

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

In the Matter of	)	OAH No. 14-0754-ADQ
	)	Division No.
T L. N	)	Fraud Control Case No.
_____	)	Food Stamp Program

**DECISION AND ORDER<sup>1</sup>**

**I. Introduction**

T N is a former Food Stamp<sup>2</sup> recipient. On May 16, 2014, the Department of Health and Social Services, Division of Public Assistance (Division), initiated this Administrative Disqualification case against her, alleging she had committed a first time Intentional Program Violation of the Food Stamp program.<sup>3</sup>

Ms. N’s hearing was held on July 31, 2014. Ms. N appeared telephonically for her hearing. She represented herself.

Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Fraud Control Unit, testified for the Division. Thomas Bybee, a Division eligibility technician, also testified for the Division.

This decision concludes that Ms. N committed a first Intentional Program Violation of the Food Stamp program.

**II. Facts**

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

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<sup>1</sup> As authorized by 2 AAC 64.350(a), the original proposed Decision and Order, which was issued on September 8, 2014, is modified to correct two errors pointed out in Ms. N’s proposal for action. The original decision stated that Ms. N appeared in person and omitted the fact that Thomas Bybee testified on behalf of the Division. That decision is corrected to reflect that Ms. N appeared telephonically, and to state that Mr. Bybee testified on behalf of the Division. The remainder of the decision is unchanged.

<sup>2</sup> 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.

<sup>3</sup> Ex. 3.

Ms. N was a Food Stamp recipient who applied to renew those benefits on August 6, 2013.<sup>4</sup> The renewal application contained a question asking whether anyone in her household was employed and earning wages. Ms. N answered that question by indicating that she had one job, with a vocational services company.<sup>5</sup> Ms. N signed the application, certifying that the information contained in it was correct.<sup>6</sup> The Food Stamp application was approved and benefits were issued.<sup>7</sup>

Ms. N, however, was working another job in addition to her vocational services job. She began working for No Name on May 29, 2013, was working there at the time of her August 6, 2013 renewal application, and continued to work there through at least mid-December 2013.<sup>8</sup> Ms. N is a former Division employee, whose testimony established that she remains knowledgeable about Division practices and procedures.<sup>9</sup> Ms. N testified that she did not intend to omit her No Name employment from her August application, and that as soon as she realized that she had omitted that information, she turned in a change reporting form to the Division. She said she had retained a copy of that form, and submitted a copy of that form post-hearing.<sup>10</sup> The form submitted by Ms. N is dated August 7, 2013. It reports that her job with No Name began on May 29, 2014.<sup>11</sup>

The Division has no record of Ms. N reporting her employment with No Name.<sup>12</sup>

The Division initiated a fraud investigation which culminated in this case.<sup>13</sup> The Division calculated Ms. N received \$862 in Food Stamp benefits that she was not entitled to receive during the period from September 2013 through November 2013.<sup>14</sup>

### **III. Discussion**

In order to prevail, the Division must prove by clear and convincing evidence<sup>15</sup> that Ms. N committed an Intentional Program Violation of the Food Stamp program: that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld

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<sup>4</sup> Ex. 7.

<sup>5</sup> Ex. 7, p. 2.

<sup>6</sup> Ex. 7, p. 4.

<sup>7</sup> Ex. 8, p. 2; Ex. 9, p. 1.

<sup>8</sup> Ex. 10.

<sup>9</sup> Ms. N’s testimony.

<sup>10</sup> Ms. N’s testimony; Ex. A, pp. 3 - 4.

<sup>11</sup> Ex. A, pp. 3 - 4.

<sup>12</sup> Dean Rogers’ August 6, 2014 Affidavit.

<sup>13</sup> Ex. 2.

<sup>14</sup> Ms. Holton’s testimony; Ex. 12.

<sup>15</sup> 7 C.F.R. § 273.16(e)(6).

facts” with regard to her August 6, 2013 application.<sup>16</sup> It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.<sup>17</sup>

The evidence is clear that Ms. N did not list her employment with No Name on the Food Stamp application, despite there being an explicit question regarding it. The question then arises as to whether this was an intentional misrepresentation. Given her prior employment with the Division, Ms. N was aware of reporting requirements. Ms. N testified that her omission was an oversight that she immediately rectified by completing and turning in a change reporting form. She placed a copy of that change reporting form into evidence. That change reporting form was obviously created solely for the purposes of this case, as shown by the fact Ms. N provided a date for her signature on the form as being August 7, 2013; however that form reported that her employment with No Name changed May 29, 2014.

Ms. N’s after-the-fact creation of the change reporting form rendered her testimony completely incredible. This credibility assessment is further supported by the fact that the Division did not have any record of a change reporting form being provided it. Weighing the evidence as a whole, given Ms. N’s lack of credibility, the Division has met its burden of proof and demonstrated, by clear and convincing evidence, that Ms. N intentionally failed to list her job with No Name on the Food Stamp application. Consequently, Ms. N has committed a first Intentional Program Violation of the Food Stamp program.

#### **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.<sup>18</sup> The Food Stamp program disqualification period shall begin December 1, 2014.<sup>19</sup> This disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.<sup>20</sup> For the duration of the disqualification period, Ms. N’s needs will not be considered when determining Food Stamp eligibility and

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<sup>16</sup> 7 C.F.R. § 273.16(c).

<sup>17</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

<sup>18</sup> 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).

<sup>19</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>20</sup> 7 C.F.R. § 273.16(b)(11).

benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.<sup>21</sup>

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.<sup>22</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. N or any remaining household members are now required to make restitution.<sup>23</sup> 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.<sup>24</sup>

Dated this 23rd day of September, 2014.

*Signed*

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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 3rd day of October 2014.

By: *Signed*

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Name: Ree Sailors

Title: Deputy Commissioner, DHSS

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

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<sup>21</sup> 7 C.F.R. § 273.11(c)(1).

<sup>22</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>23</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>24</sup> 7 C.F.R. § 273.15.