

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

In the Matter of)	
)	OAH No. 14-1149-ADQ
D D. C)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

D D. C applied for and received Food Stamp¹ benefits from July through December of 2013, claiming that she was not employed and had no income. On July 10, 2014, the Department of Health and Social Services, Division of Public Assistance (DPA) notified Ms. C Administrative Disqualification of its case against her. The notice alleged she had committed a second Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing convened in this case on August 26, 2014. Ms. C had been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. C did not attend the hearing and could not be reached at the telephone numbers she has provided to the program.⁴ The hearing went forward in her absence.

DPA was represented at the hearing by Vance Canoy, an investigator employed by DPA's Fraud Control Unit. Virginia Abnett, a DPA Eligibility Technician II, testified on behalf of DPA, as did Lori Smith, a DPA Eligibility Technician II, who filed the fraud complaint. Exhibits 1-13 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. C committed a second Intentional Program Violation of the Food Stamp program. She must be barred from receiving Food Stamps for twenty-four months and she must pay back the money that was paid as the result of her false reporting.

II. Facts

Ms. C has received Food Stamps going back to June of 2003. Her most recent month of eligibility was August of 2014.⁵

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

² Exhibit. 3.

³ Exhibit. 3, page 1. At the hearing Agency Representative Vance Canoy explained that he had spoken with Ms. C on the phone and that she was aware of the hearing and wished to proceed with it.

⁴ The administrative law judge left a message for Ms. C to call the Office of Administrative Hearings as soon as possible at the time set for the hearing on her voice mail but Ms. C did not call back.

⁵ Recording of Hearing-Testimony of Mr. Canoy & Exhibit 8.

Ms. C received Food Stamps benefits from July through December of 2013.⁶ During this period Ms. C claimed that she was not employed and did not expect to be working soon.⁷ Ms. C was working for the City of No Name during this period but did not report this employment or her earnings. Alaska Department of Labor records show that Ms. C's employer reported that in 2013 she earned \$7,699 in the second quarter and \$14, 397.54 in the third quarter.⁸ Payroll records show Ms. C was steadily earning income, which averaged over \$1000 about every two weeks, from July through December of 2013.⁹ DPA records show that Ms. C received a total of \$6,737 in Alaska Food Stamps during this time-frame.¹⁰

Virginia Abnett, an Eligibility Technician II with DPA, who worked with Ms. C on her benefits claims, testified at the hearing. Ms. Abnett testified that her case notes from June 17, 2013 show that Ms. C claimed no employment on her application for Food Stamps.¹¹ Ms. Abnett also testified about the records of Ms. C's Food Stamp benefit history.¹² As part of a routine eligibility reviews during this period, Ms. C had completed an eligibility review form, dated November 25, 2013. On this form, Ms. C indicated that she was unemployed.¹³

Lori Smith, another Eligibility Technician II with DPA who worked with Ms. C on her benefits claims testified at the hearing. Ms. Smith testified that she did reviews of Ms. C's eligibility for Food Stamps and discovered that Ms. C had received earnings that she did not declare on her application, or report as a change to what she had declared, as she was required to do.¹⁴ Ms. Smith testified that she had explained to Ms. C in her interview that she needed to report any earnings or employment.

III. Discussion

Food Stamp Program

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁵

⁶ Exhibit 7.

⁷ Exhibits 7, page 3.

⁸ Exhibits 2 & 11.

⁹ Exhibits 11, pages 10-16.

¹⁰ Exhibits 1 & 2.

¹¹ Recording of Hearing-Testimony of Ms. Abnett & Exhibit 10, pages 3 & 4.

¹² Recording of Hearing-Testimony of Ms. Abnett & Exhibit 8.

¹³ Recording of Hearing-Testimony of Ms. Abnett, & Exhibit 7.

¹⁴ Recording of Hearing-Testimony of Ms. Smith & Exhibits 1 & 7.

¹⁵ *See, e.g.*, 7 U.S.C. § 2015(b).

In this case, DPA seeks to establish that Ms. C committed an Intentional Program Violation in both benefit programs in which Ms. C was enrolled. To establish an Intentional Program Violation in the Food Stamp Program, DPA must prove the elements of an Intentional Program Violation by clear and convincing evidence.¹⁶

Evidence showed that Ms. C has previously been found to have committed a prior Intentional Program Violation, and therefore the alleged IPV's will be evaluated as a second-time violation.¹⁷

With some exceptions that do not apply to the circumstances in this case, federal food stamp law requires that a twenty-four month disqualification 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 in a second violation.¹⁸

Clear and Convincing Evidence of Second Violation

It is clear that Ms. C claimed that she was not employed on her application, and at her eligibility interviews. Ms. C did not report her earnings or employment while she continued to be employed and receive Food Stamps. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. C failed to appear for or testify at her hearing, but her intent can be inferred from evidence in the record. Employment and household income are central issues in any eligibility interview. It simply cannot have slipped Ms. C's mind that she was steadily employed. Ms. C's first violation was based on her failure to declare her husband's income.

The only plausible reason Ms. C would have intentionally misrepresented her earnings and employment would have been to establish her eligibility for benefits. Ms. Smith was confident that Ms. C understood that she should report changes in her income or employment to DPA. On page 11 of Exhibit 11, it shows that Ms. C was paid \$877.91 on May 22, 2013, the same day she applied for food stamps declaring no employment or earnings. The evidence is clear and convincing that Ms. C's misrepresentation was intentional. She has therefore committed a second Food Stamp Intentional Program Violation.

¹⁶ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

¹⁷ Documentation showing that Ms. C admitted to a prior violation in 2011 is found at Exhibit 13.

¹⁸ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(b)(2).

IV. Conclusion and Order

Ms. C has committed a second-time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twenty-four-month period, and is required to reimburse DPA \$6,737 for benefits that were overpaid as a result of the Intentional Program Violation.¹⁹ The Food Stamp disqualification period shall begin January 1, 2015.²⁰ This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.²¹ For the duration of the disqualification period, Ms. C'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 so that they can be used in these determinations.²²

DPA shall provide written notice to Ms. 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.²³

If over-issued Food Stamp benefits have not been repaid, Ms. C or any remaining household members are now required to make restitution.²⁴ If Ms. C disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²⁵

Dated this 7th day of October, 2014.

Signed
Mark T. Handley
Administrative Law Judge

¹⁹ 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).

²⁰ 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 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).

²¹ 7 C.F.R. § 273.16(b)(11).

²² 7 C.F.R. § 273.11(c)(1).

²³ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁵ 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 28th day of October, 2014.

By: Signed
Name: Mark T. Handley
Title: Administrative Law Judge

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