

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

In the Matter of)	OAH No. 13-1183-ADQ
)	Division No.
U K. N)	Fraud Control Case No.
)	Food Stamp and Temporary Assistance
_____)	Programs

DECISION AND ORDER

I. Introduction

U N receives Food Stamp¹ and Temporary Assistance benefits. On August 29, 2013, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed a second Intentional Program Violation of the Food Stamp and Temporary Assistance programs by failing to timely inform the Division when she became employed, by failing to timely inform the Division when her income exceeded the applicable Food Stamp program limits, and by misrepresenting her employment on her July 2, 2013 recertification application for benefits .²

Ms. N’ hearing was held on October 4, 2013. Ms. N was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. N did not appear for the hearing and it was held in her absence.⁴ Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified on behalf of the Division. Amanda Holton, an eligibility technician employed by the Division, also testified. The hearing was recorded.

¹ 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.

² Ex. 3.

³ Ex. 1, p. 3; Exs. 3, 4.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

This decision concludes that Ms. N committed a second Intentional Program Violation of the Food Stamp program, but that she did not commit a second Intentional Program Violation of the Temporary Assistance program.

II. Facts

Ms. N has a three person household, consisting of her and her two minor children.⁵ She was receiving Food Stamp and Temporary Assistance benefits in January 2013.⁶ Ms. N also receives Adult Public Assistance benefits; and her Temporary Assistance case does not include her; it consists only of her two children.⁷ She applied to renew those benefits on January 8, 2013. Her application disclosed that she and her children were receiving Social Security Supplemental Security Income benefits.⁸ The application was approved and she was notified in writing, on January 11, 2013, that because she was receiving Food Stamp benefits she was required to notify the Division, within ten days, if her total monthly household income exceeded \$2,586, and that because she was receiving Temporary Assistance benefits she was required to notify the Division, within ten days, if she became employed.⁹

Ms. N became employed on February 15, 2013, earning \$13.00 per hour. She was continuously employed with the same employer through July 14, 2013.¹⁰ Her average monthly employment income during April through June 2013 was \$2,301.¹¹ In addition, her household also received a total of \$1,684 per month in Social Security benefits during these same months.¹² Her monthly household income therefore exceeded \$2,586 during these same months. Ms. N did not notify the Division at any time that she became employed, or that her monthly income exceeded \$2,586.

Ms. N received Temporary Assistance benefits in April through June 2013 in the amount of \$217 per month based upon household income of \$562.¹³ \$562 per month is the amount of social security benefits received by Ms. N' children.¹⁴

⁵ Ex. 7, p. 1.

⁶ Ex. 10, pp. 1, 12.

⁷ Ex. 2.

⁸ Ex. 7.

⁹ Ex. 8; Ex. 9, pp. 1, 3 – 4.

¹⁰ Ex. 12, p. 3.

¹¹ Ex. 12, p. 2.

¹² Ex. 8.

¹³ Ex. 13.

¹⁴ Ex. 8, p. 1.

Ms. N applied to renew her benefits on July 2, 2013. Her application disclosed her household's receipt of Social Security benefits. However, it did not disclose that she was employed.¹⁵ The Division determined she was employed during her July 18, 2013 eligibility interview.¹⁶

Ms. N has been receiving Temporary Assistance benefits on a consistent basis since 2000 and Food Stamp benefits since 2002, with one significant interruption between late 2004 and 2006.¹⁷ She has one prior Intentional Program Violation with regard to both programs, which she incurred in late 2004 due to a failure to report she was employed, which disqualified her from receiving Food Stamp benefits for 12 months and Temporary Assistance benefits for six months.¹⁸

The Division calculated that from April through June 2013, Ms. N' household income made her financially ineligible for either Food Stamps or Temporary Assistance benefits, and that as a result she received \$1,647 in Food Stamp benefits and \$651 in Temporary Assistance benefits that she was not entitled to receive.¹⁹

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 evidence²⁰ that Ms. N intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."²¹ To meet this standard, the division must show that it is *highly probable* that Ms. N intended to misrepresent, conceal, or withhold her income information.²² It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household's income.²³

A review of the facts demonstrates that Ms. N' income exceeded the Food Stamp program's \$2,586 income limit in April 2013, if not earlier.²⁴ However, she did not inform the

¹⁵ Ex. 11, pp. 2 – 3.

¹⁶ Ex. 2.

¹⁷ Ex. 10.

¹⁸ Ex. 14.

¹⁹ Holton testimony; Ex. 13.

²⁰ 7 C.F.R. § 273.16(e)(6).

²¹ 7 C.F.R. § 273.16(c).

²² *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

²³ 7 C.F.R. § 273.10(e)(1)(i)(A).

²⁴ Ms. N obtained employment in mid-February 2013.

Division that her income exceeded the income limit within ten days, despite being obligated to do so. She therefore concealed her income information. She also did not disclose the fact that she was employed and receiving employment income on her July 2, 2013 Food Stamp benefit renewal application. This was also a concealment or withholding of facts.

It must therefore be determined whether Ms. N' concealment/withholding of her employment income was intentional. Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Ms. N failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record. Intent can, however, also be deduced from circumstantial evidence.²⁵ Ms. N undoubtedly knew she was employed, and how much money she was making. She has a long history of receiving public assistance benefits, with a prior Intentional Program Violation incurred due to not reporting her income. She was also explicitly notified, in writing, that she needed to inform the Division within ten days if her total monthly household income exceeded \$2,586. She was therefore aware of reporting requirements and the consequences for disregarding them. Consequently, Ms. N' failure to notify the Division that her household income had exceeded the Food Stamp program's limit of \$2,586 income limit was intentional. Similarly, her failure to list her employment and resulting income on her July 2, 2013 renewal application was intentional. Each of these acts provides an independent basis for finding an Intentional Program Violation.

The Division has therefore met its burden of proof and established that Ms. N committed an Intentional Program Violation of the Food Stamp program. This is her second Intentional Program Violation.

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 evidence²⁶ that Ms. N intentionally misrepresented, concealed or withheld a material fact "for the purpose of establishing or maintaining a family's eligibility for ATAP benefits."²⁷ The Temporary Assistance program has a specific requirement that a "member of the ATAP economic unit" notify the Division

²⁵ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that "in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct"

²⁶ 7 AAC 45.585(d).

²⁷ 7 AAC 45.580(n).

within 10 days of the date he or she obtains a job.²⁸ As discussed above, Ms. N intentionally did not report her new job, and she also intentionally did not list it on her July 2, 2013 renewal application.

Temporary Assistance eligibility and benefit amounts are normally based upon the total number of people in the household and their combined income.²⁹ Ms. N, however, was not a member of her family's "ATAP economic unit." She was a Social Security Supplemental Security Income and Adult Public Assistance recipient and therefore not eligible for Temporary Assistance benefits.³⁰ Her Temporary Assistance household therefore consisted only of her two children. The Division recognized the fact that Ms. N was not eligible for Temporary Assistance benefits when it explicitly excluded Ms. N from the Temporary Assistance household, as demonstrated by the fact that it issued benefits for an "Adult Not Included" household with only \$562 in income, which was the children's social security income.³¹

Ms. N was therefore not part of the Temporary Assistance household and her income, regardless of the source, was therefore not income for the purposes of calculating Temporary Assistance eligibility or benefits: "the department will disregard *all* of the income of [the adult parent of a dependent child] who is (1) actually receiving supplemental security income (SSI), adult public assistance (APA) or both."³² Because the regulation says "all" income should be disregarded, none of Ms. N' income, be it supplemental security income, adult public assistance income, or employment income, could be legally used in determining eligibility or benefit levels for her Temporary Assistance "Adult Not Included" household. She therefore had no obligation to report her job change and her income amount, regardless of source; her employment and its resulting income was not a material fact for the purposes of determining the household eligibility or benefit level.

Given that Ms. N' income was not relevant to the issue of her children's Temporary Assistance eligibility or benefit level, she had no obligation to either report when she became employed, nor did she have an obligation to disclose her employment on her July 2, 2013

²⁸ 7 AAC 45.270(a).

²⁹ 7 AAC 45.520 and 7 AAC 45.525.

³⁰ 7 AAC 45.335(e)(1).

³¹ The Division issued benefits of \$217 based upon income of \$562. Exs. 2, 8, 13. This is the amount that would result from the \$924 need standard set out for a two person child only household. See *Alaska Temporary Assistance Manual Addendum 2*.

³² 7 AAC 45.390(a) (emphasis supplied).

Temporary Assistance renewal application. Ms. N has therefore not committed an Intentional Program Violation of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. N has committed a second Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 24 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³³ The Food Stamp program disqualification period shall begin January 1, 2014.³⁴ This disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.³⁵ For the duration of the disqualification period, Ms. N'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.³⁶

The Division shall provide written notice to Ms. N 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.³⁷

If over-issued Food Stamp benefits have not been repaid, Ms. N or any remaining household members are now required to make restitution.³⁸ If Ms. N disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³⁹

B. Temporary Assistance

Ms. N has not committed an Intentional Program Violation of the Temporary Assistance program.

Dated this 28th day of October, 2013.

³³ 7 C.F.R. § 273.16(b)(1)(ii); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³⁴ 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).

³⁵ 7 C.F.R. § 273.16(b)(11).

³⁶ 7 C.F.R. § 273.11(c)(1).

³⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁹ 7 C.F.R. § 273.15.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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 13th day of November, 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.]