

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

In the Matter of:)	
)	
W B-C)	OAH No. 14-0107-ADQ
)	DPA Case No.
_____)	Fraud Control Case No.

DECISION AND ORDER

I. Introduction

W B-C is a former recipient of Alaska Temporary Assistance Program (ATAP) and Food Stamp benefits. On January 17, 2014 the Division of Public Assistance (DPA or Division) initiated this Administrative Disqualification case against Ms. B-C, alleging that she committed first time Intentional Program Violations (IPVs) of both the ATAP and Food Stamp programs. This decision concludes, based on the evidence presented, that Ms. B-C committed first-time Intentional Program Violations of the ATAP and Food Stamp programs by failing to report her current employment and income to the Division, causing her to receive benefits to which she was not legally entitled.

II. Facts

Records obtained by the Division from Equifax and from the Department of Labor and Workforce Development indicate that Ms. B-C was employed by S from September 21, 2011 through approximately January 30, 2012.¹ Ms. B-C received paychecks from her employer on October 25, 2011 (eight days prior to the submission of her eligibility review form), and on November 10, 2011 (eight days after the submission of her eligibility review form).² This indicates that Ms. B-C was employed and earning income on the date she submitted her eligibility review form to the Division (November 2, 2011).

Ms. B-C has received Food Stamp benefits since January 2011 or before, and ATAP benefits since February 2011 or before.³ On November 2, 2011 Ms. B-C completed, signed, and submitted an eligibility review form for ATAP and Food Stamp benefits.⁴ The eligibility review form contained a question asking whether anyone in Ms. B-C's household was working and receiving income from employment or self-employment.⁵ Ms. B-C did not respond to this question

¹ Ex. 12 pp. 1 - 5.
² Ex. 12 p. 4.
³ Ex. 13.
⁴ Ex. 8 pp. 1- 4.
⁵ Ex. 8 p. 2.

and left it blank.⁶ At the end of the eligibility review form, Ms. B-C signed a statement certifying that the information contained in her application was true and correct.⁷

On the same day she submitted her eligibility review form (November 2, 2011), Ms. B-C participated in an in-person eligibility interview with a DPA eligibility technician (ET).⁸ She told the ET that she had read the "Rights and Responsibilities" section of the eligibility review form⁹ while waiting in the lobby, and that she understood her rights and responsibilities under the ATAP and Food Stamp programs and had no questions about them.¹⁰

Ms. B-C's November 2, 2011 renewal application was approved as to ATAP and Food Stamp benefits the next day (November 3, 2011).¹¹ Ms. B-C subsequently received and redeemed Food Stamp benefits for the months of November 2011 through January 2013 in the total amount of \$1,402.00,¹² and ATAP benefits for the months of November 2011 through December 2012 in the total amount of \$2,647.00.¹³ This was \$1,278.00 more in Food Stamp benefits, and \$2,471.00 more in ATAP benefits, than Ms. B-C would have been paid had she reported her true income during this period.¹⁴

The Division became aware of Ms. B-C's unreported employment and income on January 10, 2012 when Ms. B-C telephoned the Division from S and the ET who received the call made further inquiry.¹⁵ The Division then initiated a fraud investigation which culminated in this case.¹⁶

The Division notified Ms. B-C of its filing of this case, and of her hearing date, on January 17, 2014.¹⁷ On January 17, 2014 the Office of Administrative Hearings (OAH) mailed Ms. B-C a separate notice of hearing. Ms. B-C's hearing began as scheduled on February 20, 2014. Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, attended the hearing, represented the Division, and testified on its behalf. DPA eligibility technician Amanda Holton also attended the hearing and testified on behalf of the Division. Ms. B-C did not attend the hearing or participate by phone. Accordingly, the hearing proceeded in Ms. B-C's absence as required by 7 AAC 45.585(b) (ATAP) and 7 C.F.R. Section 273.16(e)(4) (Food Stamp program).

⁶ Ex. 8 p. 2.

⁷ Ex. 8 p. 4.

⁸ Ex. 9 p. 1.

⁹ Ex. 7 is a copy of the "Rights and Responsibilities" section of the Division's eligibility review.

¹⁰ Ex. 9 p. 1.

¹¹ Ex. 10.

¹² Ex. 13 pp. 1, 3.

¹³ Ex. 13 pp. 2, 3.

¹⁴ Ex. 13 p. 3.

¹⁵ Ex. 11 p. 1.

¹⁶ Ex. 2 p. 1.

¹⁷ Ex. 1 p. 3; Ex. 3 p. 2; Ex. 4 p. 1.

Shortly after the hearing ended OAH received a telephone call from Ms. B-C, who stated that she had received no notice of the hearing. Ms. B-C requested that a new hearing be scheduled, and the Division did not object to this request. Accordingly, a supplemental hearing was scheduled for April 1, 2014, and notice of the hearing was mailed to Ms. B-C on February 26, 2014. Once again, Ms. B-C failed to attend the hearing or participate in the hearing by phone. The record closed on April 1, 2014.

III. Discussion

A. Alaska Temporary Assistance Program

In order to prove an Intentional Program Violation of ATAP, the Division must prove by clear and convincing evidence¹⁸ that Ms. B-C intentionally misrepresented, concealed or withheld a material fact on her November 2, 2011 eligibility review form “for the purpose of establishing or maintaining [her] family’s eligibility for ATAP benefits . . . or for increasing or preventing a reduction in the amount of the benefit.”¹⁹

Initially, it is clear that Ms. B-C did not report her employment or income from S on her November 2, 2011 eligibility review form or during her eligibility interview on that date. This constitutes misrepresentation by omission, concealment, and/or withholding.

The next issue is whether the misrepresentation was intentional. Ms. B-C did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence. Her misrepresentation could theoretically have been merely negligent. However, Ms. B-C had significant prior experience with ATAP. Accordingly, it is reasonable to infer that she knew the importance of truthfully and accurately reporting her employment and income on benefit applications and renewal forms. Also, Ms. B-C had recently received a paycheck from S, making it less likely that her failure to report the income was accidental. Finally, it would be hard to miss the "Statement of Truth" provision directly above the review form's signature line. Together, these factors constitute clear and convincing evidence that Ms. B-C's failure to report her employment and income was intentional.

The next item the Division must prove is that Ms. B-C's intentional misrepresentation or concealment of her income involved a material fact. A fact is deemed material if proof of its existence or non-existence would affect disposition of the case under applicable law.²⁰

¹⁸ 7 AAC 45.585(d).

¹⁹ 7 AAC 45.580(n).

²⁰ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986). Research indicates that the Alaska Supreme Court has not yet stated its own generally applicable definition of materiality.

ATAP eligibility and benefit levels are based in large part on a household's income.²¹ Ms. B-C's failure to report the employment income at issue was material because it had the effect of decreasing her reported income, thereby increasing the amount of ATAP benefits for which her household was eligible. By misrepresenting or concealing her receipt of the employment income at issue, Ms. B-C prevented that income from being counted for eligibility and benefit level purposes. The Division has therefore shown that the facts misrepresented or concealed by Ms. B-C were material.

Finally, the Division must prove that the intentional misrepresentation or concealment of the material fact was made for the purpose of establishing or maintaining the household's eligibility for ATAP benefits.²² The only conceivable reason Ms. B-C would have intentionally concealed her employment income would have been to establish ATAP eligibility or to receive ATAP benefits in a higher amount than she would otherwise have been entitled. Accordingly, the Division has established this final element of its ATAP IPV case.²³

In summary, the Division has demonstrated by clear and convincing evidence that Ms. B-C committed an Intentional Program Violation as defined by the Alaska Temporary Assistance Program regulations.²⁴ This is Ms. B-C's first known Intentional Program Violation of the Alaska Temporary Assistance Program.²⁵

B. The Food Stamp Program

In order to prove that Ms. B-C committed an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence²⁶ that Ms. B-C "made a false or misleading statement, or misrepresented, concealed, or withheld facts" with regard to her November 2, 2011 eligibility review form, and that this misrepresentation / concealment was intentional.²⁷ Initially, it is clear that Ms. B-C did not report her employment with, or income from, S on her November 2, 2011 eligibility review form or during her interview. This constitutes misrepresentation by omission, concealment, and/or withholding.

²¹ 7 AAC 45.470; 7 AAC 45.525.

²² 7 AAC 45.580(n).

²³ It is possible that, had she appeared and testified at hearing, Ms. B-C might have adequately explained why she did not report the employment and income at issue. Absent her testimony, it is necessary to draw reasonable inferences from the available evidence. Here, those inferences establish an IPV by clear and convincing evidence.

²⁴ 7 AAC 45.580(n).

²⁵ Ex. 1 p. 8; Wynn Jennings hearing testimony.

²⁶ 7 C.F.R. § 273.16(e)(6).

²⁷ 7 C.F.R. § 273.16(c).

The last issue is whether Ms. B-C's misrepresentation was intentional. The misrepresentation was intentional for the reasons previously discussed in Section III(A) at pages 3 - 4, above, with regard to Ms. B-C's ATAP IPV.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. B-C committed an Intentional Program Violation as defined by the Food Stamp Program regulations. This is Ms. B-C's first known Intentional Program Violation of the Food Stamp program.²⁸

IV. Conclusion and Order

A. Alaska Temporary Assistance Program

Ms. B-C has committed a first time Intentional Program Violation of the Alaska Temporary Assistance Program. She is therefore disqualified from participation in ATAP for a period of six months.²⁹ If Ms. B-C is currently receiving ATAP benefits, her disqualification period shall begin on June 1, 2014.³⁰ If Ms. B-C is not currently receiving ATAP benefits, her disqualification period shall be postponed until she applies for and is found eligible for ATAP benefits.³¹ This disqualification applies only to Ms. B-C, and not to any other individuals who may be included in her household.³² For the duration of the disqualification period, Ms. B-C's needs will not be considered when determining ATAP eligibility and benefit amounts for her household.³³ However, Ms. B-C must report her income and resources as they may be used in these determinations.³⁴ The Division shall provide written notice to Ms. B-C and the caretaker relative, if other than Ms. B-C, of the ATAP benefits they will receive during the period of disqualification.³⁵

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

B. Food Stamp Program

Ms. B-C 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,

²⁸ Ex. 1 p. 8; Wynn Jennings hearing testimony.

²⁹ AS 47.27.015(e)(1).

³⁰ 7 AAC 45.580(f).

³¹ 7 AAC 45.580(g).

³² 7 AAC 45.580(e)(1).

³³ 7 AAC 45.580(k)(3).

³⁴ 7 AAC 45.580(e)(3).

³⁵ 7 AAC 45.580(k)(4).

³⁶ 7 AAC 45.570(a).

³⁷ 7 AAC 45.570(l).

and is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.³⁸ The Food Stamp disqualification period shall begin June 1, 2013.³⁹ This disqualification applies only to Ms. B-C and not to any other individuals who may be included in her household.⁴⁰ For the duration of the disqualification period, Ms. B-C's needs will not be considered when determining eligibility and benefit amounts for her household. However, Ms. B-C must report her income and resources as they may be used in these determinations.⁴¹ The Division shall provide written notice to Ms. B-C 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.⁴²

If over-issued Food Stamp benefits have not been repaid, Ms. B-C or any remaining household members are now required to make restitution.⁴³ If Ms. B-C disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.⁴⁴

Dated this 23rd day of April, 2014.

Signed _____
Jay Durych
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 2nd day of May, 2014.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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

³⁸ 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).

³⁹ 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

⁴⁰ 7 C.F.R. § 273.16(b)(11).

⁴¹ 7 C.F.R. § 273.11(c)(1).

⁴² 7 C.F.R. § 273.16(e)(9)(ii).

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

⁴⁴ 7 C.F.R. § 273.15.