she must report her income and resources so that they can be used in these determinations.²⁸

DPA shall provide written notice to Ms. 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.²⁹

If over-issued Food Stamp benefits have not been repaid, Ms. J or any remaining household members³⁰ are now required to make restitution.³⁰ If Ms. J disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.³¹

B. Alaska Temporary Assistance Program

Ms. J 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.³² If Ms. J is currently receiving Temporary Assistance benefits, her disqualification period shall begin October 1, 2013.³³ If Ms. J 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.³⁴ This disqualification applies only to Ms. J, and not to any other individuals who may be included in her household.³⁵ For the duration of the disqualification period, Ms. J's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. J must report her income and resources as they may be used in these determinations.³⁶

The Division shall provide written notice to Ms. J and the caretaker relative, if other than Ms. J, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁷

²⁸ 7 C.F.R. § 273.11(c)(1).
²⁹ 7 C.F.R. § 273.16(e)(9)(ii).
³⁰ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
³¹ 7 C.F.R. § 273.15.
³² AS 47.27.015(e)(1); 7 AAC 45.580(d).
³³ 7 AAC 45.580(f).
³⁴ 7 AAC 45.580(g).
³⁵ 7 AAC 45.580(e)(1).
³⁶ 7 AAC 45.580(e)(3).
³⁷ 7 AAC 45.580(k).

If over-issued Temporary Assistance benefits have not been repaid, Ms. J or any remaining household members are now required to make restitution.³⁸ If Ms. J disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³⁹

Dated this 15th day of July, 2013.

Signed _____
Christopher Kennedy
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 July, 2013.

By: *Signed* _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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

³⁸ 7 AAC 45.570(b).

³⁹ 7 AAC 45.570(d).