

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

In the Matter of)	OAH No. 14-0642-ADQ
)	Division No.
M B N)	Fraud Control Case No.
_____)	

DECISION AND ORDER

I. Introduction

M B N applied and was approved for Food Stamp¹ benefits on two separate occasions, September 24, 2012 and January 31, 2013. On April 28, 2014, the Department of Health and Social Services, Division of Public Assistance Fraud Control Unit (Division) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program² by intentionally misrepresenting on both applications that she had not been convicted of a drug-related felony.

Ms. N's hearing began on May 30, 2014. Ms. N represented herself. A. C. Waugh, an investigator employed by the Division, represented the Division. The hearing was continued until June 11, 2014 at Ms. N's request. She did not appear for the hearing and it proceeded in her absence.³

This decision concludes that Ms. N committed an IPV of the Food Stamp program.

II. Facts

The following facts were established by clear and convincing evidence except where otherwise noted.

Ms. N applied for Food Stamp benefits on September 24, 2012.⁴ She reapplied for Food Stamp benefits on January 31, 2013.⁵ In both applications, she stated that she had not been

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). The program is still commonly referred to as the Food Stamp program.

² Ex. 3.

³ The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4). 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.

⁴ Ex. 7, pp. 1 - 8.

⁵ Ex. 7, pp. 13 - 16.

convicted of a drug-related felony for an offense that occurred after August 22, 1996.⁶ Ms. N signed both applications, certifying that the information contained on them was correct.⁷

Ms. N, who was then represented by an attorney, pleaded guilty to a federal felony for knowingly engaging in the money laundering of drug trafficking proceeds, specifically for depositing funds in her bank account when she knew the funds came from drug trafficking and to enable the funds to be sent to the drug supply source. The dates for the money laundering transactions fell between July 2011 and February 17, 2012.⁸ She was convicted and sentenced for that offense on September 7, 2012.⁹

The Division calculated that Ms. N's household received \$888 in Food Stamp benefits which it was not entitled to receive.¹⁰

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹¹ that Ms. N *intentionally* “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹² To meet this standard, the division must show that it is *highly probable* that Ms. N intended to provide or knowingly provided incorrect information.¹³

A review of the facts demonstrates that Ms. N may not have had a felony conviction for directly possessing, buying, or selling drugs, but she did have one for facilitating the financial side of drug sales. Under 7 C.F.R. § 273.11(m), a person who has a felony conviction where an element of the crime is “the possession, use, or distribution of a controlled substance” may not receive Food Stamp benefits.¹⁴ Because Ms. N has a conviction for financially assisting with drug distribution, that conviction is one where an element of the crime is distribution of a controlled substance. This is a drug-related felony conviction. However, when asked if she had

⁶ Ex. 7, pp. 2, 13.

⁷ Ex. 7, pp. 8, 16.

⁸ Ex. 11, pp. 7 - 22.

⁹ Ex. 11, p. 1.

¹⁰ Ex. 12.

¹¹ 7 C.F.R. § 273.16(e)(6).

¹² 7 C.F.R. § 273.16(c).

¹³ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

¹⁴ There are exceptions to this rule if the state legislature has enacted legislation that exempts them from this exclusion. However, the Alaska legislature has not enacted any such legislation.

a drug-related felony conviction on her two Food Stamp applications, Ms. N stated she did not. This was a misrepresentation.

The question then arises as to whether Ms. N's misrepresentation was intentional. Ms. N did not testify. However, at the May 30, 2014 proceeding, Ms. N made an unsworn statement that the judge told her she did not have a drug felony.¹⁵ Assuming, for the sake of argument, that Ms. N's statement was made under oath, it does not establish that her misrepresentation was unintentional. The question is whether she was convicted of a drug-related felony. A felony conviction for drug-related money laundering is a drug-related felony. Ms. N was convicted and sentenced on September 7, 2012, a very brief period of time before her September 24, 2012 Food Stamp application. The exact terms of her conviction would have been very fresh in her mind. The evidence demonstrates that the Division has met its burden of proof by clear and convincing evidence and shown that Ms. N intentionally misrepresented that she had not been convicted of a drug-related felony on her September 24, 2012 Food Stamp application. Similarly, her misrepresentation on her January 2013 Food Stamp application was also intentional.

IV. Conclusion and Order

Ms. N 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, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.¹⁶ The Food Stamp program disqualification period shall begin October 1, 2014.¹⁷ This disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.¹⁸ For the duration of the disqualification period, Ms. N'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 as they may be used in these determinations.¹⁹

¹⁵ No evidence was taken at the May 30, 2014 proceeding. This was a statement made by Ms. N when the parties were informed that there was a legal issue they should address at the June 11, 2014 hearing. Ms. N was told she should address the issue at the June 11, 2014 hearing.

¹⁶ 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).

¹⁷ 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 7 C.F.R. § 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).

¹⁸ 7 C.F.R. § 273.16(b)(11).

¹⁹ 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to Ms. N 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.²⁰

If over-issued Food Stamp benefits have not been repaid, Ms. N or any remaining household members are now required to make restitution.²¹ If Ms. N disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.²²

Dated this 16th day of July, 2014.

Signed

Lawrence A. Pederson
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 1st day of August, 2014.

By: Signed

Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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

²⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

²² 7 C.F.R. § 273.15.