

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

In the Matter of	)	
	)	
B S G	)	OAH No. 13-1025-ADQ
_____	)	DPA/FCU No.
	)	Agency No.

**DECISION AND ORDER**

**I. Introduction**

After conducting an investigation, the Division of Public Assistance (division) concluded that B G had committed two Intentional Program Violations. Mr. G contested that conclusion, and requested a hearing.

The hearing was held on September 20, 2013. Mr. G appeared in person and represented himself. The division was represented by its lay advocate, Investigator Dean Rogers. One Intentional Program Violation was proven by clear and convincing evidence, but the division did not meet its burden of proof on the other alleged violation.

**II. Factual Background**

Mr. G applied for Food Stamps and Temporary Assistance benefits on January 4, 2013.<sup>1</sup> He reported that his daughter, S D, was living with him as a household member.<sup>2</sup> Based on the information provided in his application, Mr. G's household received Food Stamp Benefits from January of 2013 through June of 2013, and Temporary Assistance Benefits from January through July of 2013.<sup>3</sup>

The central dispute in this case is whether S was actually living with Mr. G during this period.

**III. Discussion**

The division claims that Mr. G either falsely claimed that S was living with him in January of 2013 when he submitted his application, or failed to timely report that she had left his household. It is an Intentional Program Violation for a recipient of Temporary Assistance benefits to intentionally misrepresent, conceal, or withhold material

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<sup>1</sup> Exhibit 7.  
<sup>2</sup> Exhibit 7, page 2.  
<sup>3</sup> Exhibit 12.

information.<sup>4</sup> Recipients are required to report within five days if a dependent child will be absent from the home for more than one month.<sup>5</sup> The division has the burden of proving the violation by clear and convincing evidence.<sup>6</sup> 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.<sup>7</sup>

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[.]”<sup>8</sup> In order to prevail, the division must prove this violation by clear and convincing evidence.<sup>9</sup> 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,<sup>10</sup> and must repay any benefits wrongfully received.<sup>11</sup>

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.<sup>12</sup> This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

*A. First Alleged Violation*

S’s mother, X J, testified that S has always resided in her household and that S did not live with Mr. G. She reported that to the division after she had learned she was being charged child support for S. She testified that she was asked to gather documents to support her claim that S lived with her, and she provided the division with the following:

- A letter from S’s Head Start program stating that S was selected for the program on March 14, 2012; that Ms. J attended an enrollment visit on August 14, 2012; that S attended through May of 2013; that Ms. J attended five family advocate visits, two parent teacher conferences, and one home visit; and that Ms. J brought S to and from school each day.<sup>13</sup>

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<sup>4</sup> 7 AAC 45.580(n).

<sup>5</sup> 7 AAC 45.271(a).

<sup>6</sup> 7 AAC 45.585(d).

<sup>7</sup> AS 47.27.015(e)(2).

<sup>8</sup> 7 C.F.R. 273.16(c)(1).

<sup>9</sup> 7 C.F.R. § 273.16(e)(6).

<sup>10</sup> 7 C.F.R 273.16(b)(1).

<sup>11</sup> 7 C.F.R. 273.16(b)(12).

<sup>12</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

<sup>13</sup> Exhibit 10, page 1.

- An unsigned but notarized statement from C Y, a friend of Ms. J, stating that S has been living in Ms. J's household and not in Mr. G's household during the last two years.<sup>14</sup>
- A signed statement from another friend of Ms. J, M Z, stating S has lived with Ms. J since birth.<sup>15</sup>
- Medical records from S's pediatrician showing that Ms. J has taken S to her doctor on various dates beginning in July of 2008 through August 1, 2012.<sup>16</sup>

In addition, there is an investigation report in the file reporting that on June 14 and June 19, 2013, Mr. G reported that S was with her mother, and had been for about three weeks.<sup>17</sup>

Mr. G stated in his application, under penalty of perjury, that S was living with him on January 4, 2013.<sup>18</sup> During the hearing, he stated on the record that S did not leave his household until the last Sunday in May, and later stated that she left his household one or two days before June.

Mr. G also submitted the following documents:

- An unsigned letter from S's teacher, N N, stating that Mr. G dropped S off at the school, and picked her up after school daily. This letter also states that he attended parent teacher conferences and home visits.<sup>19</sup>
- A signed letter from F O stating that S was in Mr. G's custody from November of 2012 through June of 2013.<sup>20</sup>
- A letter from Mr. G's landlord, T M, stating that S was living with Mr. G from the fall of 2012 through the end of the school year in May of 2013, and that Mr. M had helped Mr. G by providing rides to school and parent teacher conferences.<sup>21</sup>

In addition, the division verified that S was living with Mr. G as of January 30, 2013.<sup>22</sup>

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<sup>14</sup> Exhibit 10, page 2.

<sup>15</sup> Exhibit 10, page 3.

<sup>16</sup> Exhibit 10, pages 4 – 21.

<sup>17</sup> Exhibit 11.

<sup>18</sup> Exhibit 7.

<sup>19</sup> Exhibit A.

<sup>20</sup> Exhibit B.

<sup>21</sup> Exhibit C.

<sup>22</sup> Exhibit 11.

Because the medical records do not cover the period in question here, they are not particularly persuasive. In addition, it would be possible for Ms. J to take S to the doctor even if S was a member of Mr. G's household at the time. Similarly, it would be possible for Ms. J to attend parent teacher conferences and take S to school even if S was living in Mr. G's household, just as it would be possible for Mr. G to take S to school and attend conferences if S was living in Ms. J's household.

On the other hand, the other letters submitted by the parties can't be reconciled. The individuals submitting the letters were not called as witnesses, so they were not questioned about the extent of their personal knowledge of the facts asserted. It is clear, however, that two people asserted Ms. J was the sole custodian during the time in question, and two people asserted that Mr. G was the sole custodian.<sup>23</sup>

There is a statement from Investigator Steve Neff in Exhibit 11 that suggests that S was living with Mr. G at least as of January 30, 2013. This contradicts the testimony of Ms. J and the letters in exhibit 10, pages 2 and 3, which say that S never lived with Mr. G, but the statement in Exhibit 11 is hearsay, and Mr. Neff was not called as a witness. It is unclear what he meant by saying that S's presence in the home was verified.

It is the division's burden to prove that it is highly probable that Mr. G misrepresented that S was a member of his household. While reasonable people might view this evidence and conclude that the preponderance of the evidence shows a misrepresentation, the division fell short of proving any misrepresentation was highly probable. Accordingly, the division has not proven that Mr. G committed an Intentional Program Violation of either program when he claimed on the application that S was a member of his household.

#### *B. Second Alleged Violation*

The division also asserted that Mr. G committed an Intentional Program Violation by failing to report when S left his household. Mr. G acknowledged that S left at the end of May, so he was obligated to inform the division of this change no later than June 5, 2013.<sup>24</sup> The division has no evidence of Mr. G reporting this change, and Mr. G did not assert that

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<sup>23</sup> The unsigned statement from C Y is odd in that it appears to be contained in an e-mail communication from Ms. J to someone named B M. It is notarized even though Mr. Y did not sign it. Normally notaries require a signature. AS 09.63.030(a).

<sup>24</sup> 7 AAC 45.271(a); Exhibit 7, page 9.

he did report S's departure from his household. Thus, it is highly probable that Mr. G did not report S's departure. To prove an Intentional Program Violation, the division must go one step further and prove that it is highly probable that this failure to report was intentional.

The division did prove that Mr. G was well aware of his obligation to report household changes at the time he submitted his application. The question here, however, is whether Mr. G was consciously thinking about that obligation five months later when the change occurred. The division did not present any direct evidence on this issue. It did demonstrate, however, that Mr. G received Temporary Assistance benefits on June 1, 2013, and again on July 1, 2013.<sup>25</sup> He also received his Food Stamp benefits on June 1, 2013. Mr. G would know that the amount of these benefits was based, in part, on who was in his household,<sup>26</sup> and he knew that his household composition changed at the end of May. While he may not have thought of it sooner, once he received his June benefits, he would have been aware of the requirement to report this change, yet he failed to do so until questioned by an investigator two weeks later. The division has proven by clear and convincing evidence an intentional failure to report S's departure from his household within five days. This is an Intentional Program Violation of the Temporary Assistance program. The division did not assert that this would also be an Intentional Program Violation of the Food Stamp program, so no violation of that program is found.

#### **IV. Conclusion and Order**

The division did not prove an Intentional Program Violation of the Food Stamp program. The division did meet its burden of proving that Mr. G committed a first time Intentional Program Violation of the Temporary Assistance program by failing to report within five days that S had left his household. Mr. G is disqualified from participation in the Temporary Assistance program for a period of six months.<sup>27</sup> If Mr. G is currently receiving Temporary Assistance benefits, his disqualification period shall begin on December 1, 2013.<sup>28</sup> If Mr. G is not currently receiving Temporary Assistance benefits, his disqualification period shall

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<sup>25</sup> Exhibit 9, page 1.

<sup>26</sup> He had been receiving Food Stamps since November of 2009, and thus would have gone through the recertification process several times and would be familiar with how these benefit programs work. See Exhibit 9, page 4.

<sup>27</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>28</sup> 7 AAC 45.580(f).

be postponed until he applies for, and is found eligible for, Temporary Assistance benefits.<sup>29</sup> This disqualification applies only to Mr. G, and not to any other individuals who may be included in his household.<sup>30</sup> For the duration of the disqualification period, Mr. G's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for his household. However, Mr. G must report his income and resources as they may be used in these determinations.<sup>31</sup>

If over-issued Temporary Assistance benefits have not been repaid, Mr. G or any remaining household members are now required to make restitution.<sup>32</sup> If Mr. G disagrees with the division's calculation of the amount of over-issuance to be repaid, he may request a hearing on that limited issue.<sup>33</sup>

Dated this 4<sup>th</sup> day of October, 2013.

Signed  
\_\_\_\_\_  
Jeffrey A. Friedman  
Administrative Law Judge

## 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 22<sup>nd</sup> day of October, 2013.

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

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

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<sup>29</sup> 7 AAC 45.580(g).  
<sup>30</sup> 7 AAC 45.580(e)(1).  
<sup>31</sup> 7 AAC 45.580(e)(3).  
<sup>32</sup> 7 AAC 45.570(b).  
<sup>33</sup> 7 AAC 45.570(l).