

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

In the Matter of )  
 )  
F U ) OAH No. 19-0900-ADQ  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION and ORDER**

**I. Introduction**

F U received Alaska Temporary Assistance (ATAP) benefits from April to July of 2018. On September 26, 2019, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against Mr. U, alleging he had committed a first Intentional Program Violation (IPV) of the ATAP program.<sup>1</sup>

A hearing in this case was convened on October 30, 2019, but Mr. U did not answer his phone on October 30 when he was called—at least three times— at the time set for the hearing. Nor did Mr. U respond to several voicemail messages left at his telephone number of record. The hearing went forward in his absence.<sup>2</sup>

DPA was represented at the hearing by Megan Gosda, an investigator employed by DPA’s fraud control unit. She and DPA Eligibility Technician Amanda Holton testified as part of DPA’s case. Exhibits 1-11 were admitted into evidence.

This decision concludes that DPA proved by clear and convincing evidence that Mr. U committed a first Intentional Program Violation of the ATAP program. Consequently, he must be barred from ATAP for six months.

**II. Facts**

F U applied for ATAP benefits on April 13, 2018, listing himself and his daughter P U as the two members of his household.<sup>3</sup> He was informed at that time, both in documents that he signed and during an eligibility interview on the same date, that if a child leaves the home, the change in household composition must be reported within five days.<sup>4</sup> Mr. U signed the application forms at issue in this matter under penalty of perjury.<sup>5</sup>

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<sup>1</sup> Exh. 3.

<sup>2</sup> Once proper notice has been given, the ATAP regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 AAC 45.585(b) (“If an accused individual ... fails to appear at an administrative disqualification hearing, the administrative law judge **shall** (1) hold the hearing without the accused individual ...; (2) consider the evidence based on the information provided by the department; and (3) determine if an intentional program violation was committed”) (emphasis added).

<sup>3</sup> Exh. 8, pp. 2-3.

<sup>4</sup> Exh. 7, p. 1; Holton testimony.

<sup>5</sup> Exh. 8, p. 12.

Mr. U was approved for ATAP benefits based on P being part of his household.<sup>6</sup> ATAP benefits were issued to him from April 13 through July 31, 2018, in the total amount of \$2,764, based on that household composition.<sup>7</sup> In fact, however, P had been removed from Mr. U's custody on April 4, 2018, and placed in foster care under State custody.<sup>8</sup> She remained in that status through at least June 24, 2019.<sup>9</sup>

Mr. U later again represented that P was living with him in an eligibility review form, dated September 21, 2018.<sup>10</sup> During an eligibility interview on that date, Mr. U continued to insist that his daughter was part of his household.<sup>11</sup>

DPA learned of P's removal from the home through internal cross-checking with other agencies.<sup>12</sup> A fraud investigation, and this proceeding, ensued.

### **III. Discussion**

Alaska law prohibits a person from obtaining ATAP benefits by concealing or withholding facts.<sup>13</sup> In this case, DPA seeks to establish an IPV by Mr. U in the ATAP program. To do so, DPA must prove the elements of the IPV by clear and convincing evidence.<sup>14</sup> No evidence has been offered that Mr. U has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that it is a first-time violation.

In order to establish an Intentional Program Violation of the Temporary Assistance program, DPA must prove by clear and convincing evidence that Mr. U intentionally misrepresented, concealed or withheld a material fact "for the purpose of establishing or maintaining a family's eligibility for ATAP benefits."<sup>15</sup>

It is clear that Mr. U claimed, on both his April 2018 application and his September 2018 eligibility review form, as well as during eligibility interviews, that his daughter was living with him at a time when she was in fact in State custody and placed in foster care. This was a

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<sup>6</sup> Exh. 8, pp. 13-16.

<sup>7</sup> Exh. 11, pp. 1-2.

<sup>8</sup> Exh. 10; Gosda and Holton testimony.

<sup>9</sup> *Id.*

<sup>10</sup> Exh. 9.

<sup>11</sup> Exh. 9, p. 7. Mr. U withdrew his application, however, after being informed by the caseworker that DPA's records showed P was still in state custody. *Id.*

<sup>12</sup> Holton testimony; Exh. 2.

<sup>13</sup> 7 AAC 45.580(n).

<sup>14</sup> 7 AAC 45.585(e).

<sup>15</sup> 7 AAC 45.580(n).

misrepresentation. It is impossible to construe this pattern of misrepresentation and concealment as anything but intentional behavior.

DPA met its burden of proof and established that Mr. U intentionally misrepresented and concealed his child's true domicile. Household composition is an essential component in qualifying for ATAP benefits.<sup>16</sup> It is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Mr. U would have intentionally misrepresented where his child was living would have been to establish his eligibility for Temporary Assistance benefits, which are available only to households with children.

The Division has therefore met its burden of proof and established that Mr. U intentionally misrepresented or withheld a material fact. This intentional misrepresentation of a material fact was made for the purpose of establishing his eligibility for ATAP benefits. Mr. U has therefore committed a first IPV of the Temporary Assistance program.

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

Mr. U has committed a first-time Temporary Assistance Intentional Program Violation. He is therefore disqualified from participation in the Temporary Assistance program for a period of six months.<sup>17</sup> If Mr. U is currently receiving Temporary Assistance benefits, his disqualification period shall begin February 1, 2020.<sup>18</sup> If Mr. U is not currently a Temporary Assistance recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, Temporary Assistance benefits.<sup>19</sup> This disqualification applies only to Mr. U, and not to any other individuals who may be included in his household.<sup>20</sup> For the duration of the disqualification period, Mr. U's needs will not be considered when determining ATAP eligibility and benefit amounts for his household. However, Mr. U must report his income and resources as they may be used in these determinations.<sup>21</sup>

The Division shall provide written notice to Mr. U and the caretaker relative, if other than Mr. U, of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>22</sup>

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<sup>16</sup> AS 47.27.025(a).

<sup>17</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>18</sup> 7 AAC 45.580(f).

<sup>19</sup> 7 AAC 45.580(g).

<sup>20</sup> 7 AAC 45.580(e)(1).

<sup>21</sup> 7 AAC 45.580(e)(3).

<sup>22</sup> 7 AAC 45.580(k).

If over-issued Temporary Assistance benefits have not been repaid, Mr. U or any remaining household members are now required to make restitution.<sup>23</sup> If Mr. U disagrees with DPA's calculation of the amount of over-issuance to be repaid, he may request a hearing on that limited issue.<sup>24</sup>

Dated this 4<sup>th</sup> day of December, 2019.

Signed  
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Andrew M. Lebo  
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 24<sup>th</sup> day of December 2019.

By: Signed  
\_\_\_\_\_  
Signature  
Andrew M. Lebo  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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

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<sup>23</sup> 7 AAC 45.570(b).

<sup>24</sup> 7 AAC 45.570(d).