

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

In the Matter of:)
)
F.C.) OAH No. 18-0486-ADQ
) Agency No. 05669503
_____)

DECISION

I. Introduction

F.C. received Alaska Temporary Assistance program benefits. On May 3, 2018, the Department of Health and Social Services, Division of Public Assistance initiated this Administrative Disqualification case against her, alleging she had committed an Intentional Program Violation of the Alaska Temporary Assistance program by stating that her daughter C.C. lived in her household, when she was not her C.C.’s custodial parent.¹

This decision concludes that F.C. committed a first Intentional Program Violation of the Temporary Assistance program.

II. Facts

F.C. has a daughter, C.C. F.C. listed C.C. as a member of her household on her applications for benefits. On June 30, 2015, F.C. applied for food stamps and Medicaid.² Her application listed herself, her boyfriend, her son, and C.C. as household members. On July 1, 2015, F.C. was interviewed by an eligibility technician. F.C. told the eligibility technician that she shared custody of C.C. 50/50 with her daughter’s father.³ Then, in early August 2015, F.C. applied for benefits from the Alaska Temporary Assistance Program (ATAP).⁴ The application listed herself, her son, and C.C. as household members.⁵ F.C. declared, under penalty of perjury, that all of the information contained in her application was true and correct to the best of her knowledge.⁶ She was interviewed about the ATAP application on August 5, 2015. The interviewer concluded that the household consisted of F.C. and C.C.⁷ Based on this application,

¹ Ex. 3.
² Exhibit 8.
³ Exhibit 10 at 1.
⁴ Exhibit 9.
⁵ Exhibit 9 at 2 - 4.
⁶ Exhibit 9 at 12.
⁷ Exhibit 11.

F.C. received ATAP benefits for the months of August, September, and October 2015 totaling \$1,612.⁸

In August 2015, the division received information from F.C.'s ex-boyfriend that C.C. was not living in F.C.'s household.⁹ In September 2015, C.C.'s father informed the division that F.C. did not have overnight visitation with C.C.¹⁰ He provided court documents showing that in 2011, he and F.C. agreed that he would have primary physical custody of C.C., and F.C. would have visitation for two days and two nights each week.¹¹ On May 6, 2015, F.C. filed a motion to enforce the terms of the agreement relating to visitation. Her affidavit in support of that motion stated that since September 10, 2014, she had seen C.C. one day a week for only two hours and 45 minutes at a time. The motion requested 16 or more hours of visitation a week.¹² In June 2015 the court modified the visitation schedule. The court ordered that F.C. would have visitation with C.C. on Thursdays from 2:00 p.m. to 8:00 p.m. during weeks when school is not in session, Thursdays from after school until 7:00 p.m. during school weeks, and on Saturdays from 9:00 a.m. to 8:00 p.m.¹³ The division's investigator spoke with F.C. in September 2017. F.C. asserted that she and C.C.'s paternal great-grandparents had actual physical custody of C.C. between 2011 and 2016.¹⁴

Based on the information it had received indicating that C.C. was living with her father and not F.C., the division reevaluated F.C.'s eligibility for ATAP benefits, and concluded that F.C. had received \$1,612 in ATAP benefits that she was not entitled to receive.¹⁵ A hearing was scheduled for June 7, 2018 at 4:00 p.m. On May 25, 2018 the division sent F.C. notice of its findings by certified mail to her post office box.¹⁶ F.C. did not sign for the mailing and the post office forwarded it to the next postal facility.¹⁷

F.C. did not appear in person for the hearing. She did not answer a telephone call placed to the number she provided on her application for ATAP benefits, and a recorded message indicated that telephone number "is not reachable." There was no opportunity to leave a voicemail message. The hearing was held in F.C.'s absence under 7 AAC 45.585(b). At the

⁸ Exhibits 15 and 16.

⁹ Exhibit 13 at 1.

¹⁰ Exhibit 2 at 1; Exhibit 13.

¹¹ Exhibit 12 at 1 - 4.

¹² Exhibit 12 at 12 - 14.

¹³ Exhibit 12 at 15.

¹⁴ Exhibit 14.

¹⁵ Exhibit 16.

¹⁶ Exhibit 5.

¹⁷ Exhibit 6.

hearing, the Division presented sworn testimony from C.C.'s father that F.C. did not have actual overnight visitation with C.C. during the three months during which F.C. received ATAP benefits.

III. Discussion

In order to establish an Intentional Program Violation of the Temporary Assistance program, the division must prove by clear and convincing evidence that F.C. intentionally misrepresented, concealed or withheld a material fact for the purpose of establishing or maintaining eligibility for ATAP benefits.¹⁸ ATAP eligibility and benefit amounts are based in part on the total number of people in the household.¹⁹

When F.C. listed C.C. as a member of her household on her ATAP application on August 15, 2015, F.C. had just been through a contested court proceeding in May and June of 2015 that granted her visitation with C.C. two days a week during the daytime only, with no overnight visitation. C.C.'s father testified that C.C. lived with him between June 2015 and October 2015.

Considering the evidence presented, the division has shown by clear and convincing evidence that F.C. intentionally misrepresented the composition of her household when she listed C.C. on her ATAP application. This was a misrepresentation of a material fact because the number of people in the household is relevant to determining Temporary Assistance eligibility and benefit levels.

F.C. would have been aware that household size can affect benefit levels based on her participation in the food stamp program as well as her interview with the eligibility technician which covered her household composition in detail. Because of this, it is reasonable to conclude that the misrepresentation was made for the purpose of establishing eligibility for ATAP benefits. F.C. has therefore committed an intentional program violation of the ATAP program, and should be disqualified from participation in the ATAP program for six months, and required to repay the benefits paid to her for those months.

IV. Conclusion

Because this is F.C.'s first intentional program violation of the ATAP program, she is disqualified from participation in the ATAP program for a period of six months.²⁰ Because she is not currently participating in the ATAP program, the disqualification period shall be postponed

¹⁸ 7 AAC 45.585(d); 7 AAC 45.580(n).

¹⁹ 7 AAC 45.520, 7 AAC 45.525.

²⁰ AS 47.27.015(e)(1); 7 AAC 45.580(d).

until she again applies and qualifies for ATAP benefits.²¹ F.C. is also required to repay the overpayment of ATAP benefits in the amount of \$1,612.²²

DATED: June 28, 2018.

Signed _____

Kathryn L. Kurtz

Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 16th day of July, 2018.

By: *Signed* _____

Name: Kathryn Kurtz

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.]

²¹ 7 AAC 45.580(g).

²² 7 AAC 45.570(a) and (b).