

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

In the Matter of)
)
)
 T N)

OAH No. 13-1604-ADQ
Agency No.

REVISED DECISION

I. Introduction

T N applied for Food Stamps, Alaska Temporary Assistance, and Medicaid benefits, and she received those benefits for several years. None of her applications listed her husband, E N, as a household member even though they were married to each other. The Division of Public Assistance (division) determined that her husband was residing in the household and alleged that she had committed an Intentional Program Violation (IPV) as to each of the three programs.

A hearing was held on January 24, 2014. Ms. N appeared by telephone and represented herself. The division was represented by Investigator Dean Rogers. A proposed decision was issued which recommended finding that the division had not met its burden of proving that Ms. N intentionally misrepresented, concealed, or withheld material information. Deputy Commissioner Ree Sailors, acting pursuant to a delegation of authority from the Commissioner of Health and Social Services, returned this matter to the Office of Administrative Hearings to take additional evidence and to make additional findings of fact.

A supplemental hearing was held on April 3, 2014. Based on the entire record, the division has still not met its burden of proving an Intentional Program Violation as to any of the three programs.

II. Facts

Ms. N submitted applications or renewals for a variety of programs as shown in the following chart:

Program	Date	Exhibit Number
Food Stamps	September 7, 2010	Exhibit 7, page 1
Food Stamps	January 28, 2011	Exhibit 7, page 9
Medicaid and Temporary Assistance	July 5, 2011	Exhibit 7, page 14

Food Stamps	August 16, 2011	Exhibit 7, page 22
Temporary Assistance and General Relief	December 27, 2011	Exhibit 7, page 26
Medicaid	February 9, 2012	Exhibit 7, page 34
Food Stamps	February 9, 2012	Exhibit 7, page 42

Although Ms. N has been married to E since October of 2008,¹ none of these applications listed E as a member of the household.

E N' Permanent Fund Dividend (PFD) applications for 2008, 2010, 2011, and 2012 all list a mailing address and a physical address that match the mailing and physical addresses used by Ms. N on her PFD applications.² Ms. N completed the applications for herself and for E each year.³

Mr. and Mrs. N both signed a one year lease with Nova Property Management commencing on October 6, 2011.⁴ The address of this leased apartment is the same address used in their 2012 PFD applications.⁵

Mr. and Ms. N are both listed on a Chugach Electric company bill dated July 21, 2011.⁶ The service address listed on that bill is the same as was used in the N' 2011 and 2010 PFD applications.

The Anchorage School District records for E N II (E's son) show Mr. and Mrs. N as the parent or guardian, and have the same residence address for both of them.⁷

E N owns two vehicles, and the vehicle registrations list the same address used by Ms. N as the mailing and residence address for both of them.⁸

E earned significant income for the years 2010 through 2012.⁹ Eligibility Technician Amanda Holton reviewed the benefits received by Ms. N, and recalculated the benefits she

¹ Exhibit 12; Testimony of Ms. N.

² Exhibit 11.

³ Testimony of Ms. N.

⁴ Exhibit 13.

⁵ The 2012 PFD application is for the 2011 calendar year.

⁶ Exhibit 14.

⁷ Exhibit 15, page 4; Exhibit 15, pages 6 & 7; Exhibit 15, page 10.

⁸ Exhibit 16.

⁹ Exhibit 17; quarterly wages reported to the Alaska Department of Labor. Ms. N testified that the amount reported to the Department of labor was more than E N actually earned. She did not present W2 statements, tax returns, pay stubs, or other evidence to show the Department of Labor's records are wrong. Nor did E N testify. The wages reported by E's employer to the Department of Labor are accepted as accurate for the purposes of this decision.

would have been entitled to if E and his income had been included in the household. According to Ms. Holton's calculations, Ms. N received \$19,256 in Food Stamps benefits between September of 2010 and October of 2012. Had she listed E and his income on her applications, the household would only have received \$675 in Food Stamps.¹⁰ In addition, Ms. N would not have been eligible for Medicaid benefits if E had been included in the household. She received \$5,343.13 worth of Medicaid benefits between June 2012 and October 2012.¹¹ The total claimed overpayment to Ms. N is \$23,924.13.¹² There was no loss to the division associated with her Temporary Assistance applications.¹³

In 2012 through early 2013, Ms. N was working for the No Name. A co-worker, F S, worked in the same building and observed that someone brought meals to her five or more times. That person identified himself as her husband, though he didn't mention his name or state whether they were residing in the same household.¹⁴

Ms. N's supervisor, L B, was moving furniture in the office in October of 2012. Ms. N mentioned to him, "I sure wish I could get my husband to do stuff around the house."¹⁵ Mr. B reviewed Ms. N's file and saw that she did not list a husband as part of her household. He referred the matter for a possible fraud investigation.¹⁶

After the proposed decision was issued, this matter was returned by the Deputy Commissioner to

take additional evidence about:

the financial relationship between Mr. and Mrs. N related to support of the household.

[and to] make additional findings about any financial support received from the husband while he was presumably living away from the house and its impact on eligibility or benefit determination.^[17]

At the supplemental hearing, the division stated that it had no additional evidence to offer. Ms. N testified that E bought clothes and school supplies for his son. He also bought Christmas and birthday gifts. Ms. N did not receive child support from him, but the Child

¹⁰ Testimony of Ms. Holton; Exhibit 20.

¹¹ *Id.*

¹² *Id.*

¹³ See Exhibit 3, page 14; Exhibit 20, page 1.

¹⁴ Testimony of Mr. S.

¹⁵ Testimony of Mr. B; Exhibit 2.

¹⁶ *Id.*

¹⁷ Non-Adoption by Deputy Commissioner dated March 17, 2014.

Support Services Division did deduct \$65 from his October 31, 2013, PFD. That money went to the State of Alaska to reimburse the state for his son's Medicaid.¹⁸ The division did not claim that these contributions to the household would support an IPV finding or change Ms. Holton's benefit calculations.

III. Discussion

It is an IPV for a person applying for Temporary Assistance benefits to intentionally misrepresent, conceal, or withhold material information.¹⁹ The division has the burden of proving the violation by clear and convincing evidence.²⁰ A person who is found to have committed an intentional violation is disqualified from receiving Temporary Assistance benefits for six months for his or her first IPV.²¹

For Food Stamp recipients, an IPV is defined as having intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts[.]"²² In order to prevail, the division must prove this violation by clear and convincing evidence.²³ A person who is found to have committed a first Food Stamps IPV is disqualified from receiving food stamps for 12 months,²⁴ and must repay any benefits wrongfully received.²⁵

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.²⁶ This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

For Medicaid benefits, an IPV also includes intentionally misrepresenting, concealing, or withholding a material fact.²⁷ The Medicaid regulations do not contain a burden of proof standard. Thus, the general rule that proof must be by a preponderance of the evidence is applied.²⁸

¹⁸ Testimony of Ms. N.

¹⁹ 7 AAC 45.580(n).

²⁰ 7 AAC 45.585(d).

²¹ AS 47.27.015(e)

²² 7 C.F.R. 273.16(c)(1).

²³ 7 C.F.R. 273.16(e)(6).

²⁴ 7 C.F.R. 273.16(b)(1).

²⁵ 7 C.F.R. 273.16(b)(12).

²⁶ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003).

²⁷ 7 AAC 100.912(e)(1)(B).

²⁸ 2 AAC 64.290(e); *Amerada Hess Pipeline Corp. v. Alaska Pub. Util. Comm'n*, 711 P.3d 1170, 1179 n. 14 (Alaska 1986).

Ms. N did not dispute that E was listed on school records, PFD applications, and other documents as physically residing at the same address where she lived. This is evidence that E was in fact part of the household when she applied for benefits. However, Ms. N testified that he was not in fact living with her, and explained why those forms incorrectly claimed otherwise.

Ms. N testified²⁹ that she had three children from a prior relationship and E had one child from a prior relationship. According to Ms. N, after they got married, both of their former partners caused problems with their new household. In particular, E's prior partner was interfering at home and at school. This was causing the children a lot of stress. Accordingly, in 2010, while living at the XY Avenue address,³⁰ Ms. N asked E to move out. From that point on, he would live part of the time at Ms. N' mother's house and part of the time at his own mother's house. He also spent Monday and Tuesday nights at Ms. N' home.³¹

Ms. N and E agreed that his son would stay in her home, and he would help watch all the children on his days off work, which were Tuesdays and Wednesdays. Because E and his former partner were disputing custody, he and Ms. N wanted to show that he had a stable home with sufficient income to support his child. Thus, they listed him on school records – which his former partner might access – as living with Ms. N.

Ms. N also filled out all of E's PFD applications. Because he had no fixed address, she used her address as his mailing address. She explained that when completing the PFD application, there is a box one can check to use the mailing address as the physical address, and she simply checked that box to complete the form.

The lease agreement, Exhibit 13, contains both Mr. and Ms. N' names because they were still working on their marriage, and because they needed the income from both of them to qualify for the lease. His name is on the Chugach Electric bill, Exhibit 14, because she wanted him to have access to the account information. Ms. N testified that anyone, including a non-household member, can be added to a Chugach Electric account.

²⁹ This summary of Ms. N' explanation is all based on her testimony.

³⁰ This is the address used on Ms. N' first Food Stamps application in 2010.

³¹ The division did not argue that anyone living in the household two days each week should have been included on the application, and no ruling is made here as to whether that is the case. In order to prove that the failure to list a person living in the home two days a week was an intentional violation, the division would need to show both that disclosure was required, and also that Ms. N knew it was required.

According to Ms. N, E used her mailing address as his own for most of his mail because he had no fixed address to use.³²

The division argued that it is highly suspicious that E was listed as living with Ms. N on all documents *except* for those where it would have made her ineligible to receive benefits. This argument cuts both ways, however. It is just as likely that Ms. N left E off of her benefit applications because those were the documents where it was most important to provide accurate information. It can be an IPV to provide incorrect information on those applications, and there is a warning that providing false information may be penalized as perjury.

No specific rights or benefits are gained or lost depending on accurately listing a residence address on most of the other records. For school records, the important aspect is where the child lives, and a mailing address for each parent. For PFD applications, it is important that the applicant physically live in Alaska, but need not have a specific fixed address within the state.³³ People often co-sign lease agreements to help the tenant qualify for an apartment even if they don't live in the leased apartment. Having one's name on a utility bill is not an assertion of residence at that location. E N did list the XY Avenue address for his vehicle registrations, but if he had no fixed address to use it might not be improper for him to use that address.³⁴

Certainly using Ms. N' address for E's physical residence on all of these documents raises a reasonable question as to whether he was living in her household. Without more, it would be easy to conclude that he was. However, it is also reasonable that a husband and wife, separated but working towards getting back together, would continue to use the same address on multiple documents. Even though the separation was for a lengthy period of time, it is not surprising that E continued to use her address as his own under the circumstances of this case.

The evidence that E brought meals to Ms. N, and that Ms. N wished he would do work around the house, is at best weak evidence that he lived in her household. That he

³² He did use his mother's address for his medical related correspondence.

³³ The actual question on the application is not in the record – only a summary data sheet showing the answer to the question – so it is not known whether the answer was technically correct or incorrect.

³⁴ This discussion is not meant to suggest that it was prudent to list E as residing at Ms. N' address on any of these documents. The decision to do so might have unforeseen consequences in other areas. The question here is only whether listing Ms. N' address establishes that he was in fact living in her home, and not whether those documents were completed correctly according to the rules governing those documents.

continued to use her address as his own on official documents is much stronger evidence. However, in light of Ms. N' explanation for why he did so, the division has not shown that it is *highly probable* that he did live with her and that she misrepresented his absence from the home when listing household members on her applications. This is particularly true in light of the fact that the division did not provide evidence from neighbors, friends, relatives, or anyone else who might have personal knowledge of who had been residing in Ms. N' household since the fall of 2010. The division has not proven an IPV as to Food Stamps or Temporary Assistance benefits.

As mentioned above, the burden of proof is different for Medicaid benefits. The division only needs to show that it is more likely true than not true that Ms. N misrepresented the household membership.

There was nothing about Ms. N' testimony to suggest she was being deceptive during the hearing while testifying under oath. On the other hand, she was the only person testifying in support of her position. Her oldest daughter was born in 1993,³⁵ and was old enough to consider calling as a witness. E N might have been called to corroborate Ms. N' testimony. Neighbors and other relatives might also have provided helpful testimony. Ultimately, however, it was not Ms. N' burden to prove anything. The division has the burden of establishing an intentional misrepresentation. The division's evidence was not sufficiently strong to outweigh Ms. N' explanation. While it is possible that E was a household member, it cannot be said that he was more likely than not a member of Ms. N' household. The division has not proven an IPV as to Medicaid benefits.

IV. Conclusion and Order

The division did not prove by clear and convincing evidence, or by a preponderance of the evidence, that Ms. N intentionally misrepresented, concealed, or withheld material information when she failed to list her husband, E N, on her applications. The evidence that E N was a household member is at least equally balanced by Ms. N' testimony that he was not. Accordingly, no Intentional Program Violation has been proven.

Dated this 4th day of April, 2014.

Signed

Jeffrey A. Friedman
Administrative Law Judge

³⁵ Exhibit 7, page 2.

Adoption

The undersigned, by delegation from of 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 11th day of April, 2014.

By: Signed _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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