

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

|                  |   |                     |
|------------------|---|---------------------|
| In the Matter of | ) |                     |
|                  | ) |                     |
| K.Q.             | ) | OAH No. 19-1120-ADQ |
| _____            | ) |                     |

**DECISION AND ORDER**

**I. Introduction**

On December 12, 2019, the Alaska Division of Public Assistance (Division) initiated an Administrative Disqualification case against K.Q. alleging that she had committed first known Intentional Program Violation (IPV) of the Alaska Temporary Assistance Program (ATAP) by (1) making a false or misleading statement, or misrepresenting, concealing, or withholding facts, and (2) doing so for the purpose of establishing or maintaining her eligibility for benefits.<sup>1</sup>

This decision concludes that the Division proved by clear and convincing evidence that Ms. Q. misrepresented that her children C. and D.Q. were residing with her on her initial application for ATAP benefits in November of 2018, on an Eligibility Review form she submitted in May of 2019, and in two different eligibility interviews she had with the Division. The deception was clearly for the purpose of establishing her eligibility for benefits. This was a first time IPV; as a result, she is disqualified from receiving ATAP benefits for a period of six (6) months. Additionally, she must repay all benefits wrongly received.

**II. Facts**

The following facts were established by clear and convincing evidence.<sup>2</sup>

The Division's application form for ATAP benefits is comprehensive and solicits a significant amount of information regarding the applicant's household.<sup>3</sup> Additionally, it includes a four-page document entitled "Your Rights and Responsibilities" that provides information regarding reporting requirements, penalties for Intentional Program Violations, and details regarding ATAP.<sup>4</sup> On the final page of the application there is a signature line with a statement of truth that asserts that the person who signs it acknowledges that all the information contained in the application is true and correct to the best of the person's knowledge and that the individual

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<sup>1</sup> Exhibit ("Ex.") 1, 7 AAC 45.580(n).

<sup>2</sup> The facts are based on the exhibits referenced, as well as testimony given under oath by Wynn Jennings, the DPA Investigator who presented this case, along with several witnesses who testified on behalf of the Division.

<sup>3</sup> Ex. 8.

<sup>4</sup> Ex. 7.

has read and understood the “rights and responsibilities” section of the application.<sup>5</sup> Applicants must also attend a mandatory interview with a Division representative both prior to being approved, as well as during the Eligibility Review process.<sup>6</sup> Before approving an applicant, the Division must verify, among other things, that the individual is a member of a household that includes a minor, biologically related child.<sup>7</sup>

In November of 2018 Ms. Q. completed, signed and submitted an application for ATAP benefits, listing her children C. and D.Q. as sharing her residence.<sup>8</sup> She made the same representation on her eligibility review form submitted in May of 2019, as well as in two different eligibility interviews she had with the Division on November 30 of 2018, and May 6 of 2019.<sup>9</sup>

On the initial application Ms. Q. listed F.Q. as the father of the children.<sup>10</sup> Child Support Services was subsequently notified; Mr. Q. was contacted regarding presumably delinquent child support payments.<sup>11</sup> Mr. Q., in turn, notified the Division that the children actually lived with him, and this proceeding ensued.<sup>12</sup>

The Division sent Ms. Q. a packet including the information forming the basis of her disqualification from benefits, as well as notice of the hearing date and time, by both certified, return receipt mail as well as standard, first class postage prepaid mail on or about November 26, 2019.<sup>13</sup> The United States Postal Service (USPS) tracking system showed it was available for pickup at the post office in No Name, Alaska on November 30, 2019.<sup>14</sup> The Division sent a duplicate packet to Ms. Q. on or about December 13, 2019.<sup>15</sup> The USPS tracking system showed it was available for pickup at the post office in No Name, Alaska, on December 16, 2019.<sup>16</sup> No evidence was presented that Ms. Q. picked up either packet. However, proof that the information was effectively delivered to her address of record established that Ms. Q. received

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<sup>5</sup> Ex. 8, p. 12.

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

<sup>7</sup> AS 47.27.020(a); 7 AAC 45.195; 7 AAC 45.225.

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

<sup>9</sup> Ex. 8, p. 5.

<sup>10</sup> Ex. 8, p. 13.

<sup>11</sup> Testimony of Ms. Holton.

<sup>12</sup> Testimony of Mr. Jennings.

<sup>13</sup> Ex. 3, pp. 1-26.

<sup>14</sup> Ex. 4.

<sup>15</sup> Ex. 5.

<sup>16</sup> Ex. 6.

adequate notice of the basis of the allegations brought by the Division, as well as notice of the scheduled hearing before the Office of Administrative Hearings.<sup>17</sup>

The hearing convened on December 27, 2019, as scheduled. Ms. Q. did not attend the hearing and could not be reached at the telephone number she had provided to the Division.<sup>18</sup> The hearing went forward in her absence.<sup>19</sup> The Division was represented at the hearing by Wynn Jennings, an investigator employed by the Division's Fraud Control Unit. Brent Frazier, an employee of the Division, attended the hearing for training purposes. Mr. Jennings and Amanda Holton, a Division Eligibility Technician, testified on behalf of the Division, as did F.Q., T.L. and T.C. Exhibits 1-11 were admitted into evidence without objection and without restriction.

Following the hearing, the record was left open until January 6, 2020, to allow Ms. Q. an opportunity to show reasonable cause for her failure to participate.<sup>20</sup> The record closed without any further submissions received from any party.

### **III. Discussion**

#### *A. The Division established an IPV of the Temporary Assistance Program*

In order to establish an IPV of ATAP, the Division must prove by clear and convincing evidence that Ms. Q. intentionally misrepresented, concealed, or withheld a material fact "for the purpose of establishing or maintaining a family's eligibility for ATAP benefits."<sup>21</sup>

No evidence has been offered that Ms. Q. has ever been found to have committed a prior ATAP IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation. A first-time IPV in the ATAP program results in a six-month disqualification.<sup>22</sup> If she is not a current ATAP recipient her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.<sup>23</sup>

Both eligibility and benefit levels are determined based upon household composition.<sup>24</sup> Because ATAP benefits are only available to households that include a minor, biologically

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<sup>17</sup> 2 AAC 64.920(b).

<sup>18</sup> The number was called; it went to voicemail. A message was left directing Ms. Q. to call the Office of Administrative Hearings if she wished to participate and providing her with the number, but no return call was received.

<sup>19</sup> Once proper notice has been given, the ATAP regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. See 7 AAC 45.585(c).

<sup>20</sup> 15 AAC 05.030(j).

<sup>21</sup> 7 AAC 45.585(d); 7 AAC 45.580(n).

<sup>22</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>23</sup> 7 AAC 45.580(g).

<sup>24</sup> 7 AAC 45.470(c); 7 AAC 45.525.

related child, whether there are dependent children living in the home is clearly a material fact for the purpose of determining ATAP eligibility.

At the hearing F.Q. credibly testified under oath that his daughters C. and D. have been living with him full time since 2017.<sup>25</sup> He and Ms. Q. continue to be legally married but have been living separately for more than four years.<sup>26</sup> Ms. Q.'s contact with the children over the years has been quite limited.<sup>27</sup>

T.L., a family friend of Mr. Q. for over thirty years, testified similarly. For years she has been in regular contact with Mr. Q., seeing him at family functions, the local grocery store, and in the neighborhood, as they live near each other.<sup>28</sup> Her husband occasionally helps out the family by giving D.Q. rides to school.<sup>29</sup> She testified credibly that Mr. Q. has been a single parent raising his two daughters for at least the last two years.<sup>30</sup>

T.C., another family friend whose daughters were friends with F.Q. in high school, also represented that she is in close contact with Mr. Q. She testified that she speaks with Mr. Q. at least once a week and regularly helps him and his daughters out with food, transportation, or other assistance.<sup>31</sup> She, too, asserted that Mr. Q.'s daughters have been living solely with him for several years.<sup>32</sup>

It is clear and undisputed that throughout the recertification process, Ms. Q. made false statements about her household composition, namely claiming her daughters were living with her at a time when the children were, in fact, in living with their father, F.Q. She did this multiple times, first by listing C. and D. as "person/people who lives with you" on the application, then again on the Eligibility Review Form, and finally saying that they both lived with her in the follow-up eligibility interviews. Plainly, this was a misrepresentation.

The remaining issue is whether the misrepresentation was intentional. As Ms. Q. did not testify, the answer to this question must be found by evaluating the totality of the circumstances. At the time Ms. Q. applied for ATAP benefits her daughters had been in the care of their father for *years*, during which time she only had nominal contact with them. There can be no serious

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<sup>25</sup> Testimony of Mr. Q.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Testimony of Ms. L.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Testimony of Ms. C.

<sup>32</sup> *Id.*

question that Ms. Q. knew, when she filled out her application or was interviewed by the Division that C. and D.Q. did not live with her, but rather with their father F.Q. Under these circumstances, there is simply no credible way to see her statements as anything other than an intentional, material misrepresentation. The evidence is thus sufficient to meet the standard of “clear and convincing,” and is thus sufficient to constitute an IPV.

The Division has therefore met its burden of proving that Ms. Q. committed an IPV of ATAP.

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

The Division met its burden of showing by clear and convincing evidence that Ms. Q. committed an IPV as defined by the ATAP regulations. This is Ms. Q.’s first known IPV for the programs.<sup>33</sup> Because of this violation, Ms. Q. is disqualified from receiving ATAP benefits for a six (6) month period.<sup>34</sup>

The ATAP disqualification period shall begin one month after the issuance of the notice of disqualification by the Final Decisionmaker if she is a current ATAP recipient.<sup>35</sup> If she is not a current ATAP recipient, however, her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.<sup>36</sup>

Ms. Q. must repay all ATAP benefits wrongly received.

DATED: January 23, 2020

By: Signed  
Danika B. Swanson  
Administrative Law Judge

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<sup>33</sup> Ex. 1.

<sup>34</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d); 7 C.F.R. § 273.16(b)(1).

<sup>35</sup> 7 USC 2015(b)(1)(i); 7 C.F.R. § 273.16(b)(13); 7 AAC 45.580(f).

<sup>36</sup> 7 AAC 45.580(g).

## 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 6<sup>th</sup> day of February, 2020.

By: Signed  
Signature  
Danika Swanson  
Name  
Administrative Law Judge  
Title

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