

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

In the Matter of	)	OAH No. 13-1114-ADQ
	)	Division No.
D C	)	Fraud Control Case No.
	)	Food Stamp and Medicaid Programs
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The issue presented is whether D C committed an Intentional Program Violation (IPV) of the Food Stamp<sup>1</sup> and Medicaid programs by intentionally misrepresenting that her two children were living with her on her August 1, 2012 application for benefits.

Ms. C’s hearing was held on September 17, 2013. Ms. C was provided advance notice of the hearing by mail.<sup>2</sup> She did not appear for the hearing and it was held in her absence.<sup>3</sup>

Linette Lacy, an investigator employed by the Division of Public Assistance’s (division) Fraud Control Unit, represented and testified for the division. This decision concludes that the division proved by clear and convincing evidence that Ms. C committed a first IPV of the Food Stamp and Medicaid programs.

**II. Facts**

Ms. C applied for Food Stamp and Medicaid benefits on August 1, 2012.<sup>4</sup> Her application stated she was living in Anchorage, Alaska, with her two minor children.<sup>5</sup> Ms. C has not challenged the division’s conclusion that her children were actually living full time in Anchorage with their father, as they had been since at least June 15, 2012.<sup>6</sup>

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<sup>1</sup> 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.

<sup>2</sup> Ms. C was sent advance notice of her hearing by both certified mail and first class mail. The advance notice of the hearing sent by certified mail was claimed August 16, 2013. Exs. 3, 4.

<sup>3</sup> The Food Stamp program 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).

<sup>4</sup> Ex. 8.

<sup>5</sup> Ex. 8, p. 1.

<sup>6</sup> On October 22, 2012, the children’s father provided affidavits stating that the children were living in his home. Exs. 10 – 12.

Ms. C's Food Stamp and Medicaid application was approved for a three person household (Ms. C and her two children).<sup>7</sup> She then received Food Stamp benefits for the months of August 2012 through November 2012, for a three person household, in the total amount of \$2,508.<sup>8</sup> She received Medicaid for this same time period in the total amount of \$3,949.<sup>9</sup>

The division calculated that, during August 2012 through November 2012, Ms. C received \$1,552 in Food Stamp benefits and \$3,949 in Medicaid benefits that she was not entitled to receive.<sup>10</sup>

### **III. Discussion**

#### *A. Food Stamp Program*

The division has alleged that Ms. C committed an IPV. In order to prevail, the division must prove this violation by clear and convincing evidence.<sup>11</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>12</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>13</sup> and must repay any benefits wrongfully received.<sup>14</sup>

Food Stamp eligibility and benefit amounts are determined based, in part, on the number of persons residing in the Food Stamp household.<sup>15</sup> Ms. C's application listed two children as being part of her household, despite the fact they were not living with her. This had the effect of causing Food Stamp benefits to be issued for a three person household, when there was actually only one person in the household. The unchallenged evidence establishes that Ms. C, by representing that her children lived with her, provided false or misleading information on her application.

The more difficult question is whether the division has proven by clear and convincing evidence that Ms. C intentionally provided false or misleading information. To

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<sup>7</sup> Ex. 8.

<sup>8</sup> Ex. 16.

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

<sup>10</sup> *Id.*

<sup>11</sup> 7 C.F.R. § 273.16(e)(6).

<sup>12</sup> 7 C.F.R. §273.16(c)(1).

<sup>13</sup> 7 C.F.R. §273.16(b)(1).

<sup>14</sup> 7 C.F.R. §273.16(b)(12).

<sup>15</sup> 7 C.F.R. § 273.10(e)(2)(i) and (ii)(A).

meet this standard, the division must show that it is *highly probable* that Ms. C intended to provide or knowingly provided incorrect information.<sup>16</sup> Because Ms. C did not attend the hearing, her state of mind can only be inferred from circumstantial evidence.<sup>17</sup> In the absence of any evidence from Ms. C explaining why she identified her children as living with her, it is reasonable to conclude that she was aware they were living elsewhere and intentionally provided false or misleading information.<sup>18</sup> The division has proven intent by clear and convincing evidence.

The division has met its burden of proof. This is Ms. C's first IPV, so she is 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 IPV.<sup>19</sup> Penalties for subsequent Intentional Program Violations include increasingly longer periods of disqualification, including lifetime disqualifications.<sup>20</sup>

#### B. *Medicaid Program*

Unlike the Food Stamp program, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.<sup>21</sup> When no standard of proof is specified, the general rule is that the “preponderance of the evidence” standard of proof applies.<sup>22</sup> 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 46 (Food Stamp Program) if the facts involved arise from the same or related circumstances.”<sup>23</sup> Because this case also involves an alleged Food Stamp violation based upon the same factual allegations, the Food Stamp IPV “clear and convincing evidence” standard of proof is appropriate.

The Alaska Medicaid program defines an IPV as:

(1) “intentional program violation” means an action that

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<sup>16</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

<sup>17</sup> *In re M. S. B.*, OAH No. 13-0128-ADQ (Commissioner of Health and Social Services 2013), page 3.

<sup>18</sup> *See In re K. E. G.*, OAH No. 13-0078-ADQ (Commissioner of Health and Social Services 2013), page 3.

<sup>19</sup> 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).

<sup>20</sup> 7 C.F.R. 273.16(b)(1).

<sup>21</sup> *See* 7 AAC 100.912.

<sup>22</sup> 2 AAC 64.290(e); *Amerada Hess Pipeline Corp. v. Alaska Pub. Util. Comm'n*, 711 P.2d 1170, 1179 n.14 (Alaska 1986).

<sup>23</sup> 7 AAC 100.912(c).

- (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.<sup>[24]</sup>

As discussed above, Ms. C intentionally misrepresented that her children were residing in her home when they were residing with their father. In order to establish a Medicaid IPV, 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.”<sup>25</sup>

Ms. C is under 60 years old. There is no evidence that on August 1, 2012 she was disabled, pregnant, or had breast or cervical cancer.<sup>26</sup> Accordingly, her only Medicaid eligibility category would be the Family Medicaid category. In order for a household to qualify for Family Medicaid, among other requirements, there must be a dependent child residing in the household.<sup>27</sup> Whether there is a dependent child primarily residing in the home is therefore a material fact for the purposes of determining Family Medicaid 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 Family Medicaid benefits. Because Ms. C did not attend the hearing, her state of mind can only be inferred from circumstantial evidence.<sup>28</sup> Ms. C would have only been eligible for Family Medicaid if her children were primarily residing with her. In the absence of any evidence from Ms. C explaining why she identified her children as living with her, it is reasonable to conclude that her misrepresentation regarding the presence of children in her home was made for the purpose of establishing her eligibility for Family Medicaid benefits.

The division has therefore met its burden of proof and established that Ms. C intentionally misrepresented a material fact for the purpose of establishing her eligibility for Family Medicaid benefits. Ms. C therefore committed an Intentional Program Violation as defined by the Medicaid regulations.

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<sup>24</sup> 7 AAC 100.912(e)(1).

<sup>25</sup> 7 AAC 100.912(e)(1)(A).

<sup>26</sup> See 7 AAC 100.002 for a list of Medicaid coverage categories.

<sup>27</sup> 7 AAC 100.110(a).

<sup>28</sup> *In re M. S. B.*, OAH No. 13-0128-ADQ (Commissioner of Health and Social Services 2013), page 3.

#### IV. Conclusion and Order

##### A. Food Stamp Program

Ms. C 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.<sup>29</sup> The Food Stamp program disqualification period shall begin December 1, 2013.<sup>30</sup> This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.<sup>31</sup> For the duration of the disqualification period, Ms. C'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.<sup>32</sup>

The division shall provide written notice to Ms. C of the benefits, if any, she will receive during the period of disqualification, or that she must reapply because the certification period has expired.<sup>33</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. C is now required to make restitution.<sup>34</sup> If Ms. C disagrees with the division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.<sup>35</sup>

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<sup>29</sup> 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).

<sup>30</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>31</sup> 7 C.F.R. § 273.16(b)(11).

<sup>32</sup> 7 C.F.R. § 273.11(c)(1).

<sup>33</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>34</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>35</sup> 7 C.F.R. § 273.15.

B. *Medicaid Program*

Ms. C 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. C is required to make restitution.<sup>36</sup> If Ms. C disagrees with the division's calculation of the amount of overissuance to be repaid, she may request a hearing on that limited issue.<sup>37</sup>

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

*Signed*

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Rebecca L. Pauli

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 21<sup>st</sup> day of October, 2013.

By: *Signed*

\_\_\_\_\_  
Signature

Rebecca L. Pauli

\_\_\_\_\_  
Name

Administrative Law Judge

\_\_\_\_\_  
Title

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

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<sup>36</sup> 7 AAC 100.910(a)(1).

<sup>37</sup> 7 AAC 100.910(f).