

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

In the Matter of)
)
S Q)
_____)

OAH No. 14-0006-ADQ
Agency No.

DECISION and ORDER

I. Introduction

S Q received Alaska Temporary Assistance (ATAP) and Food Stamp¹ benefits from March 2013 through October 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 by claiming her daughter as a member of her household.

A hearing convened in this case on February 7, 2014 with Ms. Q having been provided advance notice of the hearing by both certified mail and standard First Class mail.² Ms. Q did not attend the hearing and could not be reached at the telephone number she had provided to the program.³ The hearing went forward in her absence.⁴

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. Q committed a first Intentional Program Violation of both programs. By regulation, Ms. Q must be barred from Food Stamps for twelve months and from ATAP for six months.

II. Facts

Ms. Q received Food Stamps and ATAP benefits continuously from March 2013 through October 2013.⁵ As part of a routine eligibility review, she completed and signed an eligibility

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

² Ex. 3; Ex. 4; Ex. 5; Ex. 6. She did not claim the certified mail.

³ The administrative law judge left messages for Ms. Q to call the Office of Administrative Hearings as soon as possible.

⁴ 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 CFR § 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.

⁵ Ex. 9; Holton testimony.

review form, dating it January 1, 2013.⁶ On the form, she listed her daughter, X, as living with her.⁷ She appears either to have back-dated the form or to have delayed in submitting it, as it was not received by DPA until February 1, 2013.⁸

She completed and signed another review eligibility form, dated August 20, 2013.⁹ On the August form she again listed her daughter as living with her.¹⁰ This form was received by DPA on August 23, 2013.¹¹

X is not in her mother's custody. In September 2012, her cousins M and B T were awarded shared legal custody of X; M has sole physical custody.¹² Ms. Q has limited visitation.¹³

DPA re-approved Food Stamp and ATAP benefits for Ms. Q.¹⁴ Benefits were issued and redeemed during months in which X clearly did not reside in the home. Ms. Q should not have received any ATAP benefits for these months (since there must be children in the household to be eligible for ATAP), and her Food Stamp benefit should have been lower.¹⁵ DPA has calculated the excessive benefits as \$3,600 in ATAP and \$706 in Food Stamps.¹⁶

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.¹⁷ Alaska law likewise prohibits securing ATAP benefits by such means.¹⁸

In this case, DPA seeks to establish an IPV in both of the benefit programs in which Ms. Q was enrolled. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁹ No evidence has been offered that Ms. Q has ever been found to

⁶ Ex. 7, p. 4.

⁷ Ex. 7, p. 1.

⁸ *Id.*

⁹ Ex. 7, p. 8.

¹⁰ Ex. 7, p. 5.

¹¹ *Id.*

¹² Ex. 11.

¹³ *Id.*

¹⁴ Ex. 9.

¹⁵ Holton testimony.

¹⁶ *Id.*; Ex. 12.

¹⁷ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁸ 7 AAC 45.580(n).

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

have committed a prior IPV, and therefore both alleged IPVs will be evaluated on the assumption that this is a first-time violation.

A. Food Stamp Program

Except for someone with prior IPVs in his or her record, someone who falls in the ten-year provision, 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.²⁰

It is clear that Ms. Q claimed that X was living with her at a time when she was in the legal and physical custody of others. For Ms. Q to claim X was residing in her home was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. Q failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Household composition is a central focus of any eligibility interview. It simply cannot have slipped Ms. Q’s mind that a few months prior she had, by court order, relinquished custody of her daughter and the household composition she was describing was fictional. This is clear and convincing evidence that Ms. Q’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. Q intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”²¹ As discussed above, Ms. Q intentionally misrepresented that her daughter was living with her.

In order to qualify for ATAP benefits, an applicant must have a dependent child living in her home.²² Whether there is a dependent child living in the home is therefore a material fact for the purpose of determining ATAP eligibility. The only plausible reason Ms. Q would have intentionally misrepresented the presence of X in her home would have been to establish her eligibility for Temporary Assistance benefits.

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

²¹ 7 AAC 45.580(n).

²² AS 47.27.010; 7 AAC 45.210(a)(4); 7 AAC 45.225(a).

The Division has therefore met its burden of proof and established that Ms. Q intentionally misrepresented a material fact: the fact that X was not living with her. This intentional misrepresentation of a material fact was made for the purpose of establishing her eligibility for ATAP benefits. Ms. Q has therefore committed a first IPV of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. Q 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 May 1, 2014.²⁴ This disqualification applies only to Ms. Q, and not to any other individuals who may be included in her household.²⁵ For the duration of the disqualification period, Ms. Q'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. Q 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. Q or any remaining household members are now required to make restitution.²⁸ If Ms. Q disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.²⁹

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).

²⁹ 7 C.F.R. § 273.15.

B. Alaska Temporary Assistance Program

Ms. Q 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.³⁰ If Ms. Q is currently receiving Temporary Assistance benefits, her disqualification period shall begin May 1, 2014.³¹ If Ms. Q 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.³² This disqualification applies only to Ms. Q, and not to any other individuals who may be included in her household.³³ For the duration of the disqualification period, Ms. Q's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. Q must report her income and resources as they may be used in these determinations.³⁴

The Division shall provide written notice to Ms. Q of the Temporary Assistance benefits she will receive during the period of disqualification.³⁵

If over-issued Temporary Assistance benefits have not been repaid, Ms. Q or any remaining household members are now required to make restitution.³⁶ If Ms. Q disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.³⁷

Dated this 20th day of February, 2014.

Signed

Rebecca L. Pauli
Administrative Law Judge

³⁰ AS 47.27.015(e)(1); 7 AAC 45.580(d).
³¹ 7 AAC 45.580(f).
³² 7 AAC 45.580(g).
³³ 7 AAC 45.580(e)(1).
³⁴ 7 AAC 45.580(e)(3).
³⁵ 7 AAC 45.580(k).
³⁶ 7 AAC 45.570(b).
³⁷ 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 6th day of March, 2014.

By: Signed
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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