

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

In the Matter of	)	OAH No. 13-1181-ADQ
	)	Division No.
G K. U	)	Fraud Control Case No.
	)	Food Stamp and Temporary Assistance
_____	)	Programs

**DECISION AND ORDER**

**I. Introduction**

G K. U received Food Stamp<sup>1</sup> and Temporary Assistance benefits. On August 28, 2013, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed an Intentional Program Violation of the Food Stamp and the Alaska Temporary Assistance programs by misrepresenting her residence address; not informing the Division that her husband was part of her household which also resulted in not declaring his income; by failing to disclose a household bank account; and by failing to timely inform the Division when her income exceeded the applicable Food Stamp program limit in October 2012.<sup>2</sup>

Ms. U’s hearing was held on November 15, 2013. Ms. U was provided advance notice of the hearing by both certified mail and standard First Class mail.<sup>3</sup> Ms. U appeared for the hearing; she represented herself and testified on her own behalf. Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified on behalf of the Division. Amanda Holton and Michele Rogovin, both of whom are employed by the Division, also testified. The hearing was recorded.

This decision concludes that Ms. U committed an Intentional Program Violation of both the Food Stamp and Temporary Assistance programs.

**II. Facts**

The following facts were established by clear and convincing evidence.

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<sup>1</sup> Congress amended the Food Stamp Act in 2008 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, p. 3; Exs. 3, 4.

Ms. U is married to B U. They have five children. Mr. U moved to Alaska in 2011.<sup>4</sup> Ms. U moved to Alaska in July 2012. She applied for Food Stamps and Temporary Assistance benefits on July 12, 2012. Her application stated that she lived at No Name, Alaska. That application stated that her household consisted only of herself and her minor children, *i.e.*, Mr. U was declared to not be a household member.<sup>5</sup> The application contained a “Rights and Responsibilities” attachment that notified applicants that they were required to notify the Division within 10 days of any change in unearned income of more than \$50 per month, and if anyone moved in or out of the home, if they received Temporary Assistance benefits. They were also required to notify the Division, if they received Food Stamps benefits, within 10 days if their total household income exceeded the monthly household income limit for the household size.<sup>6</sup> As part of the application process, Ms. U completed and submitted a “Child Support Information” form on July 23, 2012 that stated Mr. U was still residing in California.<sup>7</sup> Ms. U’s application was approved for Food Stamp benefits and denied for Temporary Assistance benefits.<sup>8</sup>

On July 12, 2012, the same day Ms. U applied for Temporary Assistance and Food Stamp benefits, she obtained an Alaska driver’s license. That license states that her residence address is No Name, Alaska.<sup>9</sup>

On December 10, 2012, Ms. U applied for Child Care Assistance benefits. That application stated that her residence address was again No Name. However, on the signature page, she listed her address as No Name.<sup>10</sup>

On January 18, 2013, Ms. U applied to renew her Food Stamp benefits. The application again stated her residence address was No Name. The application stated that Ms. U was not receiving any income from employment. Mr. U was not listed as living in the household, and no bank accounts were listed on the application.<sup>11</sup> Ms. U, however, was employed at the time. She started working during August 2012 and her paychecks were direct deposited in Mr. U’s bank

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<sup>4</sup> Ms. U testimony.  
<sup>5</sup> Ex. 7; Ex. 8, p. 1.  
<sup>6</sup> Ex. 7, p. 11.  
<sup>7</sup> Ex. 9.  
<sup>8</sup> Ex. 8, pp. 5 – 7.  
<sup>9</sup> Ex. 14, p. 1; Ex. 15.  
<sup>10</sup> Ex. 16, pp. 1, 5.  
<sup>11</sup> Ex. 10.

account.<sup>12</sup> Mr. U's bank records show that Ms. U's paychecks continued to be deposited into his account through February 14, 2013.<sup>13</sup> There was a short lapse and then Ms. U began receiving direct deposits of her paychecks in Mr. U's account beginning March 15, 2013.<sup>14</sup> In addition to Mr. U's bank account that Ms. U's paychecks were deposited into, Mr. U had a separate bank account which was opened on September 7, 2012 – the application for that account gave his address as No Name, and stated he had been at that address for eight months.<sup>15</sup>

The Division sent an investigator to No Name on April 30, 2013. The investigator spoke to Ms. U, who claimed limited contact with Mr. U and that she did not know his phone number. The investigator then discovered that Mr. U was asleep in the bedroom and that his clothes were in the closet.<sup>16</sup>

Ms. U testified she lived in No Name until February 2013, at which point she moved into No Name with Mr. U. In earlier testimony, she said that she moved in with Mr. U in March 2013. She further testified that, even though she did not live with Mr. U until February 2013, she deposited her paychecks into Mr. U's bank account because he was paying her rent. Her testimony admitted that she did not tell the truth on her July 2012 Child Support form where she stated that Mr. U was in California. She initially testified that she had just lost her job when she completed her January 2013 application, but then later testified, when confronted with the bank account statements showing that she had paychecks deposited in February 2013, that she lost her job in February 2013. She explained the address discrepancy between her July 2012 application (No Name) and her driver's license (No Name) by saying that her mailbox for No Name was not secure so she gave her mailing address for the driver's license as No Name, which she testified belonged to her mother-in-law.

Ms. U's testimony was rife with contradictions and contained admissions that she had misrepresented the facts. Given her misrepresentations on the July 2012 child support form that her husband was in California, when he was in Alaska, and her misrepresentation to an investigator in April 2013 that she had limited contact with her husband, when the investigator found him asleep in the apartment during that same investigative visit, her assertion that she did not reside with her husband when she first applied for benefits in July 2012 was not credible.

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<sup>12</sup> Ex. 19, p. 71.

<sup>13</sup> Ex. 19, p. 27.

<sup>14</sup> Ex. 19, p. 20.

<sup>15</sup> Ex. 19, pp. 8 – 9.

<sup>16</sup> Ex. 13, p.1; Rogovin testimony.

Her use of two different addresses, claiming No Name as her residence on her public assistance application while using No Name, the address which her husband used for his bank account, for her driver's license address supports this finding. It is therefore found that Ms. U was residing continuously with her husband in No Name from the period when she first applied for benefits in July 2012 forward.

The Division calculated that from August 2011 through May 2013, Ms. U's household received \$8,386 in Food Stamp benefits that it was not entitled to receive.<sup>17</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>18</sup> that Ms. U intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."<sup>19</sup> To meet this standard, the division must show that it is *highly probable* that Ms. U intended to misrepresent, conceal, or withhold facts.<sup>20</sup> It must be noted that Food Stamp eligibility and benefits are determined based upon a household's composition, assets, and income.<sup>21</sup>

A review of the facts demonstrates that Ms. U misrepresented her residence on her July 2012 and January 2013 applications. She also concealed her husband's presence in the household, his bank account, a household asset, and income from those applications. She also misrepresented that she was not employed on her January 2013 application.<sup>22</sup> These acts were a misrepresentation, concealment or withholding of facts.

It must therefore be determined whether Ms. U's misrepresentation/concealment regarding her actual residence, her husband's presence in the household, and his banking

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<sup>17</sup> Holton testimony; Ex. 21.

<sup>18</sup> 7 C.F.R. § 273.16(e)(6).

<sup>19</sup> 7 C.F.R. § 273.16(c).

<sup>20</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

<sup>21</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

<sup>22</sup> The Division's Advance Notice also alleged that Ms. U committed an Intentional Program Violation of the Food Stamp program by not reporting that her household income exceeded the applicable program income limit in October 2012. (Ex. 3, p. 2). There is insufficient evidence in the record to make this finding for the following reasons. Ms. U was informed that she needed to report if her household income exceeded \$3,027. (Ex. 8, p. 6). She was employed in the fourth quarter of 2012, earning \$5,190.97 during that quarter, an average of \$1,730.32 per month. (Ex. 2, p. 5). Mr. U was also employed starting sometime during the fourth quarter of 2012, earning \$2,646.89 during that quarter. (Ex. 20, p. 2). In order to exceed the reporting requirement limit, Mr. U would have had to earn at least \$1,297 a month during October 2012. The quarterly employment records for Mr. U do not contain enough information to draw such an inference.

information, his income, and her employment income were intentional acts. The numerous misrepresentations made by Ms. U support a finding that Ms. U consciously and intentionally failed to notify the Division of these facts.

The Division has therefore met its burden of proof and established that Ms. U committed an Intentional Program Violation of the Food Stamp program. This is her first Intentional Program Violation of that 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>23</sup> that Ms. U intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”<sup>24</sup> Ms. U only filed one application for Temporary Assistance benefits on July 12, 2012, which was denied. Accordingly, the following discussion will only address the July 12, 2012 application.

Temporary Assistance eligibility and benefit amounts are normally based upon the total number of people in the household, their assets, and their combined income.<sup>25</sup>

As discussed above, Ms. U intentionally misstated her address, and intentionally omitted any mention of her husband’s presence in the household, including his financial information. Mr. U’s presence in the household and his financial information were material facts because the number of people in the home, their assets and income, are relevant to determining both Temporary Assistance eligibility and benefit levels. Ms. U therefore intentionally misrepresented/concealed material facts by her failure to report her husband’s presence in the household and by her failure to provide his financial information. Her residence address was also material because, as shown by the investigator’s April 30, 2013 visit, providing the correct address could well have resulted in the discovery of the actual household composition.

The Division must then prove that the intentional misrepresentation/concealment of the material facts was for the purpose of establishing or maintaining the household’s eligibility for Temporary Assistance benefits. Because Ms. U would have only been eligible for Temporary Assistance if her household’s assets and income had been within the Temporary Assistance program’s limits, her misrepresentation/concealment was made for purpose of establishing and

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<sup>23</sup> 7 AAC 45.585(d).

<sup>24</sup> 7 AAC 45.580(n).

<sup>25</sup> 7 AAC 45.280, 7 AAC 45.520, 7 AAC 45.525.

maintaining her eligibility for Temporary Assistance benefits. Ms. U has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

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

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

Ms. U 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>26</sup> The Food Stamp program disqualification period shall begin March 1, 2014.<sup>27</sup> This disqualification applies only to Ms. U, and not to any other individuals who may be included in her household.<sup>28</sup> For the duration of the disqualification period, Ms. U's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.<sup>29</sup>

The Division shall provide written notice to Ms. U 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>30</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. U or any remaining household members are now required to make restitution.<sup>31</sup> If Ms. U 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>32</sup>

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

Ms. U 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>33</sup> If Ms. U is currently receiving Temporary Assistance benefits, her

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<sup>26</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>27</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>28</sup> 7 C.F.R. § 273.16(b)(11).

<sup>29</sup> 7 C.F.R. § 273.11(c)(1).

<sup>30</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>31</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>32</sup> 7 C.F.R. § 273.15.

<sup>33</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

disqualification period shall begin March 1, 2014.<sup>34</sup> If Ms. U 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>35</sup> This disqualification applies only to Ms. U, and not to any other individuals who may be included in her household.<sup>36</sup> For the duration of the disqualification period, Ms. U's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. U must report her income and resources as they may be used in these determinations.<sup>37</sup>

The Division shall provide written notice to Ms. U and the caretaker relative, if other than Ms. U, of the Temporary Assistance benefits they will receive during the period of disqualification.<sup>38</sup>

If over-issued Temporary Assistance benefits have not been repaid, Ms. U or any remaining household members are now required to make restitution.<sup>39</sup> If Ms. U disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.<sup>40</sup>

Dated this 5th day of December, 2013.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>34</sup> 7 AAC 45.580(f).  
<sup>35</sup> 7 AAC 45.580(g).  
<sup>36</sup> 7 AAC 45.580(e)(1).  
<sup>37</sup> 7 AAC 45.580(e)(3).  
<sup>38</sup> 7 AAC 45.580(k).  
<sup>39</sup> 7 AAC 45.570(b).  
<sup>40</sup> 7 AAC 45.570(l).

## 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 19<sup>th</sup> day of December, 2013.

By: Signed \_\_\_\_\_

Name: Lawrence A. Pederson \_\_\_\_\_

Title/Agency: Admin. Law Judge, DOA/OAH

[This document has been modified to conform to the technical standards for publication.]