



contained in the application is true and correct to the best of the person’s knowledge and that the individual has read and understood the “Rights and Responsibilities” section of the application

Question 32 of the application asks whether the applicant lives with a child under the age of 19 for whom the applicant is the primary caregiver. Mr. M answered “Yes” to that question. He listed his two-year-old son as the child for whom he was the primary caregiver.<sup>4</sup>

Question 91 of the application asks the applicant to list their employment. Mr. M listed Business A as his employer. Mr. M answered that he normally worked 40 hours a week, paid bimonthly, but he was not currently making any wages because “\$0 no work slow time of year.”<sup>5</sup>

Mr. M signed the Statement of Truth and acknowledged he read or had read to him the Rights and Responsibilities included with the application and understood those responsibilities, including the potential for penalties.<sup>6</sup>

The eligibility interview accompanying the February 18, 2020 benefits application took place in the Division office. During the interview Mr. M stated he did not pay rent. Instead, he performed labor in exchange for lodging. The eligibility technician confirmed this arrangement with Mr. M’s landlord, Business A, the same person listed as Mr. M’s employer.<sup>7</sup> However, Mr. M also told the eligibility technician that he was looking for work.<sup>8</sup>

According to Division records, Mr. M had no questions about the application. The Eligibility technician specifically discussed Mr. M’s rights and responsibilities. Mr. M indicated he understood them.<sup>9</sup>

Mr. M’s SNAP and ATAP benefits were approved based on the information he provided on his application and in his interview.<sup>10</sup> His benefits were determined based on receipt of no income and payment of rent by providing work-in-trade for his landlord.<sup>11</sup> Mr. M’s ATAP allotment was set at \$575.00 per month. His SNAP benefits varied from \$350.00 to \$473.00 per month.<sup>12</sup> Mr. M received benefits continuously from February 2020 to November 2020.<sup>13</sup>

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<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> Ex. 9. Business A later amended this statement to reflect that the work for rent arrangement ended in December 2019. *Id.* at 3; Testimony of Business A.

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

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

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

<sup>11</sup> *Id.*

<sup>12</sup> Ex. 12.

<sup>13</sup> *Id.*

Because Mr. M told the eligibility technician that he was looking for work, Mr. M's case was assigned to Employment Services Technician II Thomas Snell to assist him in the creation of a self-sufficiency plan. Mr. Snell has several years' experience as a work services manager for the Division combined with more than 20 years' experience assisting veterans with employment services in City A and the surrounding rural areas. Mr. M did not submit the required self-sufficiency plan, but Mr. Snell was able to verify that Mr. M worked for Business A.<sup>14</sup>

Mr. M's SNAP and ATAP benefits continued through the summer of 2020 without the need to submit a renewal application or comply with a self-sufficiency plan. The State of Alaska waived those requirements in response to the COVID-19 pandemic.<sup>15</sup>

On August 21, 2020, Mr. Snell received a report that Mr. M had improperly claimed his child as a household member on the February 18, 2020 benefits application. Mr. Snell submitted this report to the Fraud Division where it was assigned to Investigator Vance Canoy.<sup>16</sup>

Investigator Canoy was able to determine that the child was not living with Mr. M at the time Investigator Canoy investigated the report in 2021. Mr. Canoy was not, however, able to reliably determine an historical record regarding the child's custody and residence from February 2020 to November 2020 due to the age of the child and the lack of court and child support records. Based on information he received while investigating the child custody report, however, Mr. Canoy shifted the focus of his inquiry to Mr. M's February 18, 2020 employment disclosures.<sup>17</sup>

Investigator Canoy requested records from Business A. Those records demonstrated that Business A and Mr. M began work on construction projects in City A together in September 2019. Corresponding company bank records for Business A confirmed regular payment to Mr. M beginning in 2019. The bank records included checks dated January 16, 2020, January 27, 2020, February 11, 2020, and February 25, 2020, followed by continued regular payments to the end of the year.<sup>18</sup>

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<sup>14</sup> Testimony of T. Snell.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Testimony of V. Canoy. This decision does not address whether the Division proved an IPV due to a misrepresentation regarding the child's living circumstances.

<sup>18</sup> *Id.*; Ex. 11.

Mr. M's average gross income from employment with Business A was \$1,537.00 per month from January 2020 through November 2020.<sup>19</sup>

According to Business A, he met Mr. M on a job site in City B in 2017. When that job was over, Business A told Mr. M that they could keep him reliably employed if Mr. M were willing to move to City A. Mr. M arrived to work temporarily in City A in May 2019. He moved permanently to City A in September 2019. After the permanent move, Mr. M lived at property owned by Business A. Initially, in lieu of rent Mr. M completed remodeling projects at the property.<sup>20</sup>

Mr. M also worked for Business A during that time. Mr. M continued to work for Business A from his arrival in City A until December 8, 2020, when the homeowner for one of the business's remodeling projects found controlled substances at the job site. The homeowner fired Business A. Business A, believing the drugs to belong to Mr. M, terminated their working relationship on December 8, 2020.<sup>21</sup>

Mr. M filed a wage claim against Business A with the State of Alaska Department of Labor (DOL) on December 22, 2020. In his wage claim Mr. M certified that he worked for Business A from May 2019 to December 2020.<sup>22</sup>

Investigator Canoy completed his investigation after interviewing Business A, reviewing the bank records, and receiving the DOL claim file. The Division determined that had his income been disclosed on Mr. M's application, the Division would not have approved benefits. The Division calculated Mr. M received a total of \$9,257.00 in overpaid benefits from inception to termination of his case. The total consisted of \$3,844.00 overpaid SNAP benefits and \$5,413.00 overpaid ATAP benefits.<sup>23</sup>

Investigator Canoy initiated an administrative disqualification proceeding against Mr. M on April 29, 2021. The Division sent Mr. M a packet including the information forming the basis of this case as well as notice of the hearing date and time by both regular and certified, return receipt mail to her address of record. The packet contains an explicit advisement outlining Intentional Program Violations and the consequences if a determination is made.<sup>24</sup> It informed

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<sup>19</sup> *Id.*  
<sup>20</sup> Testimony of Business A.  
<sup>21</sup> *Id.*  
<sup>22</sup> Ex. 13.  
<sup>23</sup> Ex. 12.  
<sup>24</sup> Ex. 3.

Mr. M that the Division calculated he was overpaid \$9,257.00 in program benefits and reimbursement was sought.

The hearing was originally scheduled for May 11, 2020. At the hearing Mr. M stated he had not yet received the Division's information packet due to difficulty reaching the City C Post Office. The hearing was continued to May 24, 2020 at 11:00 a.m. The Office of Administrative Hearings (OAH) emailed a copy of the agency record including the complete Division information packet to Mr. M on May 14, 2020. Mr. M confirmed he received the record by telephone to OAH staff later that day and by email dated May 21, 2020. In addition, on May 24, 2020, Vance Canoy testified that the Division also emailed the packet to Mr. M on May 14, 2020 and sent an additional copy to him by unregistered mail. Thus, Mr. M was provided actual notice of the investigation and the relief sought by the Division, as well as notice of the date and time for his scheduled hearings before the OAH.

Mr. M could not be reached for the hearing on May 24, 2020. One of his telephone numbers, 907-000-0000, was disconnected. Mr. M emailed the OAH soon after the schedule start of the hearing. An attempt to reach him at the updated number, 907-000-0001, was unsuccessful but a message left at approximately 10:20 a.m. asked Mr. M to promptly recall OAH. Mr. M did not do so.

The hearing proceeded in his absence as required by 7 C.F.R. § 273.16(e)(4). Vance Canoy represented the Division at the hearing. In addition to testifying himself, Investigator. Canoy called witnesses Business A and Employment Services Technician Thomas Snell. He submitted an affidavit from Eligibility Technician Amanda Holton. Thirteen exhibits were admitted.

Mr. M did call OAH close to noon on May 24, 2021. This telephone call was treated as a request to reschedule pursuant 7 AAC 45.585(c). A rescheduled hearing was set for July 7, 2021. Attempts were made to contact Mr. M prior to the hearing to determine if it could be continued. Those attempts were unsuccessful, so the hearing went forward on July 7, 2021. Mr. M could not be contacted. He did not answer the telephone at any of the numbers provided to the OAH. Mr. M did not contact OAH between July 7 and July 20, 2021.

The Decision, therefore, rests on the information previously provided under oath on May 24, 2021.

### III. Discussion

The Division seeks to disqualify Mr. M from future SNAP benefits for twelve months and recoup overpaid benefits provided to him. The Division also seeks to disqualify Mr. M from ATAP benefits for six months and recoup overpaid benefits. Those remedies are available if the applicant engaged in an Intentional Program Violation (IPV) of a benefits program.<sup>25</sup> The Division bears the burden of proof to establish Mr. M committed an IPV by clear and convincing evidence.<sup>26</sup> To do so, the Division must demonstrate he intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>27</sup> To prove an IPV of the ATAP program the Division must also demonstrate that the misrepresentation was made for the purpose of obtaining benefits that are not otherwise due.<sup>28</sup>

When he filed his Alaska SNAP benefit application, Mr. M failed to disclose his income from self-employment as an independent contractor with Business A which caused him to receive benefits that he would not have been entitled to receive. This was a misrepresentation. The only question is whether the misrepresentation was intentional. This decision concludes the concealment by Mr. M was intentional and an IPV finding is appropriate.

Although Mr. M did not appear, his intent can be determined from circumstantial evidence. The following totality of circumstances support the IPV finding. First, there is no legitimate doubt that Mr. M understood the Division would rely on the application form to determine whether he would receive benefits.

Second, the language in Question 91 is clear and simple. It specifically asks the applicant to list their employment and income. Mr. M understood the question and listed his employer. He then specifically wrote his income was “\$0” and made the effort to provide an explanation. However, Mr. M regularly received payment from Business A for several months in 2019. He received two checks totaling \$1,620.00 in January 2020 from Business A. Notably, Mr. M also received a check for \$700.00 from Business A on February 11, 2020 the week prior to his February 18, 2020 benefit application. It is not probable he would have forgotten the existence of this income.

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<sup>25</sup> 7 C.F.R. § 2015(b); 7 AAC 45.580.

<sup>26</sup> 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is established if the truth of the asserted facts is highly probable. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>27</sup> 7 C.F.R. § 273.16(c)(i).

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

Third, Mr. M subsequently filed a certification with the Department of Labor that he was employed by Business A from May 2019 to December 2020 and documented significant wages.

In summary, on his sworn application form, Mr. M failed to disclose employment income which would have materially impacted the decision to approve benefits for him. He also failed to reveal this information during a personal interview with a Division employee or subsequently to his case manager, Ms. Snell. The reasonable conclusion to be drawn from the totality of Mr. M's conduct is that he consciously and intentionally withheld accurate information for the purpose of obtaining benefits to which he was not otherwise due. His actions were not mere oversights or misunderstandings.

Accordingly, the Division met its burden of proof that an IPV occurred. The Division further demonstrated that Mr. M did not have a prior program violation. A staggered scale of increasing penalties attaches to commission of IPV.<sup>29</sup> Because Mr. M does not have a prior IVP, the penalties for a first violation apply.

Mr. M is disqualified from the SNAP program for 12 months.<sup>30</sup> He must repay \$3,844.00 in SNAP benefits obtained as a result of the misrepresentation.<sup>31</sup>

Mr. M is disqualified from the ATAP program for six months.<sup>32</sup> He must repay \$5,413.00 in ATAP benefits obtained as a result of the misrepresentation.<sup>33</sup>

If over-issued benefits have not already been repaid, Mr. M is now required to make restitution.<sup>34</sup>  
**If he disagrees with the Division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.**<sup>35</sup>

#### IV. Conclusion

##### A. SNAP

Clear and convincing evidence demonstrated that Mr. M committed a first IPV of the SNAP programs. Because this is his first violation, he is disqualified from receiving SNAP/Food Stamp benefits for twelve months.<sup>36</sup>

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<sup>29</sup> 7 C.F.R. § 273.16(b)(1).  
<sup>30</sup> 7 C.F.R. § 273.16(b)(1)(i).  
<sup>31</sup> 7 C.F.R. § 273.16(b) (12); 7 C.F.R. § 273.16(e)(8)(iii).  
<sup>32</sup> AS 47.27.015(e)(1).  
<sup>33</sup> 7 AAC 45.580.  
<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.  
<sup>36</sup> 7 C.F.R. § 273.16(b)(1).

The disqualification period shall begin no later than the second month from the time the final decision in this case is announced. Distribution of the final decision in this case qualifies as notice of disqualification as required in 7 C.F.R. § 273.16(b)(3).

The SNAP disqualification applies solely to Mr. M. It does not apply to any other individuals such as his son who may be included in his household.<sup>37</sup> Mr. M's needs will not be considered when determining benefit eligibility and benefit amounts for his household. However, he must report his income and resources so they may be used in the determination of benefit amounts.<sup>38</sup>

The Division shall provide written notice to Mr. M 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.<sup>39</sup>

*B. ATAP*

Mr. M has committed a first-time ATAP Intentional Program Violation. The Division proved by clear and convincing evidence that a misrepresentation occurred, and the misrepresentation was made for the purpose of obtaining benefits that are not otherwise due.

He is therefore disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.<sup>40</sup>

If Mr. M is currently receiving ATAP benefits, his disqualification period shall begin as provided in 7 AAC 45.580(f)(1). If Mr. M is not currently an ATAP recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, ATAP benefits.<sup>41</sup>

This disqualification applies only to Mr. M, and not to any other individuals who may be included in his household.<sup>42</sup> For the duration of the disqualification period, Mr. M's needs will not be considered when determining ATAP eligibility and benefit amounts for his household. However, Mr. M must report his income and resources as they may be used in these determinations.<sup>43</sup> The Division shall provide written notice to Mr. M and the caretaker relative, if other than Mr. M of the ATAP benefits they will receive during the period of disqualification.<sup>44</sup>

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<sup>37</sup> 7 C.F.R. 273.16(b) (11).

<sup>38</sup> 7 C.F.R. 273.11(c)(1).

<sup>39</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>40</sup> AS 47.27.015(e)(1).

<sup>41</sup> 7 AAC 45.580(g).

<sup>42</sup> 7 AAC 45.580(e)(1).

<sup>43</sup> 7 AAC 45.580(e)(1).

<sup>44</sup> 7 AAC 45.580(k).



*C. Repayment of Benefits*

If over-issued benefits have not already been repaid, Mr. M is now required to make restitution.<sup>45</sup> If he disagrees with the Division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>46</sup>

Dated: July 20, 2021.

*Signed* \_\_\_\_\_  
Carmen E. Clark  
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 5<sup>th</sup> day of August, 2021.

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

[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>45</sup> 7 C.F.R. § 273.16(b) (12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>46</sup> 7 C.F.R. § 273.15.