

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

In the Matter of	)	OAH No. 14-0835-ADQ
	)	Division No.
X B. C	)	Fraud Control Case No.
_____	)	

**DECISION**

**I. Introduction**

X C applied and was approved for Food Stamp<sup>1</sup> benefits. On May 29, 2014, the Department of Health and Social Services, Division of Public Assistance Fraud Control Unit (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.<sup>2</sup>

Mr. C's hearing was held on July 31, 2014. Mr. C appeared in person and represented himself. Dean Rogers, an investigator employed by the Division, represented the Division.

This decision concludes that Mr. C committed a first IPV of the Food Stamp program.

**II. Facts**

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

Mr. C applied for Food Stamp benefits on December 12, 2013.<sup>3</sup> In his application, he stated that he had never been convicted of a drug-related felony.<sup>4</sup> Mr. C signed the application, certifying that the information contained in it was correct.<sup>5</sup> Mr. C's application was approved.<sup>6</sup>

Mr. C was convicted of a drug felony on July 26, 2013, for an offense that occurred on October 15, 2012.<sup>7</sup> Mr. C testified that he did not intentionally misrepresent that he had not been convicted. He stated that it was an inadvertent clerical error, which could be due to poor

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<sup>1</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>2</sup> Ex. 3.

<sup>3</sup> Ex. 5.

<sup>4</sup> Ex. 5, p. 10.

<sup>5</sup> Ex. 5, p. 12.

<sup>6</sup> Ex. 6, p. 1.

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

eyesight, or not paying attention. Mr. C was not credible. His demeanor, both visual and tone of voice, conveyed a lack of sincerity.

The Division calculated that Mr. C received \$1,275 in Food Stamp benefits to which he was not entitled, as a result of his Food Stamp application being approved.<sup>8</sup>

### **III. Discussion**

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.<sup>9</sup> In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence<sup>10</sup> that Mr. C *intentionally* “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>11</sup> To meet this standard, the division must show that it is *highly probable* that Mr. C intended to provide or knowingly provided incorrect information.<sup>12</sup>

A review of the facts demonstrates that Mr. C had a conviction for a drug felony, which makes him ineligible to receive Food Stamp benefits. When he responded to the question on the Food Stamp application which asked if he had a felony drug conviction on the Food Stamp application, he answered that he did not. The question then arises as to whether this was an intentional misrepresentation. As found above, Mr. C was not credible. Because it is undisputed that Mr. C has a drug felony conviction and because he was not credible when he testified that he inadvertently stated that he did not have a drug conviction on his Food Stamp application, the Division has proven, by clear and convincing evidence, that Mr. C has committed a first time IPV of the Food Stamp program.

### **IV. Conclusion and Order**

Mr. C has committed a first time Intentional Program Violation of the Food Stamp program. He 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>13</sup> The Food Stamp program disqualification period shall begin

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<sup>8</sup> Michael Giovanelli’s testimony; Ex. 9.

<sup>9</sup> 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.

<sup>10</sup> 7 C.F.R. § 273.16(e)(6).

<sup>11</sup> 7 C.F.R. § 273.16(c).

<sup>12</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

<sup>13</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).

November 1, 2014.<sup>14</sup> This disqualification applies only to Mr. C, and not to any other individuals who may be included in his household.<sup>15</sup> For the duration of the disqualification period, Mr. C's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in these determinations.<sup>16</sup>

The Division shall provide written notice to Mr. 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.<sup>17</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. C or any remaining household members are now required to make restitution.<sup>18</sup> If Mr. C disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.<sup>19</sup>

Dated this 21<sup>st</sup> day of August, 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 4<sup>th</sup> day of September, 2014.

By: Signed

Name: Lawrence A. Pederson

Title/Agency: Administrative Law Judge, DOA/OAH

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

<sup>14</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>15</sup> 7 C.F.R. § 273.16(b)(11).

<sup>16</sup> 7 C.F.R. § 273.11(c)(1).

<sup>17</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>18</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>19</sup> 7 C.F.R. § 273.15.