

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

In the Matter of )  
 )  
F Q ) OAH No. 19-0260-ADQ  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The issue in this case is whether F Q committed an Intentional Program Violation (IPV) of the Alaska Temporary Assistance Program (ATAP) by intentionally failing to make a mandatory report per 7 AAC 45.271 regarding change in circumstances: to wit, her children were no longer residing in her household.

A hearing on the matter was held on May 3, 2019. Ms. Q was provided advance notice of the hearing at her address of record by both certified mail and standard first-class mail. She did not appear in person for the hearing and a call to the telephone number provided to the Office of Administrative Hearings (OAH) and the Division of Public Assistance (DPA) went unanswered. The hearing went forward in her absence.

Ms. M. Gosda represented DPA at the hearing. She called two witnesses: B I, an experienced DPA Eligibility Technician, and M Q, F Q' mother. Exhibits 1 through 9 were admitted.

This decision concludes DPA proved by clear and convincing evidence that F Q committed an IPV of the ATAP program. She will receive a 6-month disqualification from the program and be required to pay restitution.

This decision also concludes a request by DPA to consider allocation of benefits to M Q for February 2019 is outside the scope of the hearing.

**II. Facts.<sup>1</sup>**

F Q and E C are the parents of two minor children. F and E separated approximately two years ago. Each parent claims one child as a dependent for tax purposes.<sup>2</sup> However, in

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<sup>1</sup> The facts contained herein are taken from testimony on the record and the admitted exhibits. Where exhibits exist to corroborate testimony or independently establish facts, they are referenced by footnote.

<sup>2</sup> Ex. 8, pgs. 2-4.

the summer of 2018 both children were living with F<sup>3</sup>, although in unstable housing.<sup>4</sup> Due to that unstable housing, F asked her parents, M and S Q, if the children could live with them. Thus, in July 2018 the children moved in with their maternal grandparents.

F joined her children at her parent's home soon thereafter living in a motor home in the driveway.<sup>5</sup> Her parents saw this a temporary arrangement while F got on her feet. Her residency in the motor home was expected to cease before the weather turned cold.

F applied for ATAP benefits on August 20, 2018 while she and the children were living at the grandparent's home.<sup>6</sup> She participated in an in-person intake interview that same day. She was informed orally and given written notification that she was required to inform the Division of any change in composition of the household that resulted in the children no longer living with her if that change would last more than 30 days.<sup>7</sup> She signed a certification under penalty of perjury that the information she provided was correct and she understood her responsibilities.<sup>8</sup> She was found to be eligible and the benefits authorized.

Benefits were paid to F from August 2018 through February 2019.<sup>9</sup>

On February 4, 2019 M applied for ATAP benefits for the minor children. DPA informed her that the children were already receiving benefits through another individual. M then demonstrated that the children were still living with her. She had the children's social security cards and birth certificates as well as powers of attorney from both parents permitting the grandparents to make decisions regarding school, medical care, and other daily parental questions. M informed DPA that F moved to her own apartment in Anchorage in September or October 2018. DPA denied the children's benefits to M for February 2019 but began to pay benefits to her in March 2019.

The February 4, 2019 request by M spurred an investigation by DPA which concluded F committed a first Intentional Program Violation (IPV) of the ATAP program by failing to report she was no longer in the same residence as her children as required in 7

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<sup>3</sup> This decision refers to two women with the surname Q. First names will be used to avoid confusion.

<sup>4</sup> This was described as "camping in the woods with them" at the hearing.

<sup>5</sup> Ex. 8, pg. 10.

<sup>6</sup> Id. 8.

<sup>7</sup> Ex. 7, pgs. 1-4.

<sup>8</sup> Ex. 8, pg. 12.

<sup>9</sup> Ex. 9.

AAC 45.271,<sup>10</sup> but continued to receive their benefits. Notice of an administrative disqualification hearing was given to F by letter dated April 23, 2019. The letter along with a written advisement of rights and a copy of the exhibits generated by the investigation were served on her by registered and regular mail.<sup>11</sup> She did not contact the OAH or DPA in response. Nor did she appear for the hearing or answer the telephone on the date and time the hearing was set.

M testified at the hearing. According to her, F and E are currently unable to successfully parent their two children who have established mental health and emotional issues which are treated and monitored while living with their grandparents. M and S took the children into their home July 2018 when F was essentially homeless; she was camping in the woods with the children which resulted in erratic medication, counseling and school. M and S also let F live at the residence in a motor home after the children arrived, but she moved to Anchorage in September or October 2018.

M testified she did not ask F about the children's benefits after meeting with DPA in February 2019. M was worried that any discussion about the issue could turn into a confrontation that would have consequences impacting what she perceived as the best interests of the children. However, the two women did speak after the administrative disqualification hearing was calendared. In that conversation, F told M that F was going to be losing her benefits.

### **III. Discussion.**

#### **a. Disqualification and Restitution.**

In order to prevail, DPA must prove by clear and convincing evidence<sup>12</sup> that F Q committed an Intentional Violation of the Alaska Temporary Assistance Program: that she intentionally "misrepresent[ed], conceal[ed], or [withheld] a material fact in order to establish or keep her benefits."<sup>13</sup> In addition to other requirements, a household must

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<sup>10</sup> That regulations reads in pertinent part: (a) In addition to the reporting requirements in 7 AAC 45.270 a caretaker relative shall report a dependent child's absence from the home within five days after the date that it becomes clear to the caretaker relative that the dependent child will be absent from the home for more than one month.

<sup>11</sup> Ex. 3, 4, 5 & 6.

<sup>12</sup> 7 AAC 45.585(d).

<sup>13</sup> As used in this section, "intentional program violation" means an action taken by an individual for the purpose of establishing or maintaining a family's eligibility for ATAP benefits or for benefits under the former

contain a minor, biologically related child to be eligible for ATAP benefits.<sup>14</sup> The recipient is required to report a change in household composition that includes a child's absence from the recipient's residence "within five days of the date that it becomes clear... that the dependent child will be absent from the home for more than one month."<sup>15</sup> Failure to do so may lead to disqualification of benefits for 6 months as a sanction for the first offense.<sup>16</sup>

**b. The failure to report was intentional.**

There is no legitimate dispute in this case that F failed to notify DPA that she moved from the residence used to qualify for ATAP benefits and that she was no longer residing in the same household as her children. This decision concludes it was an intentional failure.

DPA established that F was notified at the time she applied for benefits that reporting certain changes in circumstances was mandatory. She was warned failure to do so would have consequences including disqualification. She signed a certification stating she had been informed of her requirements and understood them.<sup>17</sup> No evidence was presented indicating good cause for the failure to notify DPA of the changes in household.

It is also undisputed that F continued to receive benefits for the children through February 2019 but did not forward them to her parents who were providing care. Failure to provide these funds to her parents negates the possibility of a good faith mistake based on confusion of whether a report needed to be made if the children continued to reside at the address in the original application.

This information alone would be enough to establish an intentional failure.

M was a credible witness. Her testimony established that F and the children were living together when benefits were requested, but F and the children ceased sharing a residence by October 2018. F obtained her own apartment in Anchorage with the plan her children would continue living with their grandparents. From the time F moved it was clear the children would be absent from her home for more than 30 days.

In addition, M's testimony established that during the holiday season of 2018 F falsely claimed she was not receiving benefits during a discussion as to whether she could

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AFDC program or for increasing or preventing a reduction in the amount of the benefit, that intentionally misrepresents, conceals, or withholds a material fact. 7 AAC 45.585(n).

<sup>14</sup> 7AAC 45.195 and 7 AAC 45.225.

<sup>15</sup> 7AAC 45.271.

<sup>16</sup> AS 47.27.015(e).

<sup>17</sup> Ex. 8.

help her parents while they were caring for the minor children. Months later, after she had been notified of the administrative disqualification hearing, F informed M that F was going to lose her benefits. This statement-- coming after F earlier told her mother that she was not receiving any benefits-- indicates both knowledge and culpability to the ALJ; it is the type of information reasonable people would rely on in making important real-world determinations. In conjunction the two statements support the conclusion that F knowingly continued to receive benefits, kept the full amount for her personal use, and was sanguine about the situation when her misconduct was discovered. The statements are consistent with an intentional violation. They confirm motive for withholding and concealing the information from DPA.

**c. F failed to report a material fact.**

A duty to report appears in two sections of the controlling regulatory framework. Absent good cause, ATAP recipients are required to report simple changes such as the acquisition of a car, change of mailing address, or change in rent within 10 days of the change.<sup>18</sup> They are also required to report if a minor child will be absent from the household for more than 30 days within 5 days of learning of the planned absence.<sup>19</sup>

ATAP benefit eligibility requires that a minor biological child be in the home when benefits are received.<sup>20</sup> An absence of thirty days is a presumptive indicator that the child no longer resides in the home.<sup>21</sup> Witness GU I testified extensively with regard to how DPA monitors and responds to children going in and out of the home as such situations are common due to shared custody. Because a child's presence in the home is required for benefits to be available, it is a material fact.

F Q was no longer residing in the same household as her children by September or October 2018 and did not inform DPA of that change. It makes no difference to this decision that the adult recipient changed residences leaving the minor children where they were: the children were no longer in her household as required.

DPA has therefore met its burden of proof that F Q committed an intentional violation by concealing or withholding material facts. F Q committed a first IVP of the

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<sup>18</sup> 7 AAC 45.270.

<sup>19</sup> 7 AAC 45.271

<sup>20</sup> 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

<sup>21</sup> 7 AAC 45.225(c).

ATAP program. As a result, she is disqualified from receiving benefits for a 6-month period beginning August 20, 2019.<sup>22</sup> The disqualification applies solely to F Q, and not her children.

F Q is also required to reimburse DPA for benefits that were overpaid as a result of her IVP.<sup>23</sup> If she disputes DPA's calculation of restitution, she may request a separate hearing on that limited issue.

**c. The request regarding denial of February 2019 benefits to M Q is not properly before the OAH.**

DPA additionally requested an order that M be paid ATAP benefits for February 2019 because the minor, biologically related children were living in her household and she met the other requirements for benefits.<sup>24</sup> This request was not contained in the agency pre-hearing brief. DPA did not articulate a basis of authority for OAH to grant such a request at the hearing. This decision concludes the question of whether M is entitled to ATAP benefits is outside the scope of the issue of whether F committed an IPV and will not be addressed.<sup>25</sup>

**IV. Conclusion**

F Q committed a first intentional violation of the ATAP mandatory reporting requirements. She is therefore disqualified from participation in the ATAP program for six months beginning August 20, 2019.

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<sup>22</sup> AS 47.27.015(e)(1).

<sup>23</sup> 7AAC 45.470(a); 7AAC 45.580(f).

<sup>24</sup> The Division did not pay benefits to M for her grandchildren in February 2019 when she first applied because it had already paid benefits for that month to Esther.

<sup>25</sup> M is entitled to a review of her own application for ATAP benefits. 7 AAC 45.150-195. The Fraud Unit is also specifically authorized to request a special review of an applicant's request. 7 AAC 45.560(a)(8). There has been no indication that agency action has been exhausted or that M would not have the opportunity for administrative review of her own case were the agency internal review to go against her. 7 AAC 49.010-030.

If over-issued ATAP benefits have not been repaid, F Q is now required to make restitution. She may request a hearing for the limited purpose of contesting the DPA restitution calculation within 30 days of receipt.

Dated this 23<sup>rd</sup> day of May, 2019.

*Signed* \_\_\_\_\_  
Carmen E. Clark  
Administrative Law Judge

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days after the date of this decision.

DATED this 11th day of June, 2019.

By: *Signed* \_\_\_\_\_  
Signature  
Carmen E. Clark \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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