

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

In the Matter of)	
)	OAH No. 13-1491-ADQ
B J)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

B J received Alaska Temporary Assistance (ATAP) and Food Stamp¹ benefits for several years, through August of 2012. On October 24, 2013, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the ATAP and Food Stamp programs in connection with some of those benefits.²

A hearing convened in this case on November 27, 2013, with Ms. J having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ She signed for the certified notice.⁴ Ms. J did not attend the hearing and could not be reached at the telephone numbers she has provided to the program. The hearing went forward in her absence.⁵

DPA was represented at the hearing by Dean Rogers, an investigator employed by DPA's Fraud Control Unit. Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. Exhibits 1-12 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. J committed a first Intentional Program Violation of both programs. She must be barred from Food Stamps for twelve months and from ATAP for six months.

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 3.

³ Ex. 1, p. 3; Ex. 3; Ex. 4; Ex. 6.

⁴ Ex. 4, Ex. 6.

⁵ Once proper notice has been given, the Food Stamps and ATAP regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 C.F.R. § 273.16(e)(4); 7 AAC 45.585(c). 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. In this case, an extra step was taken: Ms. J was mailed a notice on July 8, 2013 giving her ten days to show good cause for failing to appear. She did not respond to that notice.

II. Facts

Ms. J received Food Stamps and ATAP benefits continuously from the late spring of 2010 through the events at issue in this case.⁶ As part of a routine eligibility review, she completed and signed an eligibility review form, dating it March 29, 2012.⁷ She turned it in to DPA the same day.⁸ In response to questions on the form, she wrote answers explicitly indicating she had no income or employment.⁹

Ms. J attended an eligibility interview on April 24, 2012 in connection with the eligibility form she submitted on March 29. She said her only income was her Temporary Assistance.¹⁰ This interview, as well as prior interviews and written materials distributed with the review form, covered the illegality of giving false or incomplete information to get benefits.¹¹

In reality, Ms. J began working for No Name Services, LLC in February of 2012, earning \$1,839.75 in the first quarter of 2012 and \$6,930.00 in the second quarter.¹²

DPA re-approved Food Stamp and ATAP benefits for Ms. J based on zero income.¹³ Benefits at this level were issued and redeemed in April and May of 2012.¹⁴ Ms. J's ATAP and Food Stamp benefits should have been lower for these months.¹⁵ DPA has calculated the excessive benefits as \$1,537 in ATAP and \$659 in Food Stamps.¹⁶ Benefits were reduced thereafter based on the No Name Services income.¹⁷

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁸ Alaska law likewise prohibits securing ATAP benefits by such means.¹⁹

⁶ Ex. 9; Holton testimony.

⁷ Ex. 7.

⁸ *Id.*; Holton testimony.

⁹ Ex. 7, pp. 2-3.

¹⁰ Holton testimony; Ex. 8, p. 1.

¹¹ Holton testimony; Ex. 7, Ex. 8.

¹² Ex. 2, Ex. 11.

¹³ Ex. 8.

¹⁴ Holton testimony; Ex. 10.

¹⁵ Holton testimony.

¹⁶ Holton testimony; Ex. 12.

¹⁷ *See* Ex. 2, Ex. 10.

¹⁸ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁹ 7 AAC 45.580(n).

In this case, DPA seeks to establish an IPV in both benefit programs in which Ms. J was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.²⁰ No evidence has been offered that Ms. J has ever been found to have committed a prior IPV, and therefore both alleged IPV's will be evaluated on the assumption that they are first-time violations.

A. Food Stamp Program

Except for someone with prior IPV's in his or her record, someone who falls in the ten-year provision discussed above, or someone who has used food stamps in a drug or weapons transaction, federal food stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts" in connection with the program.²¹

It is clear that Ms. J actively claimed that she was unemployed and had no income when in fact she had ongoing paid employment with No Name Services. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. J failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Income is a central focus of both the recertification form and any eligibility interview. Ms. J's repeated, explicit claims of unemployment cannot have been a mere oversight. The evidence is therefore clear and convincing that Ms. J's misrepresentation was intentional. She has therefore committed a first IPV.

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 that Ms. J intentionally misrepresented, concealed or withheld a material fact "for the purpose of establishing or maintaining a family's eligibility for ATAP benefits."²² As discussed above, Ms. J intentionally misrepresented that she was unemployed when she was not. Income is an essential component in qualifying for ATAP benefits.²³ The existence and amount of income is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. J would have

²⁰ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

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

²² 7 AAC 45.580(n).

²³ AS 47.27.0025(a).

intentionally misrepresented that she was unemployed would have been to establish her eligibility for Temporary Assistance benefits.

The Division has therefore met its burden of proof and established that Ms. J intentionally misrepresented a material fact: the fact that she had a paying job. This intentional misrepresentation of a material fact was made for the purpose of establishing her eligibility for ATAP benefits. Ms. J has therefore committed a first IPV of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. J has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.²⁴ The Food Stamp disqualification period shall begin February 1, 2014.²⁵ This disqualification applies only to Ms. J, and not to any other individuals who may be included in her household.²⁶ For the duration of the disqualification period, Ms. J'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 so that they can be used in these determinations.²⁷

DPA shall provide written notice to Ms. J 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.²⁸

If over-issued Food Stamp benefits have not been repaid, Ms. J or any remaining household members are now required to make restitution.²⁹ If Ms. J disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.³⁰

²⁴ 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).

²⁵ 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 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).

²⁶ 7 C.F.R. § 273.16(b)(11).

²⁷ 7 C.F.R. § 273.11(c)(1).

²⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁰ 7 C.F.R. § 273.15.

B. Alaska Temporary Assistance Program

Ms. J 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.³¹ If Ms. J is currently receiving Temporary Assistance benefits, her disqualification period shall begin February 1, 2014.³² If Ms. J 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.³³ This disqualification applies only to Ms. J, and not to any other individuals who may be included in her household.³⁴ For the duration of the disqualification period, Ms. J's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. J must report her income and resources as they may be used in these determinations.³⁵

The Division shall provide written notice to Ms. J and the caretaker relative, if other than Ms. J, of the Temporary Assistance benefits they will receive during the period of disqualification.³⁶

If over-issued Temporary Assistance benefits have not been repaid, Ms. J or any remaining household members are now required to make restitution.³⁷ If Ms. J disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³⁸

Dated this 27th day of November, 2013.

Signed

Christopher Kennedy
Administrative Law Judge

³¹ AS 47.27.015(e)(1); 7 AAC 45.580(d).
³² 7 AAC 45.580(f).
³³ 7 AAC 45.580(g).
³⁴ 7 AAC 45.580(e)(1).
³⁵ 7 AAC 45.580(e)(3).
³⁶ 7 AAC 45.580(k).
³⁷ 7 AAC 45.570(b).
³⁸ 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 13th day of December, 2013.

By: Signed
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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