

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

In the Matter of: )  
 )  
S.I. ) OAH No. 22-0896-ADQ  
 ) Agency No. 05446740  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

S.I. applied for Food Stamp<sup>1</sup> and Alaska Temporary Assistance benefits in July 2022. Her application was approved. On November 10, 2022, the Department of Health, Division of Public Assistance Fraud Control Unit (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed a first time Intentional Program Violation of these two programs.<sup>2</sup>

S.I.’s hearing was held on December 14, 2022. S.I. was provided advance notice of the hearing by both certified mail and standard First-Class mail.<sup>3</sup> S.I. did not attend her hearing and did not answer her phone.<sup>4</sup> The hearing went forward in her absence.<sup>5</sup>

Wynn Jennings, an Investigator with the Division’s Fraud Control Unit, represented the Division. Amanda Holton, a Division Eligibility Technician, testified for the Division. M.I. also testified for the Division. All the Division’s exhibits were admitted. The hearing was recorded.

This decision concludes that S.I. committed a first Intentional Program Violation of the Food Stamp and Temporary Assistance programs.

**II. Facts**

S.I. has two minor children. M.I. is the father of N.I., who is one of those children. S.I. was living in Oregon with the children in December of 2021, when she contacted M.I. and

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<sup>1</sup> Congress amended the Food Stamp Act 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> Ex. 3.

<sup>3</sup> Ex. 1, para. 6; Ex. 3; Ex. 4.

<sup>4</sup> S.I. was telephoned twice at her phone number of record. The call went directly to voicemail each time.

<sup>5</sup> Once proper notice has been given, the Food Stamp and Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4) – Food Stamps; 7 AAC 45.585(b) – Temporary Assistance. 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.

arranged with him for N.I. to return to his home in Anchorage. S.I. returned to Alaska in May of 2022. M.I. and S.I. then entered into a custody change which resulted in M.I. having physical custody of N.I. 70% of the time, with S.I. having physical custody the remaining 30%. That agreement was filed with the courts on May 23, 2022 and approved by the Court on June 14, 2022. The child support order signed by the Court specifically provides that M.I. does not owe child support for N.I..<sup>6</sup>

S.I. has resided in a different community than M.I. since her return to Alaska in May of 2022. The original plan was that she would have extended visitation with N.I. for the entire summer. However, her living situation did not allow for her to have visitation for the entire summer. She has had visitation with N.I. in 2022 from May 26 to June 15, from July 1 to July 17, August 12 – August 18, and Thanksgiving.<sup>7</sup>

S.I. applied for Food Stamp and Temporary Assistance benefits on July 19, 2022. She wrote on her application that her household consisted of three persons: S.I., N.I., and her other minor child. S.I. signed a statement certifying, under penalty of perjury, that the information contained in her application was correct.<sup>8</sup> S.I. then participated in an intake interview on July 25, 2022 with a Division representative. In that interview, she told the interviewer that her household consisted of herself, her son N.I., and her other minor child.<sup>9</sup> S.I.'s application was approved for Food Stamp and Temporary Assistance.<sup>10</sup> Benefits were issued for July through October of 2022 for a household of three persons: S.I., N.I., and her other minor child.<sup>11</sup> S.I. was a prior recipient of both Food Stamp and Temporary Assistance benefits in 2016.<sup>12</sup>

M.I. was contacted by the Alaska Child Support Services Division (CSSD) regarding child support that he allegedly was supposed to be paying S.I. Following its contact with M.I., CSSD contacted the Division regarding a potential public assistance fraud case, which then resulted in this case.<sup>13</sup>

The Division then determined that S.I. received Food Stamp and Temporary Assistance benefits based upon there being two minor children in her household, when she should have

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<sup>6</sup> Ex. 10.

<sup>7</sup> S.I.'s testimony.

<sup>8</sup> Ex. 8, pp. 1, 3 – 4, 12.

<sup>9</sup> Ex. 9, p. 1 (interview notes); Ex. 13 (audio recording of the July 25, 2022 interview).

<sup>10</sup> Ex. 9, pp. 2, 5

<sup>11</sup> Ex. 11; Ms. Holton's testimony.

<sup>12</sup> Ex. 11.

<sup>13</sup> Ex. 2; Mr. Jennings' testimony.

received benefits based upon there only being one minor child in her home. Accordingly, the Division calculated that during July through October of 2022, S.I. received \$1,004 in Food Stamp benefits, and \$352 in Temporary Assistance benefits that she was not entitled to receive.<sup>14</sup> S.I. has no known prior Intentional Program Violations of either the Food Stamp or the Temporary Assistance programs.<sup>15</sup>

### **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 evidence<sup>16</sup> that S.I. intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>17</sup>

Food Stamp eligibility and benefit amounts are based in part on a household's size.<sup>18</sup> S.I.’s application listed N.I. as being part of her household, despite the fact he was living in M.I.’s household over fifty percent of the time. This had the effect of causing Food Stamp benefits to be issued for a three-person household, when there were only two persons in the household, being S.I. and her other minor child. S.I. was fully aware that N.I. was primarily residing at M.I.’s home when she completed the application, given that she completed and filed her application on July 19, 2022, when N.I. had returned to M.I.’s home on July 17, 2022. Consequently, S.I. intentionally misrepresented that N.I. was residing in her home when he was primarily residing at M.I.’s home.

The Division has therefore met its burden of proof and established that S.I. made an intentional misrepresentation on her July 19, 2022 application 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 evidence<sup>19</sup> that S.I. intentionally misrepresented, concealed or withheld a material fact on her application “for the purpose of

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<sup>14</sup> Ex. 12; Ms. Holton’s testimony.

<sup>15</sup> Mr. Jennings’ testimony.

<sup>16</sup> 7 C.F.R. § 273.16(e)(6).

<sup>17</sup> 7 C.F.R. § 273.16(c).

<sup>18</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

<sup>19</sup> 7 AAC 45.585(d).

establishing or maintaining a family's eligibility for ATAP benefits."<sup>20</sup> As discussed above, S.I. intentionally misrepresented that N.I. lived with her when he did not.

In order to qualify for Temporary Assistance benefits, an applicant must have a dependent child residing in his or her home for more than half the time.<sup>21</sup> Whether there is a dependent child primarily residing in the home is therefore a material fact for the purpose of determining Temporary Assistance eligibility. In addition, the amount of benefits paid is based, among other factors, upon the number of dependent children in the home.<sup>22</sup>

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. Because S.I. was a prior Temporary Assistance recipient, she would have known that the monthly benefit amount was based upon the number of dependent children in her home. She would have been aware that she would be receiving more benefits if there were two children in the home, whereas if N.I. was not in her home, she would have received less in benefits. Consequently, her intentional misrepresentation regarding his presence in her home was therefore made for the purpose of establishing her eligibility for a higher benefit amount. S.I. has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

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

##### ***A. Food Stamp Program***

S.I. 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>23</sup> The Food Stamp program disqualification period shall begin March 1, 2023.<sup>24</sup> This disqualification applies only to S.I., and not to any other individuals who may be included in her household.<sup>25</sup> For the duration of the disqualification period, S.I.'s needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household.

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<sup>20</sup> 7 AAC 45.580(n).

<sup>21</sup> AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a) and (b).

<sup>22</sup> See 7 AAC 45.520 – 525.

<sup>23</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>24</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>25</sup> 7 C.F.R. § 273.16(b)(11).

However, she must report her income and resources as they may be used in these determinations.<sup>26</sup>

The Division shall provide written notice to S.I. 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>27</sup>

If over-issued Food Stamp benefits have not been repaid, S.I. or any remaining household members are now required to make restitution.<sup>28</sup> If S.I. 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>29</sup>

***B. The Alaska Temporary Assistance Program***

S.I. has committed a first time Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of six months.<sup>30</sup> If S.I. is currently receiving Temporary Assistance benefits, her disqualification period shall begin March 1, 2023.<sup>31</sup> If S.I. is not currently a Temporary Assistance recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, Temporary Assistance benefits.<sup>32</sup> This disqualification applies only to S.I., and not to any other individuals who may be included in her household.<sup>33</sup> For the duration of the disqualification period, S.I.'s needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, S.I. must report her income and resources as they may be used in these determinations.<sup>34</sup>

The Division shall provide written notice to S.I. and the caretaker relative, if other than S.I., of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>35</sup>

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<sup>26</sup> 7 C.F.R. § 273.11(c)(1).  
<sup>27</sup> 7 C.F.R. § 273.16(e)(9)(ii).  
<sup>28</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).  
<sup>29</sup> 7 C.F.R. § 273.15.  
<sup>30</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).  
<sup>31</sup> 7 AAC 45.580(f).  
<sup>32</sup> 7 AAC 45.580(g).  
<sup>33</sup> 7 AAC 45.580(e)(1).  
<sup>34</sup> 7 AAC 45.580(e)(3).  
<sup>35</sup> 7 AAC 45.580(k).

If over-issued Temporary Assistance benefits have not been repaid, S.I. or any remaining household members are now required to make restitution.<sup>36</sup> If S.I. disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.<sup>37</sup>

Dated: December 28, 2022

*Signed*  
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Lawrence A. Pederson  
Administrative Law Judge

## Adoption

The undersigned, by delegation from the Commissioner of Health, 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 11<sup>th</sup> day of January, 2023.

By: *Signed*  
\_\_\_\_\_  
Name: Lawrence A. Pederson  
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>36</sup> 7 AAC 45.570(b).

<sup>37</sup> 7 AAC 45.570(l).