

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

In the Matter of )  
 )  
 T M )  
\_\_\_\_\_ )

OAH No. 14-1183-ADQ  
DPA/FCU No.  
Agency No.

**DECISION and ORDER**

**I. Introduction**

T M received Food Stamp<sup>1</sup> benefits from January 2014, through May 2014. On July 11, 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 Intentional Program Violation (IPV) of the Food Stamp program.<sup>2</sup>

A hearing convened in this case on August 15, 2014 and continued to September 26, 2014. The hearing was continued to provide Ms. M with service and notice at her new mailing address. The Division sent its affidavit, evidence, and a reminder of the new hearing date to the address she had provided, by certified mail.<sup>3</sup> The package was delivered August 20, 2014 and signed for by S M.<sup>4</sup> Ms. M did not attend the September 26, 2014 hearing and could not be reached at the telephone number where she had been reached on August 15, 2014.<sup>5</sup> The hearing went forward in her absence.<sup>6</sup>

The Division was represented at the hearing by Dean Rogers, an investigator employed by the Division's Fraud Control Unit. Exhibits 1-13 were admitted into evidence without restriction.

This decision concludes that the Division proved by clear and convincing evidence that Ms. M committed a first Intentional Program Violation of the Food Stamp program. She must be barred from Food Stamps for twelve months and make restitution for the Food Stamps received while she was ineligible.

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

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

<sup>3</sup> Ex. 12.

<sup>4</sup> Ex. 13.

<sup>5</sup> The telephone numbers on record were not working numbers.

<sup>6</sup> Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4); 7 AAC 45.585(c). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear. The record closed without further participation from Ms. M.

## II. Facts

Ms. M received Food Stamps continuously from January 2014 through May 2014.<sup>7</sup> As part of a routine eligibility review, she completed and signed an eligibility review form, dating it January 3, 2014.<sup>8</sup> One question on the eligibility review form asks if anyone in the household has been convicted of a drug-related felony.<sup>9</sup> Ms. M marked “no” even though she had been convicted of a drug-related felony, Misconduct in the Fourth Degree, on 00/00/2004.<sup>10</sup> On the last page of the application Ms. M signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of her knowledge.<sup>11</sup>

Relying on the representations of Ms. M in her application and in her eligibility interview, the Division approved her application and issued Food Stamp benefits to her from January 2014 through May 2014.<sup>12</sup> The Division has calculated the total benefits Ms. M received during that timeframe to be \$933.<sup>13</sup>

## III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.<sup>14</sup>

In this case, the Division seeks to establish an IPV by Ms. M. To do so, it must prove the elements of that IPV by clear and convincing evidence.<sup>15</sup> The Division concedes that Ms. M has never been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV's in his or her record, and other exceptions not relevant here, federal Food Stamp law provides that a twelve-month disqualification must 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.<sup>16</sup>

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<sup>7</sup> Ex. 9.  
<sup>8</sup> Ex. 7.  
<sup>9</sup> Ex. 7 p. 2.  
<sup>10</sup> *Id.*; Ex. 10.  
<sup>11</sup> Ex. 7 p 5.  
<sup>12</sup> Ex. 9.  
<sup>13</sup> Ex. 11.  
<sup>14</sup> *See, e.g.*, 7 U.S.C. § 2015(b).  
<sup>15</sup> 7 C.F.R. § 273.16(e)(6).  
<sup>16</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

It is clear that on May 27, 2004 Ms. M was convicted of a felony drug violation. When asked whether she had any drug related felony convictions on her application for Food Stamps she answered “no.” Her answer “no” to that question on the application, when she had been convicted of a felony drug conviction; was a false statement and a misrepresentation of fact. Therefore, Ms. M “made a false or misleading statement, or misrepresented, concealed, or withheld facts.” The remaining issue is whether these misrepresentations / concealments were intentional.<sup>17</sup>

Theoretically Ms. M’s failure to disclose her felony drug conviction could have been negligent rather than intentional. Ms. M failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Ms. M was convicted of a felony nine and a half years before she completed the application at issue. Had she testified it is possible that her testimony could have established that her failure to disclose was negligent and not intentional. However, on the record presented it is not reasonably plausible that the conviction would have slipped her mind. A felony drug conviction is not something that someone easily forgets; it is exceedingly improbable for her to have forgotten about that conviction at the time she applied for benefits. Consequently, Ms. M intentionally misrepresented on her application that she did not have a felony drug conviction. She has therefore committed a first IPV.

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

Ms. M has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-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 disqualification period shall begin February 1, 2015.<sup>19</sup> This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.<sup>20</sup> For the duration of the disqualification period, Ms. M’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for her

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<sup>17</sup> 7 C.F.R. §273.16(c).

<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).

household. However, she must report her income and resources so that they can be used in these determinations.<sup>21</sup>

The Division shall provide written notice to Ms. M 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. M or any remaining household members are now required to make restitution.<sup>23</sup> If Ms. M disagrees with the Division's calculation of the amount of over-issued benefits to be repaid, she may request a separate hearing on that limited issue.<sup>24</sup>

Dated this 1<sup>st</sup> day of December, 2014.

*Signed*

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Andrew M. Lebo  
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 16<sup>th</sup> day of December, 2014.

By: *Signed*

\_\_\_\_\_  
Name: Andrew M. Lebo

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Title: Administrative Law Judge

[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.