

II. Facts

The following facts were established by clear and convincing evidence.

Ms. D. is the mother of K. B., a minor child at the time of these events.⁵ She and her child are residents of Village A. Ms. D. submitted an Eligibility Review form to the Division on July 27, 2023 declaring that K. B. was a full-time member of her household.⁶ The form contains a certification under penalty of perjury that the information in the form is correct, and was signed by Ms. D.⁷ The form contained a “Rights and Responsibilities” attachment that notified applicants that they were required to notify the Division if anyone moved in or out of the home if they received SNAP or Temporary Assistance benefits.⁸ In an Application for Services for Temporary Assistance and SNAP benefits submitted on November 14, 2023, she again listed K. B. as a full time member of her household.⁹ Ms. D.’s application was approved for Temporary Assistance.¹⁰

On April 1, 2024, Ms. D. again submitted an Eligibility Review form declaring that K. B. was a member of her household.¹¹ An eligibility worker’s case note indicates that SNAP benefits had been suspended due to lack of an interim report and that the Division had received a March 27, 2024 tribal court order removing K. B. from Ms. D.’s custody.¹² On April 12, 2024, the Division opened an investigation into Ms. D.’s receipt of Temporary Assistance.¹³ On May 16, 2024, the Division notified Ms. D. that a fraud allegation had been made against her and that the investigation had concluded that K.B. had not resided in her household since December 26, 2022.¹⁴ A signed certified mail return indicates that this notice was collected by Ms. D.¹⁵

Authenticated copies of records of the Magistrate’s Court of the Village A. Indian Community, a recognized tribal court, showed that on March 29, 2023, the court ordered that K. B. was declared a ward of the Village A. Tribal court, and placed in the temporary physical and

⁵ This decision and order uses the child’s initial’s to protect the child’s privacy.

⁶ Ex. 8, pg. 1.

⁷ Ex. 8, pg. 5.

⁸ Ex. 7

⁹ Ex. 10, pg. 4.

¹⁰ Ex. 11,

¹¹ Ex. 12.

¹² Ex.13.

¹³ Ex. 2, pg.1.

¹⁴ Ex. 17, pg. 1.

¹⁵ *Id.* at pg. 2.

legal guardianship of her maternal grandmother.¹⁶ The record contained a statement of the same day to the magistrate by an employee of Village A. Social Services that K. B. had been living with her grandmother since December 26, 2022.¹⁷ On January 17, 2024, following a hearing, the court ordered that K.B. would remain a ward of the court and placed in the physical and legal guardianship of her maternal grandmother.¹⁸ On March 27, 2024, the Magistrate ordered that K. B. would remain a ward of the court, and that she would be permanently placed in the physical and legal guardianship of her maternal grandmother.¹⁹ Because the Magistrate’s Court of the Village A. Indian Community is a recognized tribal court acting within its jurisdiction, and the record of the court’s actions was authenticated, these are considered as established facts.

The Division calculated that from August of 2023 through April of 2024, Ms. D.’s household received \$1,558 in SNAP benefits and \$4,269.00 in Temporary Assistance that it was not entitled to receive.²⁰ The Division presented no evidence of prior intentional violations, therefore this case is evaluated as a first-time violation.

III. Discussion

A. Food Stamp (SNAP) Program

In order to establish an Intentional Program Violation of the SNAP program, the Division must prove by clear and convincing evidence²¹ that Ms. D. intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”²² To meet this standard, the division must show that it is *highly probable* that Ms. D. intended to misrepresent, conceal, or withhold facts.²³ It must be noted that Food Stamp eligibility and benefits are determined based upon a household’s composition, assets, and income.²⁴

A review of the facts demonstrates that Ms. D. misrepresented that her minor child K.B. was a member of her household on her July 27, 2023, Eligibility Review form, her November 14, 2023, Application for Services form, and her April 1, 2024, Eligibility Review form. These acts were a misrepresentation, concealment or withholding of fact.

¹⁶ Ex. 14, pg. 4.

¹⁷ Ex. 14, pg. 6.

¹⁸ *Id.* at pg. 9.

¹⁹ *Id.* at pg. 7.

²⁰ Holton testimony; Ex. 16.

²¹ 7 C.F.R. § 273.16(e)(6).

²² 7 C.F.R. § 273.16(c).

²³ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

²⁴ 7 C.F.R. § 273.10(e)(1)(i)(A).

The numerous misrepresentations made by Ms. D. support a finding that she consciously and intentionally misrepresented that K.B. was a member of her household, and concealed from the Division the material fact that K.B. had been placed in another household by the tribal court effective December 26, 2022.

The Division has therefore met its burden of proof and established that Ms. D. committed an Intentional Program Violation of the Food Stamp (SNAP) program. This is her first Intentional Program Violation of that program.

B. Temporary Assistance (ATAP) Program

To establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence²⁵ that Ms. D. intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for Temporary Assistance benefits.”²⁶ Ms. D. filed an application for Temporary Assistance benefits on November 14, 2023, which was granted, and an Eligibility Review form on April 1, 2024.

Temporary Assistance eligibility and benefit amounts are normally based upon the total number of people in the household, their assets, and their combined income.²⁷

As discussed above, Ms. D. intentionally misstated the presence of her child K.B. in the household. K.B.’s presence in the household was a material fact because the number of people in the home, their age, assets and income, are relevant to determining both Temporary Assistance eligibility and benefit levels. Ms. D. therefore intentionally misrepresented a material fact by her failure to report K. B.’s removal from her household.

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 Ms. D.’s would have only been eligible for Temporary Assistance at the rate paid if her household included her minor child K.B., her misrepresentation was made for the purpose of establishing and maintaining her eligibility for Temporary Assistance benefits. Ms. D. has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

²⁵ 7 AAC 45.585(d).

²⁶ 7 AAC 45.580(n).

²⁷ 7 AAC 45.280, 7 AAC 45.520, 7 AAC 45.525.

IV. Conclusion and Order

A. Food Stamp (SNAP) Program

Except for someone with prior IPV's in his or her record or who has other circumstances that can lead to enhanced penalties, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally . . . concealed or withheld facts" in connection with the program.²⁸ Ms. D. 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.²⁹ The Food Stamp program disqualification period shall begin October 1, 2024.³⁰ This disqualification applies only to Ms. D., and not to any other individuals who may be included in her household.³¹ For the duration of the disqualification period, Ms. D.'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.³²

The Division shall provide written notice to Ms. D. 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.³³

If over-issued SNAP benefits have not been repaid, Ms. D. or any remaining household members are now required to make restitution.³⁴ If Ms. D. 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.³⁵

B. The Alaska Temporary Assistance Program (ATAP)

Ms. D. has committed a first time Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a

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

²⁹ 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).

³⁰ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th 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).

³¹ 7 C.F.R. § 273.16(b)(11).

³² 7 C.F.R. § 273.11(c)(1).

³³ 7 C.F.R. § 273.16(e)(9)(ii).

³⁴ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³⁵ 7 C.F.R. § 273.15.

period of six months.³⁶ If Ms. D. is currently receiving Temporary Assistance benefits, her disqualification period shall begin October 1, 2024.³⁷ If Ms. D. 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.³⁸ This disqualification applies only to Ms. D., and not to any other individuals who may be included in her household.³⁹ For the duration of the disqualification period, Ms. D.'s needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. D. must report her income and resources as they may be used in these determinations.⁴⁰

If over-issued Temporary Assistance benefits have not been repaid, Ms. D. or any remaining household members are now required to make restitution.⁴¹ If Ms. D. 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.⁴²

Dated this 15th day of August, 2024.

By: Signed
Signature
Kristin S. Knudsen
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.]

³⁶ AS 47.27.015(e)(1); 7 AAC 45.580(d).
³⁷ 7 AAC 45.580(f).
³⁸ 7 AAC 45.580(g).
³⁹ 7 AAC 45.580(e)(1).
⁴⁰ 7 AAC 45.580(e)(3).
⁴¹ 7 AAC 45.570(b).
⁴² 7 AAC 45.570(l).

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 30 day of August, 2024.

By: Signed
Signature
Kristin S. Knudsen
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.]