

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

In the Matter of)	OAH No. 13-1097-ADQ
)	Division No.
L L)	Fraud Control Case No.
)	Food Stamp, Temporary Assistance,
_____)	and Medicaid Programs

DECISION AND ORDER

I. Introduction

L L applied for Food Stamp¹, Temporary Assistance, and Medicaid benefits on March 4, 2010. Her application was approved. She applied for Food Stamp and Medicaid benefits on September 28, 2011, which was approved. On August 8, 2013, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed a first time Intentional Program Violation of the Food Stamp, Temporary Assistance, and Medicaid programs by misrepresenting her household composition upon each of these applications.²

Ms. L’s hearing was held on September 18, 2013. Ms. L was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. L did not appear for the hearing and it was held in her absence.⁴ Linette Lacy, an investigator employed by the Division’s Fraud Control Unit, represented the Division. The hearing was recorded.

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. 3.

³ Ex. 1, p. 3; Exs. 3, 4.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). 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.

The Alaska Medicaid Intentional Program Violation regulation, 7 AAC 100.912, does not contain specific procedures for Intentional Program Violation hearings. However, the regulation states that “the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance program) or 7 AAC 46 (Food Stamp program) if the facts involved arise from the same or related circumstances.” 7 AAC 100.912(c). Because this case also involves an alleged Intentional Program Violation of the Food Stamp and Temporary Assistance programs, the hearing procedures required by those programs are also used for the alleged Intentional Program Violation of the Medicaid program.

This decision concludes that Ms. L did not commit an Intentional Program Violation of the Temporary Assistance program, but that she committed a first Intentional Program Violation of the Food Stamp and Medicaid programs.

II. Facts

Ms. L has one child. She and S T are the parents of that child. Ms. L arrived in Anchorage, Alaska from Hawaii, along with Mr. T, on March 4, 2010.⁵ She applied for Food Stamp, Temporary Assistance, and Medicaid benefits that same day.⁶ Mr. T was residing with her at that time.⁷ However, her application stated that her household consisted only of herself and the child; it did not list Mr. T as a household member.⁸ In addition, during her application interview, she informed the Division eligibility technician that she was staying with her cousins, who paid for her and her child to come to Alaska, and did not disclose that Mr. T was with her.⁹ Her application was approved and she began receiving benefits for all three programs.¹⁰

Ms. L again applied for Food Stamp and Medicaid benefits on September 28, 2011. Her application again stated that her household consisted only of her and her daughter.¹¹ However, Mr. T informed a Division investigator on November 30, 2011, that although he and Ms. L had an on and off again relationship, that he had been living with her continuously for the past three months.¹² It is therefore highly probable that Mr. T was residing with Ms. L at the time of her September 28, 2011 application. The application was approved.¹³

Ms. L did not attend her hearing. However, she stated in a recorded May 24, 2013 interview that Mr. T was living with her in March 2010, but that her relationship with him was “rocky” and that beginning in April 2010, he would come and go from the household.¹⁴ As of December 9, 2011, Mr. T had been employed continuously with the same employer since March 26, 2010.¹⁵

⁵ Ex. 19, p. 1; Ex. 24, p. 2.

⁶ Ex. 8.

⁷ Ex. 26.

⁸ Ex. 8, p. 2.

⁹ Ex. 19.

¹⁰ Ex. 18.

¹¹ Ex. 13.

¹² Ex. 24, p. 2.

¹³ Ex. 21, p. 3.

¹⁴ Ex. 26.

¹⁵ Ex. 15.

The Division calculated that from May through August 2010, Ms. L received \$1,998 in Temporary Assistance benefits that she was not entitled to receive.¹⁶ The Division calculated that from September 2011 through January 2012, Ms. L received \$1,373 in Food Stamp benefits and \$137.39 in Medicaid benefits that she was not entitled to receive.¹⁷

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁸ that Ms. L intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁹ To meet this standard, the division must show that it is *highly probable* that Ms. L intended to provide or knowingly provided incorrect information.²⁰

A review of the facts demonstrates that Mr. T was actually living as part of Ms. L’s household in March 2010 and September 2011 when she applied for Food Stamp benefits. Ms. L, however, did not disclose Mr. T’s presence in the home when she completed those applications. Consequently, Ms. L intentionally misrepresented that Mr. T was not residing in her household when he was.

The Division has therefore met its burden of proof and established that Ms. L made an intentional misrepresentation on her March 2010 and September 2011 applications for Food Stamp benefits. As a result, she committed a first Intentional Program Violation of the Food Stamp program.

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 evidence²¹ that Ms. L intentionally misrepresented, concealed or withheld a material fact on her application “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²² As discussed above, Ms. L intentionally misrepresented that Mr. T did not reside with her when he actually did reside

¹⁶ Ex. 27.

¹⁷ Ex. 27.

¹⁸ 7 C.F.R. § 273.16(e)(6).

¹⁹ 7 C.F.R. § 273.16(c).

²⁰ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

²¹ 7 AAC 45.585(d).

²² 7 AAC 45.580(n).

with her. While the misrepresentation was made on both the March 2010 and the September 2011 applications, because the September 2011 application was not one for Temporary Assistance benefits, only the March 2010 application will be considered.

Temporary Assistance benefits are based upon the total number of people in the household and their combined income.²³ Whether someone resides in the home and their income, if any, are therefore material facts for the purpose of determining Temporary Assistance eligibility.

The Division must then prove that the intentional misrepresentation of the material fact was for the purpose of establishing or maintaining the household's eligibility for Temporary Assistance benefits. However, Mr. T was unemployed at the time of the March 2010 application – he did not start working until March 26, 2010. He therefore had no income to take into account, and would not have affected the household's financial eligibility.²⁴ Consequently, the intentional misrepresentation that Mr. T was not in the household was not made for the purpose of establishing or maintaining the household's eligibility for Temporary Assistance benefits. The Division has the burden of proof in this case and failed to meet it with regard to the Temporary Assistance program. Ms. L has not committed a first Intentional Program Violation of the Temporary Assistance program.²⁵

C. Medicaid Program

Unlike the Food Stamp and Temporary Assistance programs, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.²⁶ When no standard of proof is specified, the general rule is that the “preponderance of the evidence” standard of proof applies.²⁷ However, the Medicaid regulations specifically provide that “the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance Program) or 7 AAC

²³ 7 AAC 45.520 and 7 AAC 45.525.

²⁴ If anything, his presence in the household combined with his lack of income would have resulted in a higher Temporary Assistance benefit, rather than making the household either ineligible or reducing its benefit amount.

²⁵ If the Division had filed this case alleging that Ms. L had committed a Temporary Assistance Intentional Program Violation by failing to timely report when Mr. T became employed, then the outcome of this case might be different. However, the alleged Intentional Program Violation was only that she misrepresented her household composition on the applications.

²⁶ See 7 AAC 100.912.

²⁷ 2 AAC 64.290(e); *Amerada Hess Pipeline Corp. v. Alaska Pub. Util. Comm'n*, 711 P.2d 1170, 1179 n.14 (Alaska 1986).

46 (Food Stamp Program) if the facts involved arise from the same or related circumstances.”²⁸ Because this case also involves alleged Food Stamp and Alaska Temporary Assistance Intentional Program Violations based upon the same factual allegations, this decision will use the higher Food Stamp and Temporary Assistance Intentional Program Violation “clear and convincing evidence” standard of proof, instead of the lower “preponderance of the evidence” standard of proof.

The Alaska Medicaid program defines an Intentional Program Violation as follows:

- (1) “intentional program violation” means an action that
 - (A) an individual takes for the purpose of establishing and maintaining an individual’s eligibility for Medicaid benefits; and
 - (B) intentionally misrepresents, conceals, or withholds a material fact;^[29]

As discussed above, Ms. L intentionally misrepresented that Mr. T was not residing in her home when he was. Like the Temporary Assistance program, financial eligibility for Medicaid is dependent upon the number of persons in the home and their combined income.³⁰ This means that the intentional misrepresentation regarding Mr. T was one of a material fact. Again, as with the Temporary Assistance Intentional Program Violation, in order to establish a Medicaid Intentional Program Violation, the Division must prove not only that an intentional misrepresentation has been made, but also that the misrepresentation was of a material fact and was made “for the purpose of establishing and maintaining an individual’s eligibility for Medicaid benefits.”³¹

The facts of this case compel a conclusion with regard to the March 2010 application that is identical to that reached above with regard to the Temporary Assistance program: Ms. L’s misrepresentation on the March 2010 application was not one made for the purpose of “establishing and maintaining an individual’s eligibility for Medicaid benefits.” Again, this conclusion is reached because Mr. T was unemployed at the time of the application: since he had no income, his presence in the household would not have resulted in a finding of ineligibility.

The September 2011 application, however, is a different matter. Mr. T was employed at the time of that application. The omission of his presence from Ms. L’s household omitted his

²⁸ 7 AAC 100.912(c).

²⁹ 7 AAC 100.912(e).

³⁰ See 7 AAC 1001.102(c) for the financial eligibility requirements for the Family Medicaid program.

³¹ 7 AAC 100.912(e)(1).

income from being considered in determining the household's financial eligibility. This was an intentional misrepresentation of a material fact that was made for the purpose of "establishing and maintaining an individual's eligibility for Medicaid benefits." The Division has therefore met its burden of proof and established that Ms. L intentionally misrepresented a material fact on her September 2011 application for the purpose of establishing her eligibility for Medicaid benefits. Ms. L therefore committed an Intentional Program Violation as defined by the Medicaid regulations.

IV. Conclusion and Order

A. Food Stamp Program

Ms. L has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³² The Food Stamp program disqualification period shall begin January 1, 2014.³³ This disqualification applies only to Ms. L, and not to any other individuals who may be included in her household.³⁴ For the duration of the disqualification period, Ms. L's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.³⁵

The Division shall provide written notice to Ms. L 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.³⁶

If over-issued Food Stamp benefits have not been repaid, Ms. L or any remaining household members are now required to make restitution.³⁷ If Ms. L disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³⁸

³² 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).

³³ 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 7 C.F.R. § 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).

³⁴ 7 C.F.R. § 273.16(b)(11).

³⁵ 7 C.F.R. § 273.11(c)(1).

³⁶ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁸ 7 C.F.R. § 273.15.

B. Medicaid Program

Ms. L has committed an Intentional Program Violation of the Medicaid program. She is required to reimburse the Division for Medicaid benefits she received as a result of her Intentional Program Violation. If she has not reimbursed the Division, Ms. L is required to make restitution.³⁹ If Ms. L disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.⁴⁰

Dated this 9th day of October, 2013.

Signed

Lawrence A. Pederson

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 23rd day of October, 2013.

By: Signed

Signature

Lawrence A. Pederson

Name

Administrative Law Judge

Title

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

³⁹ 7 AAC 100.910(a)(1).

⁴⁰ 7 AAC 100.910(f).