

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

In the Matter of)
) OAH No. 19-0930-ADQ
 K.M.)
_____)

DECISION

I. Introduction

In an August 12, 2019 Food Stamp¹ recertification application, and an August 26, 2019 application for Alaska Temporary Assistance Program (ATAP) benefits, K.M. sought public assistance benefits for a household consisting of him and his daughter, U. After being advised in September 2019 that U. resided with her mother, the Division of Public Assistance (Division) investigated the claim and ultimately initiated this Administrative Disqualification case against Mr. M. The Division alleges Mr. M. committed a first Intentional Program Violation (IPV) of each of these two programs.

Mr. M.'s hearing occurred November 6, 2019 with advance notice having been duly mailed to Mr. M's correct address. Mr. M. appeared telephonically and testified on his own behalf. Wynn Jennings, Fraud Investigator III for the State of Alaska, represented the Division. He, as well as Amanda Holton, Eligibility Technician for the Division, and B.C., U.'s mother, testified telephonically. Exhibits 1-15 were admitted without objection.

This decision concludes that the Division proved, by clear and convincing evidence, that Mr. M. committed first IPVs of the Food Stamp and ATAP programs. Accordingly, he is barred from receiving Food Stamps for 12 months, is barred from receiving Temporary Assistance for six months, and must pay restitution for overpaid amounts.

II. Facts

The following facts were established by clear and convincing evidence.

Mr. M. submitted a renewal application for Food Stamps, on August 12, 2019.² In the section which asked him to identify who resided in his home, he identified himself and U., as living together in Anchorage as a household.³ He signed the "statement of truth" provision at the end of

¹ The Food Stamp program was renamed the Supplemental Nutrition Assistance Program (SNAP) in 2008. It is still commonly referenced as Food Stamps.

² Exhibit 8.

³ Exhibit 8 p. 1.

the renewal application under penalty of perjury, which provides that the statements in the application are “true and correct to the best of [the applicant’s] knowledge.”⁴ The statement also expressly acknowledges that Mr. M. read and understood the Rights and Responsibilities documents provided to all applicants, which includes understanding the “fraud penalties.”⁵

Mr. M. then applied for ATAP benefits on August 26, 2019.⁶ On that application, in the section asking to identify each person who resides in his home, he again listed U. as residing in his home in Anchorage, Alaska.⁷ He again declared under the “statement of truth” section, that the information was true and correct.⁸ He again affirmed he had received the Rights and Responsibilities documents provided to all applicants, including understanding the “fraud penalties.”⁹ In the ATAP application, however, Mr. M. also submitted a letter dated August 26, 2019, purporting to be from his mother, W.P., attesting that U. lived with Mr. M.¹⁰

As part of determining eligibility for benefits, the benefits applicant interviews with an eligibility technician, who affirms the information in the application and explains the rights and responsibilities of a benefit recipient to the applicant.¹¹ During his interview,¹² Mr. M. reaffirmed U. was residing in his Anchorage home.¹³ Also during the interview, the eligibility technician specifically discussed a benefits recipient’s rights and responsibilities.¹⁴ Those rights and responsibilities include that when a child leaves the home, the recipient “must report this within 5 days.”¹⁵ It also includes the consequences for failing to report, which include requirements to repay the overpayment, and potential loss of benefits.¹⁶

Mr. M. was approved for both benefits programs.¹⁷ Mr. M.’s Food Stamp benefits were renewed and his ATAP benefits began August 26, 2019.¹⁸

⁴ Exhibit 8 p. 5.

⁵ Exhibit 8 p. 5.

⁶ Mr. M. testimony; Ms. Holton testimony; Exhibit 10.

⁷ Exhibit 10 p. 2.

⁸ Exhibit 10 p. 12.

⁹ Exhibit 10 p. 12.

¹⁰ Exhibit 10 p. 13.

¹¹ Ms. Holton testimony; 7 C.F.R. § 273.2.

¹² Mr. M. had a single interview on August 20, 2019 which was used for both applications. (Ex. 11, pp. 1 – 2).

¹³ Ms. Holton testimony.

¹⁴ Ms. Holton testimony.

¹⁵ Exhibit 7 p.1.

¹⁶ Exhibit 7.

¹⁷ Food Stamp recertification Exhibit 9 p.3; ATAP approval 11 p. 4.

¹⁸ Ms. Holton testimony; Exhibit 9 p.3.

Wynn Jennings, a Fraud Investigator III for the State of Alaska, was contacted on September 12, 2019, by B.C., U.'s mother.¹⁹ Ms. C called the Division after she had been contacted by Child Support Services Divisions.²⁰ The Division was investigating whether Ms. C. should be paying child support to Mr. M., based on Mr. M.'s assertions that U. was living with him.²¹ Ms. C. told Mr. Jennings that U. lives with her in Village A and has never lived with her father in Anchorage.²²

Mr. Jennings conducted an investigation which, in addition to his discussion with Ms. C., included procuring written statements from Ms. C., W.P. (K.M.'s mother), K.M. (Mr. M.'s sister), O.N., and E.C. (Ms. C.'s husband).²³ Mr. Jennings obtained U.'s City A Middle School records dating back to 2010, and City A High School enrollment and attendance records, showing she has historically resided with her mother and was currently enrolled for the 2019-2020 school year.²⁴ U. started the 2019-2020 school year at City A High on August 20, 2019, and was in regular attendance.²⁵

Mr. M.'s benefits ended September 30, 2019.²⁶ On October 4, 2019, Mr. M. was provided written notification, via both certified, return- receipt requested U.S. mail and standard, first-class postage prepaid U.S. mail of the Administrative Disqualification hearing for both benefits programs.²⁷ Delivery of the thirty-day advance notification packets was made October 5, 2019.²⁸

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.²⁹ Alaska law likewise prohibits securing ATAP benefits by such means.³⁰

In this case, the Division claims Mr. M. committed an IPV of both the Food Stamp and ATAP programs by intentionally misleading the Division into believing Mr. M.'s daughter resided with him in Anchorage, when she actually resided with her mother in Village A.

¹⁹ Mr. Jennings testimony; Ms. C. testimony.

²⁰ Mr. Jennings testimony; Ms. C. testimony.

²¹ Ms. C. testimony.

²² Ms. C. testimony.

²³ Exhibit 12.

²⁴ Ms. C. testimony; Exhibit 12; p. 1; Exhibit 13.

²⁵ Exhibit 13; Mr. Jennings testimony.

²⁶ Ms. Holton testimony; Exhibit 1 p. 2; Exhibit 14 p. 1.

²⁷ Exhibit 3.

²⁸ Exhibit 4.

²⁹ *See, e.g.*, 7 U.S.C. §2015(b).

³⁰ 7 AAC 45.580.(n).

To prove an IPV for Food Stamps and ATAP, the Division must prove by clear and convincing evidence that Mr. M. intentionally provided, or excluded, misleading material facts in his application.³¹ To meet this standard, the Division must show that it is *highly probable* that Mr. M. intended to misrepresent, conceal or withhold facts.³²

A. Food Stamps- August 12, 2019 application

The Division asserts that Mr. M.'s Food Stamp applications consisted of a first-time IPV because U. does not reside with him.³³ No evidence was offered that Mr. M. ever committed a prior IPV, and therefore the alleged IPV is evaluated as a first-time violation. Other than certain exceptions not alleged here, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.³⁴

Both eligibility and benefit levels for Food Stamps are determined based upon household composition.³⁵ False statements about household composition are, therefore, considered to have been made for the purpose of acquiring benefits.³⁶ It is clear that throughout the recertification process Mr. M. made false statements about his household composition by claiming U. was living with him in Anchorage when she was living with her mother in Village A. Mr. M. did this first by listing U. as a “person who lives with you” on the application, and then again by claiming U. lived with him in the eligibility interview.³⁷ Plainly, this is a misrepresentation.

The remaining issue is whether the misrepresentation was intentional. Mr. M. argues that U. and Ms. C. were having some mother-daughter strife, so U. was staying with him sometimes. But that does not equate to living with him full time. And, although it is possible that he thought she wanted to live with him and was going to, he did not do the things that would demonstrate her intention to live with him, such as enrolling her in school. In fact, U. was enrolled in the same school district she had been since 2010, while living with her mother. And, beginning August 20, 2019 U. was attending that school regularly at City A High. Therefore, Mr. M. knew U. was not residing with him.

³¹ 7 AAC 45.580.(n); 7 AAC 45.585 (d); 7 CFR 273.16(e)(4) and (6).

³² *DeNupitiis v. Unocal Corporation* 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

³³ Ms. Holton; Mr. Jennings.

³⁴ 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R § 273.16(c)(1).

³⁵ 7 C.F.R. § 273.1; 7 C.F.R. § 273.8; Ms. Holton testimony.

³⁶ 7 C.F.R. § 273.16(c).

³⁷ Exhibit 9 p. 1.

Even if Mr. M. had a mistaken belief at the time of the application, his failure to notify the Division once U. was regularly attending school, beginning August 20, 2019, became an intentional misrepresentation. Mr. M. never advised the Division U. was residing with her mother. The Division only became aware U. was not in Mr. M.'s home by notification from Ms. C.³⁸

Under these circumstances, there is simply no credible way to see this as anything other than a material misrepresentation. The evidence is thus sufficient to meet the standard of "clear and convincing," and is thus sufficient to constitute an IPV.

B. ATAP- August 26, 2019 application

As with Food Stamps, the Division asserts that Mr. M.'s ATAP application was a first-time IPV because U. does not reside with him.³⁹ Again, no evidence has been offered that Mr. M. ever previously committed a prior ATAP IPV, and therefore the alleged IPV will be evaluated as a first-time violation. A first-time IPV in the ATAP program results in a six-month disqualification.⁴⁰

In determining ATAP eligibility, and benefit levels, the Division is required to consider who resides in the home because a household must contain a minor biologically related child in order to be eligible for ATAP.⁴¹ As discussed in the previous section, Mr. M. claimed that U. was living with him in Anchorage at a time when U. was in fact living with her mother in Village A.⁴² By his August 26, 2019 application, there is no question the claim was not true. Further, in addition to his application, Mr. M. submitted a letter purporting to be from Ms. P., to support an assertion that U. was living in his home.⁴³ However, Mr. M. knew Ms. P. did not draft or sign the letter, because U. signed it and drafted it, at Mr. M.'s direction.⁴⁴ In fact, Ms. P. also disputes that U. ever resided with Mr. M.⁴⁵

Because ATAP benefits are only available where a household contains a minor, biologically related child, whether there is a dependent child living in the home is clearly a material fact for the purpose of determining ATAP eligibility.⁴⁶ Mr. M. clearly knew that U. was not living in his home, and therefore he was not eligible for ATAP benefits. As such, Mr. M. committed a first IPV of the ATAP program.

³⁸ Exhibit 8 p.5.

³⁹ Ms. Holton testimony; Mr. Jennings testimony.

⁴⁰ AS 47.27.015(e)(1); 7 AAC 45.580(d).

⁴¹ AS 47.27.020(a); 7 AAC 45.195; 7 AAC 45.225.

⁴² Ms. C. testimony; Exhibit 13.

⁴³ Exhibit 15 p. 1; Mr. M. testimony.

⁴⁴ Mr. M. testimony; Exhibit 10 p. 13.

⁴⁵ Exhibit 15; Mr. Jennings testimony.

⁴⁶ AS 47.27.020(a); 7 AAC 45.195; 7 AAC 45.225.

IV. Conclusion

A. Food Stamps

Mr. M. committed a first time IPV of the Food Stamps program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse the Division for benefits that were overpaid as a result of the IPV.⁴⁷ The Food Stamp disqualification period shall begin March 1, 2020.⁴⁸ This disqualification applies only to Mr. M. and not to any other individuals who may be included in his household.⁴⁹ For the duration of the disqualification period, Mr. M.'s needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report income and resources so it can be used in those determinations.⁵⁰

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.⁵¹

If over-issued Food Stamp benefits have not been repaid, Mr. M., or any remaining household members are now required to make restitution.⁵² If Mr. M. 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.⁵³

B. ATAP

Mr. M also committed a first time IPV of ATAP. He is therefore disqualified from participating in ATAP for a period of six months.⁵⁴ If Mr. M. is currently receiving benefits, his ATAP disqualification period shall begin March 1, 2020.⁵⁵ However, if Mr. M. is not currently receiving ATAP, his disqualification period shall be postponed until he applies for, and is found eligible, ATAP benefits.⁵⁶

⁴⁷ 7 C.F.R. §273 (16)(b)(1)(i); 7 §C.F.R. 273.16(b)(12); 7 C.F.R. §16 (e)(8)(iii).

⁴⁸ See 7 C.F.R. 16(b)(13) and (e)(8)(i); *Garcia v. Concanon* 67 F.3d 256, 259 (9th Cir. 1995). Insofar as 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).

⁴⁹ 7 C.F.R. §273 (16)(b)(11).

⁵⁰ 7 C.F.R. §273 (11)(c)(1).

⁵¹ 7 C.F.R. §273 (16)(e)(9)(ii).

⁵² 7 C.F.R. §273 (16)(b)(12); 7 C.F.R. §273 (16)(e)(8)(iii).

⁵³ 7 C.F.R. §273 (15).

⁵⁴ AS 47.27.015(e)(1); 7 AAC 45.580(d).

⁵⁵ 7 AAC 45.580(f).

⁵⁶ 7 AAC 45.580(g).

This disqualification applies only to Mr. M. and not to any other individuals who may be included in his household.⁵⁷ 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, he must report income and resources so it can be used in those determinations.⁵⁸

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.⁵⁹

If over-issued ATAP benefits have not been repaid, Mr. M., or any remaining household members are now required to make restitution.⁶⁰ If Mr. M. 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.⁶¹

December 9, 2019

Signed _____
Hanna Sebold
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 24th day of December, 2019.

By: *Signed* _____
Signature
Lawrence A. Pederson _____
Name
Administrative Law Judge _____
Title

⁵⁷ 7 AAC 45.580(e)(1).
⁵⁸ 7 AAC 45.580 (e)(3).
⁵⁹ 7 AAC 45.580 (k).
⁶⁰ 7 AAC 45.570 (b).
⁶¹ 7 AAC 45.570 (l)

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]