

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

In the Matter of	)	
	)	OAH No. 14-1198-ADQ
N J	)	DPA/FCU No.
_____	)	Agency No.

**DECISION and ORDER**

**I. Introduction**

N J received Food Stamp<sup>1</sup> benefits during 2013. On May 14 of that year, she was reported to have sold the use of her Electronic Benefits Transfer (EBT) card for cash. The Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed an Intentional Program Violation (IPV) of the Food Stamp program by engaging in this transaction.

A hearing convened in this case on August 22, 2014, with Ms. J having been sent advance notice of the hearing by both certified mail and standard First Class mail to her address of record.<sup>2</sup> She is known to have received the notice.<sup>3</sup> Ms. J did not attend the hearing and could not be reached at the telephone number she had provided to the program.<sup>4</sup> The hearing went forward in her absence.<sup>5</sup>

This decision concludes that DPA proved by clear and convincing evidence that Ms. J committed a first Intentional Program Violation of the program. She must be barred from Food Stamps for twelve months.

**II. Facts**

N T J most recently applied for Food Stamps on March 13, 2013.<sup>6</sup> In connection with that application, she was reminded both orally and in writing that it is illegal to “trade or sell benefits or EBT cards.”<sup>7</sup>

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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.1, 3; testimony of Amanda Holton regarding address.

<sup>3</sup> Ex. 4.

<sup>4</sup> An individual at the number said she was not there. He provided an alternative number to reach her, but there was no answer at the second number.

<sup>5</sup> Once proper notice has been given, the Food Stamp 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). 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.

DPA was represented at the hearing by Kenneth Kramer, an investigator employed by DPA’s Fraud Control Unit. Mr. Kramer, Amanda Holton (a DPA eligibility technician), U K (a No Name Store manager), and O Z (a police officer), testified on behalf of DPA.

<sup>6</sup> Ex. 7.

On May 14, 2013, N J's EBT card was used to purchase \$40.73 in groceries for one V W-X, who is not a member of N J's household. At the register, Ms. W-X was in the company of three people, and she gave \$20.00 to the woman in the group who used the EBT card for the purchase. The store staff confronted the group. The woman who had used the EBT card fled successfully, but Ms. W-X and one other individual, later identified as S J, were apprehended and interviewed by a police officer. S J confirmed that the person who had used the EBT card was her sister, N. She explained that N J wanted cash to purchase alcohol, and so the group approached Ms. W-X in the store and proposed to buy her groceries with the EBT card in exchange for \$20.00 in cash. Ms. W-X's account, store video, and observations of one of the store managers were consistent with S J's account.

The above findings are based on store and EBT card documentation showing the transaction on N J's card, testimony of store manager U K, statements taken from S J and Ms. W-X, and the store videos.<sup>8</sup>

### **III. Discussion**

Selling Food Stamp benefits for cash is known as "trafficking,"<sup>9</sup> and it is forbidden by federal Food Stamp laws.<sup>10</sup> A person who traffics intentionally commits an IPV.<sup>11</sup> In this case, DPA seeks to impose a period of disqualification for a first IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.<sup>12</sup>

It is clear that Ms. J allowed someone else to use her EBT card to purchase items for the other person's household, in exchange for a payment of cash. This is not something one does inadvertently, and hence the intent element of the IPV is likewise established by clear and convincing evidence. Ms. J has therefore committed an IPV.

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

N J has committed a first time Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program

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<sup>7</sup> Ex. 6, p. 4; Ex. 8; Holton testimony.

<sup>8</sup> No weight was given to Exhibit 19, a photograph of N J that was shown to Ms. W-X a year later and that Ms. W-X then identified as the person who traded the EBT charge for cash. The identity of N J was established by other means, including the match between her card number and the purchase record.

<sup>9</sup> 7 C.F.R. § 271.2.

<sup>10</sup> *E.g.*, 7 C.F.R. § 274.7(a).

<sup>11</sup> 7 C.F.R. § 273.16(c)(2).

<sup>12</sup> 7 C.F.R. § 273.16(e)(6).

Violation.<sup>13</sup> The Food Stamp disqualification period shall begin November 1, 2014.<sup>14</sup> This disqualification applies only to Ms. J, and not to any other individuals who may be included in her household.<sup>15</sup> For the duration of the disqualification period, Ms. J'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.<sup>16</sup>

DPA shall provide written notice to Ms. J 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>

Dated this 25th day of August, 2014.

Signed  
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Christopher Kennedy  
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 9th day of September, 2014.

By: Signed  
\_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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

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<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).

<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 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).