

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

In the Matter of)
)
B D. U-E)
_____)

OAH No. 13-1686-ADQ
DPA/FCU No.
Agency No.

DECISION and ORDER

I. Introduction

B D. U-E applied for and received Medicaid and Food Stamp¹ benefits from September 2011 through August 2012, claiming that her children were part of her household. On November 22, 2013, the Department of Health and Social Services, Division of Public Assistance (DPA) notified Ms. U-E Administrative Disqualification of its case against her. The notice alleged she had committed a first Intentional Program Violation (IPV) of the Medicaid and Food Stamp programs.²

A hearing convened in this case on December 23, 2013, with Ms. U-E having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. U-E did not attend the hearing and could not be reached at the telephone number she has provided to the program.⁴ The hearing went forward in her absence.

DPA was represented at the hearing by William Schwenke, an investigator employed by DPA's Fraud Control Unit. Marg Parsons, a DPA Eligibility Technician, testified on behalf of DPA, as did T R, who had custody of the children during the period at issue, and Debra Hallmark, who is the employee of the Alaska Office of Children's Services who dealt with Ms. U-E for her children's placement. Exhibits 1-18 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. U-E committed a first Intentional Program Violation of both programs. She must be barred from

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

² Ex. 2.

³ Ex. 1, p. 3 at number 3; Ex. 3; Ex. 5. These tracking records indicate that Ms. U-E did not claim the notices sent by certified mail until December 17, 2013, when she signed for the package from DPA that included all the exhibits and copies of the notices of the hearing.

⁴ The administrative law judge left messages for Ms. U-E to call the Office of Administrative Hearings as soon as possible at the time set for the hearing with the gentleman who answered her phone. Ms. U-E was called later during the hearing, a woman answered and hung up when the Administrative Law Judge identified himself. A voice message was left on her phone number of record providing information on how she could join the hearing, but Ms. U-E did not call in before the hearing ended.

receiving Food Stamps for twelve months and she must pay back the money that was paid as the result of her false reporting.

II. Facts

Ms. U-E received Food Stamps and Medicaid benefits intermittently at least going back to 2008.⁵ Ms. U-E received Food Stamps and Medicaid benefits from September 2011 through August 2012.⁶ During this period Ms. U-E claimed that her children, D and B were living with her as part of her household.⁷ DPA records show that Ms. U-E received \$3,876 in Food Stamps, \$359 in Alaska Food Stamps Hold Harmless benefits, and \$6,130.63 in Medicaid benefits, that is, a total of \$10,365.63 that she would not have received if she had not falsely claimed that her children were part of her household.⁸

D and B lived with their maternal grandparents T and K R from July 29, 2011 to November of 2012. Ms. R explained at the hearing that their custody of the children was the result of a court ordered placement. Only supervised visits in public places were allowed with Ms. U-E during this placement. The children did not spend any nights under the same roof as Ms. U-E during this placement.⁹ Copies of some of the court orders related to this placement are in the record.¹⁰

The placement of the two children in the custody of their grandparents was reported to DPA by Debra Hallmark from the Alaska Office of Children's Services in a letter dated November 7, 2012.¹¹

Marg Parsons, an Eligibility Technician III with DPA who worked with Ms. U-E on her benefits claims testified at the hearing. As part of a routine eligibility reviews during this period, Ms. U-E had completed and signed three eligibility review forms, dated September 9, 2011, February 23, 2012 and August 13, 2012. On each of these the forms, Ms. U-E listed her children, D and B, as living with her.¹²

⁵ Recording of Hearing-Testimony of Ms. Parsons & Exhibit 11.

⁶ Recording of Hearing-Testimony of Ms. Parsons & Exhibit 11.

⁷ Recording of Hearing-Testimony of Ms. Parsons & Exhibits 7, 8, 9 & 11.

⁸ Recording of Hearing-Testimony of Ms. Parsons & Exhibits 1 & 11.

⁹ Recording of Hearing-Testimony of Ms. R.

¹⁰ Ex. 17.

¹¹ Ex. 16, p. 3.

¹² Recording of Hearing-Testimony of Ms. Parsons.

Ms. Parsons testified that she had been first told during a phone call from Ms. Hallmark with the Alaska Office of Children's Services that Ms. U-E had not been living with her children. Ms. Parsons asked Ms. U-E in a meeting after this call why Ms. U-E had claimed the children as part of the household even though they had not been living in her household since July 2011. Ms. Parsons testified that Ms. U-E explained to her that she had claimed that the children were claimed on her applications for Medicaid and Food Stamps because Ms. Hallmark had instructed her to make that claim so that the children would qualify for Medicaid.¹³

Ms. Hallmark from Alaska Office of Children's Services testified at the hearing that, rather than advising Ms. U-E to report the children as members of her household in DPA applications, Ms. Hallmark remembered had repeatedly informing Ms. U-E in meetings with her during the placement that Ms. U-E should inform both the Division of Child Support Services and DPA of the placement. Ms. Hallmark explained that she did this because the grandparents told Ms. Hallmark that they were living on a fixed income and receiving no assistance for having the children living with them, while Ms. U-E was receiving about \$500 in child support for their support, which she was not passing on to T and K R. Ms. Hallmark testified that the placement agreement required the children to be living in the grandparent's home, without Ms. U-E, starting around August of 2011. Ms. Hallmark testified that her impression, from her many interactions with Ms. U-E during the placement, was that Ms. U-E understood Ms. Hallmark's repeated recommendations that she report the placement to DPA and Child Support Services, but Ms. U-E had a substance abuse problem during this period and did not want to follow Ms. Hallmark's advice because Ms. U-E wanted the money she was collecting for her children's support.¹⁴

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.¹⁵ Alaska law likewise prohibits securing Medicaid benefits by such means.¹⁶

In this case, DPA seeks to establish that Ms. U-E committed an Intentional Program Violation in both benefit programs in which Ms. U-E was enrolled. To establish an Intentional

¹³ Recording of Hearing-Testimony of Ms. Parsons. & Ex. 12.

¹⁴ Recording of Hearing- Testimony of Ms. Hallmark.

¹⁵ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁶ 7 AAC 45.580(n).

Program Violation in the Food Stamp Program, DPA must prove the elements of an Intentional Program Violation by clear and convincing evidence.¹⁷ No evidence has been offered that Ms. U-E has ever been found to have committed a prior Intentional Program Violation, and therefore both alleged IPVs will be evaluated on the assumption that this is a first-time violation.

A. Food Stamp Program

With some exceptions that do not apply to the circumstances in this case, federal food stamp law requires that a twelve-month disqualification 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.¹⁸

It is clear that Ms. U-E claimed that her children were living with her at a time when they were in fact living with Mr. and Ms. R. The children were not living in her home and were not allowed to live with her in her home under the placement by Alaska Office of Children’s Services, when Ms. U-E reiterated the claim that they were, on three separate occasions on the forms she signed for her eligibility interviews. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. U-E failed to appear for or testify at her hearing, but her intent can be inferred from evidence in the record. Household composition is a central focus of any eligibility interview. It simply cannot have slipped Ms. U-E’s mind that her children had had been place with her parents and she was only allowed to see them during short supervised visitations. When she was confronted about her misrepresentations after the fraud report, Ms. U-E admitted to Ms. Parsons from DPA that she made the claims knowing that they were false, and then tried to justify her actions by misrepresenting Ms. Hallmark’s advice to her as encouraging her to make a false reports rather than encouraging her to make an accurate report regarding the children’s placement.

The only plausible reason Ms. U-E would have intentionally misrepresented the presence of children in her home would have been to establish her eligibility for benefits. The story that Ms. U-E told Ms. Parsons, that she was instructed to make this false claim by Ms. Hallmark of the Alaska Office of Children’s Services was not plausible, and was directly refuted by Ms.

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

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

Hallmark herself at the hearing, who testified that she repeatedly told Ms. U-E to report that the children were living with the Rs. Ms. Hallmark was confident that Ms. U-E understood that she should honestly report the children’s placement to DPA and Child Support Services. It was after Ms. U-E repeatedly failed to follow these instructions that Ms. Hallmark herself notified DPA of the placement as part of the fraud complaint that set this current action in motion.

The evidence is clear and convincing that Ms. U-E's misrepresentation was intentional. She has therefore committed a first Food Stamp Intentional Program Violation.

B. Medicaid Program

Unlike the Food Stamp and ATAP programs, the Medicaid program does not specify a particular standard of proof to be used in Intentional Program Violation cases.¹⁹ When no standard of proof is specified, the general rule is that the “preponderance of the evidence” standard of proof applies.²⁰ However, the Medicaid regulations specifically provide that “the department shall coordinate action under (a) or (b) of this section with any corresponding action taken under 7 AAC 45 (Alaska Temporary Assistance Program) or 7 AAC 46 (Food Stamp Program) if the facts involved arise from the same or related circumstances.”²¹

Because this case also involves alleged a Food Stamp Intentional Program Violation based upon the same factual allegations, this decision will use the higher Food Stamp Intentional Program Violation “clear and convincing evidence” standard of proof, instead of the lower “preponderance of the evidence” standard of proof.

The Alaska Medicaid program defines an Intentional Program Violation as follows:

- (1) “intentional program violation” means an action that
 - (A) an individual takes for the purpose of establishing and maintaining an individual’s eligibility for Medicaid benefits; and
 - (B) intentionally misrepresents, conceals, or withholds a material fact;^[22]

¹⁹ 7 AAC 100.912

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

²¹ 7 AAC 100.912(c).

²² 7 AAC 100.912(e).

As discussed above, Ms. U-E Intentionally misrepresented that her children were residing in her home when they were living with the Rs.

Like the Food Stamp program, financial eligibility for Medicaid is dependent upon the number of persons in the home and their combined income. This means that the intentional misrepresentation regarding whether her children were part of her household was the misrepresentation of a material fact.

The evidence is therefore clear and convincing that Ms. U-E's misrepresentation was material and intentional. She has therefore committed a first Medicaid Intentional Program Violation.

IV. Conclusion and Order

A. Food Stamp Program

Ms. U-E 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.²³ The Food Stamp disqualification period shall begin March 1, 2014.²⁴ This disqualification applies only to Ms. U-E, and not to any other individuals who may be included in her household.²⁵ For the duration of the disqualification period, Ms. U-E'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.²⁶

DPA shall provide written notice to Ms. U-E 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.²⁷

If over-issued Food Stamp benefits have not been repaid, Ms. U-E or any remaining household members are now required to make restitution.²⁸ If Ms. U-E disagrees with DPA's

²³ 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).

²⁴ 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).

²⁵ 7 C.F.R. § 273.16(b)(11).

²⁶ 7 C.F.R. § 273.11(c)(1).

²⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²⁹

B. Medicaid Program

Ms. U-E. has committed an Intentional Program Violation of the Medicaid program. She is required to reimburse the Division for Medicaid benefits she received as a result of her Intentional Program Violation. If she has not reimbursed the Division, Ms. U-E is required to make restitution.³⁰ If Ms. U-E disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³¹

Dated this 30th day of December, 2013.

Signed

Mark T. Handley
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 21st day of January, 2014.

By: *Signed* _____
Name: Mark T. Handley
Title: Administrative Law Judge

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

²⁹ 7 C.F.R. § 273.15.

³⁰ 7 AAC 100.910(a)(1).

³¹ 7 AAC 100.910(f).