

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

In the Matter of:)	
)	
K Q. L)	OAH No. 14-1180-ADQ
)	FCU Case No.
_____)	DPA Case No.

DECISION AND ORDER

I. Introduction

K L is a former recipient of Food Stamp program¹ benefits.² On July 11, 2014 the Division of Public Assistance (Division) initiated this Administrative Disqualification case against Mr. L, alleging that he committed a first time Intentional Program Violation (IPV) of the Food Stamp program by intentionally failing to disclose a felony drug conviction.³ This decision concludes, based on the evidence presented, that Mr. L did commit a first IPV. Accordingly, Mr. L is disqualified from participation in the Food Stamp program for twelve months.

II. Facts

On July 8, 2011 a judgment of conviction was entered against Mr. L for the crime of Fourth Degree Misconduct Involving a Controlled Substance; this was a felony conviction.⁴ The conviction was based on conduct which occurred on December 14, 2010.⁵

On August 18, 2013 a judgment of conviction was entered against Mr. L for the crime of shoplifting.⁶ On April 18, 2014 a judgment of conviction was entered against Mr. L for the crime of Third Degree Theft.⁷ On the same date another judgment of conviction was entered against Mr. L for the crime of Third Degree Forgery.⁸

Mr. L received Food Stamp benefits for two months in 2011, eight months in 2013, and from January 2014 through March 2014.⁹ On March 12, 2013 Mr. L completed, signed, and

¹ Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP). However, the program is still most commonly referred to as the "Food Stamp program," and this decision will therefore also refer to the program as the "Food Stamp program."

² Exs. 8, 9, 11.

³ Ex. 3.

⁴ Ex. 10 p. 1; AS 11.71.040(a).

⁵ Ex. 10 p. 1.

⁶ Ex. 14 p. 3.

⁷ Ex. 14 p. 1.

⁸ Ex. 14 p. 2.

⁹ Ex. 9 p. 1.

submitted an application for Food Stamp benefits and other forms of public assistance.¹⁰ In response to a question asking whether anyone in his household had been convicted of a drug-related felony, Mr. L answered “no.”¹¹ On the last page of the application Mr. L signed a statement certifying under penalty of perjury that the information contained in his application was correct to the best of his knowledge.¹²

On March 12, 2013 Mr. L also participated in an eligibility interview with a DPA eligibility technician (ET).¹³ Mr. L advised the ET that he had recently been incarcerated and had been released on March 7, 2013.¹⁴ There is no written record of exactly what (if anything) Mr. L told the ET about his felony drug conviction. The ET's notes contain a notation stating simply "Not a DF" (drug felony).¹⁵ The Division subsequently approved Mr. L's Food Stamp application for the period from March 2013 through August 2013, and began issuing him Food Stamp benefits.¹⁶

On November 1, 2013 Mr. L completed, signed and submitted another application for Food Stamp benefits.¹⁷ Mr. L again indicated on this application that no one in his household had been convicted of a drug-related felony,¹⁸ and that the information contained in his application was true and correct to the best of his knowledge.¹⁹ The Division again approved Mr. L's application and again issued Food Stamp benefits to him.²⁰

On April 21, 2014 the Division became aware of Mr. L's felony drug conviction and initiated an investigation which culminated in the Division's filing of this case.²¹ The Division notified Mr. L of its filing of this case, and of his hearing date, on July 11, 2014.²²

Mr. L's hearing was held on September 19, 2014. Mr. L participated in the hearing by phone, represented himself, and testified on his own behalf. Dean Rogers, an investigator employed by the Division's Fraud Control Unit, attended the hearing and represented the Division. DPA

¹⁰ Ex. 7 pp. 1 - 12.

¹¹ Ex. 7 p. 2.

¹² Ex. 7 p. 8.

¹³ Ex. 8 p. 1.

¹⁴ Ex. 8 p. 1.

¹⁵ Ex. 8 p. 1. It is important to note that Mr. L has three other convictions in addition to his felony drug conviction. Accordingly, the ET's note stating "not a DF" could refer to any one Mr. L's several convictions. In other words, the notation does not, by itself, prove that Mr. L disclosed his felony drug conviction to the ET.

¹⁶ Ex. 8 p. 2; Ex. 9.

¹⁷ Ex. 7 pp. 13 - 24.

¹⁸ Ex. 7 p. 22.

¹⁹ Ex. 7 p. 24. The evidence in the record is not clear as to whether an eligibility interview was actually conducted for the November 1, 2013 application, or whether the application received only a "paper review." Determination of this factual issue is not necessary for the adjudication of this case.

²⁰ Ex. 9 p. 1.

²¹ Ex. 2.

²² Exs. 3, 4.

eligibility technician Amanda Holton attended the hearing and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. Intentional Program Violations Under the Food Stamp Program

In order to establish that Mr. L committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove by clear and convincing evidence²³ that Mr. L “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting his March 12, 2013 and/or November 1, 2013 applications for Food Stamp benefits, and that these misrepresentations / concealments were intentional.²⁴

B. Disqualification of Persons Convicted of Drug-Related Felonies

Persons who have been convicted of felonies involving controlled substances are disqualified from participation in the Food Stamp program.²⁵ Although states have the discretion to exempt recipients from the drug felony disqualification rule,²⁶ Alaska has not done so.²⁷

C. Did Mr. L Commit an Intentional Food Stamp Program Violation?

Initially, it is clear that Mr. L did not report his felony drug conviction on either of the application forms at issue. This constitutes misrepresentation by omission or the concealment and/or withholding of facts.

The next issue is whether Mr. L's misrepresentations were intentional. A person's state of mind (for example, whether the person acted intentionally or merely recklessly or negligently) must generally be inferred from circumstantial evidence.²⁸

At hearing, Mr. L did not dispute that he failed to disclose his felony drug conviction on the application forms; he admitted that he marked the "no" boxes and signed the applications.²⁹ Mr. L testified, however, that he discussed his felony drug conviction with the eligibility technician with

²³ 7 C.F.R. § 273.16(e)(6).

²⁴ 7 C.F.R. § 273.16(c).

²⁵ 21 U.S.C. § 862a (a)(1) provides in relevant part that “[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of title IV of the Social Security Act [42 U.S.C.A. § 601 *et seq.*].” This includes the Food Stamp program.

²⁶ See 21 U.S.C. § 862a(d)(1) and 7 CFR § 273.11(m).

²⁷ See AS 47.25.975 – 990; 7 AAC § 46.010 *et. seq.*

²⁸ *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

²⁹ Mr. L testified at hearing that his felony drug conviction involved a medication for which he had a prescription. He testified that, because of this, he asked a Division employee whether he needed to disclose his conviction on the application form at the time he completed it, since he was not sure that the conviction "counted." Mr. L testified that he was told to mark the "no" box initially, but to discuss the matter with the ET during the eligibility interview.

whom he had his March 12, 2013 eligibility interview, and that the ET still approved his application. If this is what actually happened, then it would be reasonable to conclude that Mr. L's misrepresentations on the written forms were not intentional.

However, the way in which the evidence unfolded at hearing convinces the undersigned that Mr. L did not actually disclose his felony drug conviction to the eligibility technician. First, before presenting his own testimony, Mr. L asked the Division's witness whether there was a recording of his eligibility interview. Ms. Holton testified that eligibility interviews are not recorded, and that no recording of his eligibility interview exists. Next, Mr. L asked Ms. Holton whether she was the ET that performed his eligibility interview. Ms. Holton testified that she was not. Thus, Mr. L confirmed, prior to testifying, that the Division had no direct evidence of what was actually said during his eligibility interview.

When it was Mr. L's turn to testify, he testified that he disclosed his felony drug conviction during his eligibility interview, and that he did not intend to misrepresent his conviction status on the application forms. However, in devastating cross examination, Mr. Rogers subsequently asked Mr. L if he had been convicted of any crimes involving dishonesty within the past five years. After a lengthy pause, Mr. L admitted that he did. Mr. Rogers then submitted judgments of conviction for three separate crimes, involving dishonesty, entered within the last five years. Mr. L waived being provided with copies of the three convictions. Copies of the three judgments were subsequently admitted into evidence without objection.³⁰

The admission of evidence of recent prior convictions involving dishonesty, for purposes of impeaching a witness's testimony, has been held not to deny the witness due process of law.³¹ The undersigned finds that these prior convictions, in conjunction with Mr. L's questions to Ms. Holton, undercut Mr. L's otherwise plausible testimony that he discussed his felony drug conviction with the ET at his eligibility interview. Based on this evidence, the inference is clear that Mr. L knew that he had been convicted of a felony related to drugs, and understood the importance of truthfully and accurately completing applications for public assistance, but did not disclose his felony drug conviction either on the application form or during the eligibility interview. Viewing the evidence as a whole, the Division has proven, by clear and convincing evidence, that Mr. L's failure to report his felony drug conviction was intentional.

³⁰ Ex. 14. The undersigned finds that the probative value of this evidence outweighs its prejudicial effect.

³¹ See generally *Richardson v. State*, 579 P.2d 1372 (Alaska 1978); *Frankson v. State*, 645 P.2d 225 (Alaska App. 1982); *City of Fairbanks v. Johnson*, 723 P.2d 79 (Alaska 1986); *Blizzard v. State*, 2002 WL 272415 (Alaska App. 2002); and *Allison v. State*, 2003 WL 21921124 (Alaska App. 2003).

In summary, the Division has demonstrated by clear and convincing evidence that Mr. L committed an Intentional Program Violation as defined by applicable Food Stamp program statutes and regulations. This is Mr. L's first known IPV of the Food Stamp program.³²

IV. Conclusion and Order

Mr. L has committed a first time Intentional Program Violation of the Food Stamp program. He 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 him as a result of his Intentional Program Violation.³³ The Food Stamp program disqualification period shall begin on December 1, 2013.³⁴ This disqualification applies only to Mr. L and not to any other individuals who may be included in his household.³⁵ For the duration of the disqualification period, Mr. L's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. L must report his income and resources as they may be used in these determinations.³⁶ The Division shall provide written notice to Mr. L 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.³⁷ If over-issued Food Stamp benefits have not been repaid, Mr. L or any remaining household members are now required to make restitution.³⁸ If Mr. L disagrees with the Division's calculation of the amount of benefits to be repaid, he may request a hearing on that limited issue.³⁹

Dated this 28th day of October, 2014.

Signed _____

Jay Durych
Administrative Law Judge

³² Ex. 1 p. 7.

³³ 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).

³⁴ 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).

³⁵ 7 C.F.R. § 273.16(b)(11).

³⁶ 7 C.F.R. § 273.11(c)(1).

³⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁹ 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 7th day of November, 2014.

By: Signed
Name: Jay Durych
Title: Administrative Law Judge

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