

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

In the Matter of:)	
)	
E L. B)	OAH No. 14-0752-ADQ
)	DPA Case No.
_____)	Fraud Control Case No.

DECISION AND ORDER

I. Introduction

E L. B was a food stamp recipient.¹ On May 14, 2014, 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 Food Stamp program by intentionally failing to disclose a felony drug conviction.

A hearing was scheduled in this case for June 20, 2014. Two attempts were made to inform Ms. B of this claim and provide her with notice of the hearing by certified mail.² The first time a notice was left and the package remained unclaimed.³ The second time the package was signed for.⁴ At the appointed time, her telephone number was called, only to be answered by a recording stating that the number contained in the hearing file was not reachable. The hearing went forward in her absence.⁵ Exhibits 1 – 11 were admitted into evidence without objection and without restriction.

This decision concludes that the DPA proved by clear and convincing evidence that Ms. B committed a first Intentional Program Violation of the Food Stamp program. She must be barred from Food Stamps for twelve months and make restitution for the Food Stamps received while she was ineligible.

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

² Exhs. 3 – 5, 11.

³ Ex. 4. The certified mail tracking number showed that the mail was made available to her, but she did not pick it up.

⁴ Ex. 11.

⁵ Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 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.

II. Facts

On June 11, 2012, a judgment of conviction was entered against Ms. B for the crime of Third Degree Misconduct Involving a Controlled Substance.⁶ This was a felony offense under Alaska law.⁷ The conviction was based on conduct which occurred on April 9, 2010.⁸

On July 15, 2012, Ms. B completed, signed, and submitted an application form for Food Stamp Program benefits.⁹ Ms. B responded to all questions except the one asking whether anyone in her household had been convicted of a drug-related felony.¹⁰ On the last page of the application Ms. B signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of her knowledge.¹¹

Ms. B continued to apply for and receive Food Stamps. She signed these applications on December 27, 2012, July 12, 2013, and December 20, 2013.¹² They were all similar to her July 15, 2012 application. In response to the question asking whether anyone in her household had been convicted of a drug related felony, on each application she answered no.¹³ On the last page of each application Ms. B signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of her knowledge.¹⁴ The DPA approved Ms. B's Food Stamp applications and issued Food Stamp benefits to her from August 2012 through May 2014.¹⁵ DPA has calculated the excessive benefits at \$3,113.¹⁶

III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.¹⁷

⁶ Ex. 9.

⁷ Ms. B was convicted of violating Alaska Statute (A.S.) § 11.71.030(a)(1). That statute, titled “Misconduct Involving a Controlled Substance in the Third Degree,” provides in relevant part:

(a) Except as authorized in [inapplicable], a person commits the crime of misconduct involving a controlled substance in the third degree if the person . . . (1) . . . manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver . . .

(c) Misconduct involving a controlled substance in the third degree is a Class B felony.

⁸ Ex. 10 p. 1.

⁹ Ex. 6 pp. 1 - 1.

¹⁰ Ex. 6 p. 1.

¹¹ Ex. 6 p.4.

¹² Ex. 6 pp. 5, 9, 13.

¹³ Ex. 6 pp. 5, 9, 14.

¹⁴ Ex. 6 pp.8, 12 17.

¹⁵ Ex. 8.

¹⁶ Ex. 10.

¹⁷ *See, e.g.*, 7 U.S.C. § 2015(b).

In this case, DPA seeks to establish an IPV by Ms. B. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁸ DPA concedes that Ms. B has never been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV's in his or her record, someone like Ms. B who has not used Food Stamps in a drug or weapons transfer, 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.¹⁹

It is clear that on June 11, 2012 Ms. B was convicted of a felony drug violation. One month later she applied for food stamps. The only question she failed to answer on the application was the one asking whether anyone in the household had been convicted of a felony drug conviction. On the three subsequent applications she answered this question "no." As to the first application, by failing to answer the question, Ms. B concealed information. On the remaining three applications, by answering "no" when Ms. B had been convicted of a felony drug conviction is false and withholding facts. Therefore, on each of the four applications at issue, Ms. B "made a false or misleading statement, or misrepresented, concealed, or withheld facts." The remaining issue is whether these misrepresentations / concealments were intentional.²⁰

Theoretically Ms. B's failure to disclose her felony drug conviction could have been negligent rather than intentional. Ms. B failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence.

Ms. B was convicted one month before her first application at issue. It is incredible that the conviction would have slipped her mind. Her failure to answer the question supports a finding that Ms. B's concealment was intentional. Seven months after Ms. B was convicted she answered "no" The relative closeness in time between these events makes it less likely that Ms. B's failure to report the conviction was accidental. The evidence is therefore clear and convincing that Ms. B's failure to disclose constitute clear and convincing evidence that her failure to report his felony drug conviction was intentional and it follows that she has committed a first IVP.

¹⁸ 7 C.F.R. § 273.16(e)(6).

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

²⁰ 7 C.F.R. § 273.16(c).

IV. Conclusion and Order

Ms. B has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp program benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.²¹ The Food Stamp program disqualification period shall begin on August 1, 2014.²² This disqualification applies only to Ms. B and not to any other individuals who may be included in her household.²³ For the duration of the disqualification period, Ms. B's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for her household. However, Ms. B must report her income and resources as they may be used in these determinations.²⁴ The Division shall provide written notice to Ms. B 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.²⁵ If over-issued Food Stamp program benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.²⁶ If Ms. B disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.²⁷

Dated this 8th day of July, 2014.

Signed

Rebecca Pauli

Administrative Law Judge

²¹ 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).

²² 7 U.S.C. 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).

²³ 7 C.F.R. § 273.16(b)(11).

²⁴ 7 C.F.R. § 273.11(c)(1).

²⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁷ 7 C.F.R. § 273.15.

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 22nd day of July, 2014.

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

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