

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

In the Matter of)	OAH No. 13-1223-ADQ
)	Division No.
S M)	Fraud Control Case No.
f/k/a S Z)	Food Stamp and Temporary Assistance
_____)	Programs

DECISION AND ORDER

I. Introduction

S M received Food Stamp¹ and Temporary Assistance benefits. On September 5, 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 failing to inform the Division that she owned a bank account, and by failing to timely inform the Division of her income.²

Ms. M’s hearing was held on November 7, 2013. Ms. M was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. M 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, an eligibility technician employed by the Division, also testified. The hearing was recorded.

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

II. Facts

Ms. M has a nine person household, consisting of herself, her husband, and seven minor children.⁴ She and her husband applied to receive Food Stamp and Temporary Assistance

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 Ex. 11, p. 25.

benefits in July 2011 for their household.⁵ That 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 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.⁶ The record does not contain any notices showing that the M’s were ever advised of their household income reporting limit.

The Temporary Assistance application was approved effective July 27, 2011, and the M’s were notified in writing, on July 28, 2011, that they were supposed to notify the Division within 10 days of any change in unearned income exceeding more than \$50 per month.⁷ The M’s were approved for Food Stamp benefits beginning in September 2011.⁸ The record does not contain any notices showing that the M’s were ever advised of their Food Stamp household income reporting limit.

Ms. M opened a bank account with KeyBank on August 19, 2011.⁹ She and her husband reapplied for Temporary Assistance benefits on December 8, 2011. That application requested a list of all bank accounts. The application did not list the KeyBank account.¹⁰ Ms. M and her husband applied to renew their Food Stamp benefits on May 21, 2012, November 27, 2012, and June 3, 2013. Each of these applications requested a list of all bank accounts. None of the applications disclosed the KeyBank account.¹¹ Each of these applications also contained a “Rights and Responsibilities” attachment, which the applicants acknowledged having received, which advised the applicants of the reporting requirements.¹²

Ms. M’s KeyBank account had substantial deposits¹³ made into it during the time period from August 2011 through June 2013: August 30, 2011 \$2,500;¹⁴ December 6, 2011 \$10,000;¹⁵

⁵ Ex. 7.

⁶ Ex. 7, p. 10.

⁷ Ex. 9, pp. 3 – 4.

⁸ Ex. 10, p. 3.

⁹ Ex. 12, p. 6.

¹⁰ Ex. 11, p. 13.

¹¹ Ex. 11, pp. 18, 22, 26.

¹² Ex. 11, pp. 16, 20, 24, 28. *See* Ex. 7, pp. 10 -13 for the “Rights and Responsibilities” attachment.

¹³ The following list only lists the larger deposit amounts.

¹⁴ Ex. 12, p. 76.

¹⁵ Ex. 12, p. 89.

December 22, 2011 \$16,000;¹⁶ February 7, 2012 \$2,686;¹⁷ February 29, 2012 \$6,799;¹⁸ September 24, 2012 \$1,000;¹⁹ September 25, 2012 \$63,400;²⁰ October 3, 2012 \$16,800;²¹ November 20, 2012 \$1,200;²² February 21, 2013 \$11,099;²³ May 7, 2013 \$1,600.²⁴ The Division records contain no reports that Ms. M reported any of the deposits, nor that she reported the existence of the KeyBank account.²⁵ Ms. M testified that she reported the deposits to the Division, that Division employees told her she did not have to report bank accounts that had less than \$50 in them, and that she had to have notified the Division at some time about the account because otherwise the Division would not have known about it at all. Mr. Rogers testified that he discovered the existence of the bank account, not from any reports made to the Division, but rather from his review of PFD applications that showed direct deposits into the bank account.

Ms. M's testimony about her reporting her bank account and her income is rife with inconsistencies when compared to the documentary evidence. For instance, the applications all asked about bank accounts – they do not ask about bank accounts with balances of less than \$50. However, she had over \$6,000 in her bank account on December 8, 2011, the date she and her husband filed a Temporary Assistance application, yet did not disclose the existence of the bank account.²⁶ She also testified that her annuity payments were the source of her large deposits. However, of those large deposits, the \$10,000 deposit on December 6, 2011 was a credit card advance and the \$16,000 deposit on December 14, 2011 was made in cash.²⁷ In addition, Ms. M's July 27, 2011, December 8, 2011, and May 21, 2012 applications stated that she received \$400 per month from her annuity, which is inconsistent with her testimony about the annuity being the source of her large deposits.²⁸ Further, Ms. M provided July 26, 2012 and October 2,

¹⁶ Ex. 12, p. 93.

¹⁷ Ex. 12, p. 101.

¹⁸ Ex. 12, p. 101.

¹⁹ Ex. 12, p. 127.

²⁰ Ex. 12, p. 127.

²¹ Ex. 12, p. 127.

²² Ex. 12, p. 131.

²³ Ex. 12, p. 148.

²⁴ Ex. 12, p. 163.

²⁵ Rogers testimony.

²⁶ Ms. M signed this application on December 6, 2011. The Division received it on December 8, 2011. The application does not disclose the KeyBank account. *See* Ex 11, pp. 9, 13, 16. However, her bank records show a \$10,000 deposit into the account on December 6, 2011 with under \$4,000 in withdrawals by December 8, 2011, meaning that there was \$10,000 in the account when she signed the application and over \$6,000 in the account on the date the application was filed. *See* Ex. 12, p. 89.

²⁷ Ex. 12, pp. 33 - 35.

²⁸ Ex. 7, p. 5; Ex. 11, pp. 12, 19.

2012 letters from Genworth Financial that stated, in pertinent part, she would receive \$400 per month in annuity payments through July 15, 2018.²⁹ However, her November 27, 2012 and June 3, 2013 applications omit any mention of her annuity, despite there being a question regarding source of household income that explicitly mentions annuities.³⁰ Ms. M, due to the substantial inconsistencies between her testimony and the documentary evidence, was not credible.

The Division calculated that from August 2011 through May 2013, Ms. M's household received \$8,138 in Food Stamp benefits and \$2,115 in Temporary Assistance benefits that it was not entitled to receive.³¹

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 evidence³² that Ms. M intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."³³ To meet this standard, the division must show that it is *highly probable* that Ms. M intended to misrepresent, conceal, or withhold her bank account and/or income information.³⁴ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household's assets and income.³⁵

A review of the facts demonstrates that Ms. M did not notify the Division about her bank account on her December 8, 2011, May 21, 2012, November 27, 2012, and June 3, 2013 applications.³⁶ This was a concealment or withholding of facts.

It must therefore be determined whether Ms. M's concealment/withholding of her bank account was intentional. Ms. M testified that she was told that she only needed to report a bank account if the balance was more than \$50. She also argued that she had simply made a mistake. As found above, Ms. M was not a credible witness. She had more than \$50 in the bank account on at least one occasion, December 8, 2011, when she applied for assistance. Also, the question

²⁹ Ex. A, pp. 1 – 2.

³⁰ Ex. 11, pp. 23, 27.

³¹ Holton testimony; Ex. 13.

³² 7 C.F.R. § 273.16(e)(6).

³³ 7 C.F.R. § 273.16(c).

³⁴ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

³⁵ 7 C.F.R. § 273.10(e)(1)(i)(A).

³⁶ Ms. M did not open her bank account until August 19, 2011, which was after her July 2011 application.

on the applications does not specify an income limit. Further, Ms. M did not list her bank account on four separate applications. Making a mistake on four separate applications is highly improbable. The facts therefore support a finding that Ms. M intentionally omitted the fact of her bank account from her Food Stamp applications.

Ms. M also did not report her annuity income on her November 27, 2012 and June 3, 2013 applications. She, obviously, was aware of the annuity income, since she had reported it on her earlier applications. This was similarly an intentional omission/concealment of a fact.³⁷

The Division has therefore met its burden of proof and established that Ms. M committed an Intentional Program Violation of the Food Stamp program by her failure to list her bank account on her applications, and by failure to list her annuity income on her November 27, 2012 and June 3, 2013 applications. This is her first 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 evidence³⁸ that Ms. M intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”³⁹ Ms. M only signed two applications for Temporary Assistance benefits, one filed July 27, 2011 and one filed December 8, 2011.⁴⁰ In addition, the M family only received Temporary Assistance benefits for July and August 2011 and December 2011 through May 2012.⁴¹ Accordingly, the following discussion will only address the two applications and their associated benefit periods.

Temporary Assistance eligibility and benefit amounts are normally based upon the total number of people in the household, their assets, and their combined income.⁴² The Temporary Assistance program has a specific requirement that a “member of the ATAP economic unit” notify the Division within 10 days of the date there is a change of \$50 or more in unearned

³⁷ The Division’s allegations potentially include the failure to notify the Division when Ms. M’s income exceeded her family’s household income limit, due to the large intermittent deposits into her bank account. However, the Division did not supply any documentation that Ms. M was ever explicitly advised of the appropriate income limit. Consequently, this decision will not address that issue relative to the Food Stamp program.

³⁸ 7 AAC 45.585(d).

³⁹ 7 AAC 45.580(n).

⁴⁰ Ex. 7; Ex. 11, pp. 9 – 16.

⁴¹ Ex. 10, p. 1.

⁴² 7 AAC 45.280, 7 AAC 45.520, 7 AAC 45.525.

income.⁴³ A family with more than \$2,000 in non-exempt assets (which includes bank accounts) is not eligible for Temporary Assistance benefits.⁴⁴

As discussed above, Ms. M intentionally did not report her bank account on the December 8, 2011 application. She also did not report the following large deposits which were made into her bank account: December 22, 2011 \$16,000;⁴⁵ February 7, 2012 \$2,686;⁴⁶ February 29, 2012 \$6,799.⁴⁷ A review of the facts demonstrates that the failure to report was also intentional, given that Ms. M had been advised of, and received a copy of, her reporting requirements as part of the December 8, 2011 application. The existence of the bank account and the reporting of the deposits into it were material facts because assets and income are relevant to determining both Temporary Assistance eligibility and benefit levels. Ms. M therefore intentionally misrepresented/concealed material facts by her failure to report her bank account on the December 8, 2011 application and by her failure to report the large deposits made into that bank account.

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. M would have only been eligible for Temporary Assistance if her family's assets and income had been within the Temporary Assistance program's limits, her misrepresentation/concealment was made for purpose of establishing and maintaining her eligibility for Temporary Assistance benefits. Ms. M has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. M 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.⁴⁸ The Food Stamp program disqualification period shall begin

⁴³ 7 AAC 45.270(a)(2); see Ex. 7, p.10; Ex. 9, pp. 3 – 4.

⁴⁴ 7 AAC 45.280(a).

⁴⁵ Ex. 12, p. 93.

⁴⁶ Ex. 12, p. 101.

⁴⁷ Ex. 12, p. 101.

⁴⁸ 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).

February 1, 2014.⁴⁹ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.⁵⁰ For the duration of the disqualification period, Ms. M'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.⁵¹

The Division shall provide written notice to Ms. 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.⁵²

If over-issued Food Stamp benefits have not been repaid, Ms. M or any remaining household members are now required to make restitution.⁵³ If Ms. M disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.⁵⁴

B. The Alaska Temporary Assistance Program

Ms. M 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.⁵⁵ If Ms. M is currently receiving Temporary Assistance benefits, her disqualification period shall begin February 1, 2014.⁵⁶ If Ms. M 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.⁵⁷ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.⁵⁸ For the duration of the disqualification period, Ms. M's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. M must report her income and resources as they may be used in these determinations.⁵⁹

⁴⁹ 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).

⁵⁰ 7 C.F.R. § 273.16(b)(11).

⁵¹ 7 C.F.R. § 273.11(c)(1).

⁵² 7 C.F.R. § 273.16(e)(9)(ii).

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

⁵⁴ 7 C.F.R. § 273.15.

⁵⁵ AS 47.27.015(e)(1); 7 AAC 45.580(d).

⁵⁶ 7 AAC 45.580(f).

⁵⁷ 7 AAC 45.580(g).

⁵⁸ 7 AAC 45.580(e)(1).

⁵⁹ 7 AAC 45.580(e)(3).

The Division shall provide written notice to Ms. M and the caretaker relative, if other than Ms. M, of the Temporary Assistance benefits they will receive during the period of disqualification.⁶⁰

If over-issued Temporary Assistance benefits have not been repaid, Ms. M or any remaining household members are now required to make restitution.⁶¹ If Ms. M disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.⁶²

Dated this 2nd day of December, 2013.

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 17th 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.]

⁶⁰ 7 AAC 45.580(k).
⁶¹ 7 AAC 45.570(b).
⁶² 7 AAC 45.570(l).