

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

In the Matter of	)	
	)	OAH No. 14-0849-ADQ
K J. H	)	DPA/FCU No.
_____	)	Agency No.

**DECISION**

**I. Introduction**

K J. H submitted an application for Food Stamps on December 6, 2013, but failed to declare a drug-related felony conviction on his application.<sup>1</sup> Mr. H subsequently received Food Stamp benefits to which he otherwise was not entitled to receive in the amount of \$981.00 during the period from December of 2013 through May of 2014.<sup>2</sup> On May 30, 2014, the Division of Public Assistance (DPA) initiated this Administrative Disqualification Case against Mr. H, alleging that he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.<sup>3</sup>

A hearing was convened in this case on August 1, 2014 and was recorded. Mr. H appeared telephonically. DPA was represented by Dean Rogers, an Investigator employed by DPA’s Fraud Control Unit. Mike Giovanelli, an Eligibility Technician III for DPA’s Fraud Control Unit, testified on behalf of the Division. Both Mr. Rogers and Mr. Giovanelli appeared in person at the hearing.

This decision concludes that the Division has proven by clear and convincing evidence that Mr. H committed a first IVP.

**II. Facts**

Mr. H applied for Food Stamp benefits on December 6, 2013.<sup>4</sup> He filled out the Food Stamp application<sup>5</sup> (“Application”) on his own and in person at the No Name Street office of the DPA.<sup>6</sup> A Food Stamp applicant is required to answer 119 questions on the Application.<sup>7</sup> There

---

<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, however, still commonly referred to as the Food Stamp program.

<sup>2</sup> See Ex. 11.

<sup>3</sup> See Ex. 3, at p. 2.

<sup>4</sup> Ex. 7, at p. 12.

<sup>5</sup> The application that Mr. H filled out is titled “Application for Services.” Mr. H checked off that he needed the following services: health insurance, Food Stamps, adult public assistance, and general relief assistance.

<sup>6</sup> Testimony of Mr. H; see also Testimony of Mr. Giovanelli.

is a section in bold type that reads “Felony Convictions”, which appears on page 16 of the Application.<sup>8</sup> Question 119 in that section asks: “Has anyone been convicted of any of the following types of felonies?” There is a check-off box for a “Drug-related felony”, followed by a space to indicate the “Date of conviction” and another space to indicate “Who and Where”.<sup>9</sup> Mr. H answered “no” to question 119 of the Application.<sup>10</sup> He also left the related spaces blank.<sup>11</sup>

In fact, Mr. H had just been released from prison on December 6, 2013, after serving time for a Count I, Second Degree Misconduct Involving a Controlled Substance.<sup>12</sup> Since this is a drug-related felony conviction,<sup>13</sup> Mr. H should have disclosed it in his response to question 119 of the Application.

Mr. H was interviewed by a representative of DPA the same day he filled out his Application.<sup>14</sup> At that interview, Mr. H’s rights and responsibilities under the Food Stamps program were discussed with him “in detail,” and he stated that he “understood” and had no questions.<sup>15</sup> The information given to Mr. H when he applied for Food Stamps also explained what could happen if he knowingly gave false, incorrect, or incomplete information in order to get Food Stamps.<sup>16</sup>

Based on the information Mr. H provided on his Application and at his interview, his Application for Food Stamps was approved that same day, with his Food Stamp benefits commencing in December of 2013 and continuing until May of 2014.<sup>17</sup> Mr. H received Food Stamp benefits totaling \$981.00 during that period.<sup>18</sup> On April 18, 2014, The Fraud Control Unit obtained a copy of a judgment dated July 11, 2011, which sentenced Mr. H to “four years flat” for the drug-related felony conviction.<sup>19</sup> The Fraud Control Unit notified Mr. H on May 30, 2014 that it had requested an administrative disqualification hearing for a first Intentional

---

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

<sup>8</sup> See Ex. 7, at p. 10.

<sup>9</sup> See Ex. 7, at p. 10.

<sup>10</sup> See Ex. 7, at p. 10.

<sup>11</sup> See Ex. 7, at p. 10.

<sup>12</sup> See Ex. 10.

<sup>13</sup> See Ex. 10.

<sup>14</sup> Testimony of Mike Giovanelli; *see also* Ex. 8.

<sup>15</sup> See Ex. 8; *see also* Testimony of Mike Giovanelli; Ex. 3, at p. 4.

<sup>16</sup> See Ex. 7, at p. 16; *see also* Ex. 3, at p. 4.

<sup>17</sup> Testimony of Mr. Giovanelli.

<sup>18</sup> Ex. 11.

<sup>19</sup> See Ex. 10.

Program Violation arising from his receipt of Food Stamp benefits that he was not entitled to receive due to his drug-related felony conviction.

At the hearing, Mr. H testified that he did not recall any statement about a felony on the Application. He admitted that he filled out the application and that he signed the statement at the end of the Application,<sup>20</sup> which certified that the information he had provided was true and correct to the best of his knowledge.<sup>21</sup> Mr. H also testified that he was very worried about where he would go and what he would do on December 6, 2013, the day he was released from prison.<sup>22</sup> He testified that he did not do anything with “ill intent”<sup>23</sup> and that he had been diagnosed with lung cancer in February of 2014.

### **III. Discussion**

Mr. H’s rationalizations for his conduct do not alter the outcome of this case. Mr. H was released from prison for a drug-related felony conviction on December 6, 2013, the very same day that he filled out his Food Stamps Application.<sup>24</sup> The section on “Felony Convictions” appeared in bold type on the Food Stamps Application and there were two questions that specifically used the word “felony” in that same section.<sup>25</sup> For these reasons, Mr. H’s testimony that he did not recall any statements on the Application about felony convictions was not credible. Accordingly, the Division has shown by clear and convincing evidence that Mr. H has committed a first IPV of the Food Stamps program.

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

Mr. H 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. The Food Stamp disqualification period shall begin on December 1, 2014.<sup>26</sup> This disqualification applies only to Mr. H, and not to any other individual who may be included in

---

<sup>20</sup> Testimony of Mr. H.

<sup>21</sup> See Ex. 7, at p. 12.

<sup>22</sup> Testimony of Mr. H.

<sup>23</sup> Testimony of Mr. H.

<sup>24</sup> Testimony of Mr. H.

<sup>25</sup> See Ex. 7, at p. 10.

<sup>26</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).

his household at some future date.<sup>27</sup> For the duration of the disqualification period, Mr. H'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>28</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. H is now required to make restitution.<sup>29</sup> If Mr. H disagrees with the Division's calculation of the amount of Food Stamps to be repaid, he may request a separate hearing on that limited issue.<sup>30</sup>

Dated this 2nd day of October, 2014.

Signed  
Kathleen A. Frederick  
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 16th day of October, 2014.

By: Signed  
Name: Kathleen A. Frederick  
Title/Agency: Admin. Law Judge, DOA/OAH

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

---

<sup>27</sup> Mr. H in his Application only applied for Food Stamps benefits for himself. However, should the size of his household subsequently increase, Mr. H is on notice that it is he who is disqualified from Food Stamp benefits rather than others in his household.

<sup>28</sup> 7 C.F.R. § 273.11(c)(1).

<sup>29</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(E)(8)(iii).

<sup>30</sup> 7 C.F.R. § 273.15.