

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

In the Matter of)	
)	OAH No. 14-1225-ADQ
Q A. X)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

Q A. X was receiving Food Stamp¹ benefits in 2014. On July 24, 2014, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing took place on August 26, 2014. Wynn Jennings, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Ms. X was sent advance notice of the hearing by both certified mail and standard First Class mail to her address of record.³ Ms. X did not attend the hearing and could not be reached at the telephone number she had provided to the program. The hearing went forward in her absence.⁴

Exhibits 1 - 4 and 7 - 12 were admitted into evidence without objection and without restriction. Exhibits 5 and 6 were not submitted.

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

II. Facts

Ms. X applied for Food Stamps on January 14, 2014.⁵ The application for benefits asks about household income and jobs held by household members.⁶ On the form, Ms. X did not

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

² Ex. 3.

³ The certified mail was returned marked “Unable to Forward.” Ex. 4. The address used matches the one Ms. X gave on her January 15, 2014 eligibility review form (Ex. 8).

⁴ 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 C.F.R. § 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.

⁵ Ex. 8, p. 1.

⁶ Ex. 8 p. 6.

reveal any employment but did indicate she had applied for a job at “Facility A and had an interview”⁷ Ms. X was instructed of her obligation to report any changes in her employment income.⁸ In a DPA interview on January 16, 2014, Ms. X was questioned about her income in connection with Food Stamps eligibility, and she reported that her employment with Facility B and Facility C had ended more than 60 days prior to her application.⁹ On notice of approval, Ms. X was instructed to inform DPA if her income exceeded \$2,100.¹⁰

The relevant time period is January 2014 through May 2014. During this period Ms. X was employed by two employers: Facility A and Facility D.¹¹ Wage records reveal that Ms. X was employed and was receiving wages at the time of her application.¹² In January 2014 Ms. X received \$2,355.41.¹³ In the months following she earned substantially more.¹⁴

The combined incomes from her employment put Ms. X well over the \$2,100 gross earnings limit for Food Stamps for her household.¹⁵ DPA has calculated the resulting excessive benefits at \$1,900, representing her benefits from January 2014 through May 2014.¹⁶

Because Ms. X did not participate, she could not explain why she failed to inform DPA of her employment.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁷

In this case, DPA seeks to establish an IPV. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁸ DPA concedes that Ms. X 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.

⁷ Ex. 8. pp. 6, 8.
⁸ Holton testimony; Ex. 7 pp. 1, 4.
⁹ Ex. 9 p. 2.
¹⁰ Ex. 10.
¹¹ Ex. 11.
¹² *Id.*
¹³ *Id.* pp. 5, 9 - 13; Ex. 12 p. 2.
¹⁴ *Id.*
¹⁵ Ex. 12.
¹⁶ *Id.*
¹⁷ *See, e.g.,* 7 U.S.C. § 2015(b).
¹⁸ 7 C.F.R. § 273.16(e)(6).

Except for someone with prior IPV's in his or her record or who has other circumstances, not applicable here, that can lead to enhanced penalties, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally . . . concealed or withheld facts" in connection with the program.¹⁹

Ms. X was employed at the time she completed her application. She had received \$1,001.80 six days prior to completing and submitting her application. From the interview questions and other notices she received, Ms. X knew income and changes in income are a key part of Food Stamps eligibility. It is simply not credible that she could have forgotten she was employed or that she was required to inform DPA when her income exceeded the maximum for her household. Because it has to be inferred that Ms. X knew that to be so, her failure to report the change was an intentional concealment or withholding of facts. It follows that Ms. X has committed a first IPV.

IV. Conclusion and Order

Ms. X 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 DPA for benefits that were overpaid as a result of the Intentional Program Violation.²⁰ The Food Stamp disqualification period shall begin November 1, 2014.²¹ This disqualification applies only to Ms. X, and not to any other individuals who may be included in his household.²² For the duration of the disqualification period, Ms. X's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, Ms. X must report her income and resources so that they can be used in these determinations.²³

DPA shall provide written notice to Ms. X 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.²⁴

¹⁹ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

²⁰ 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).

²¹ 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).

²² 7 C.F.R. § 273.16(b)(11).

²³ 7 C.F.R. § 273.11(c)(1).

²⁴ 7 C.F.R. § 273.16(e)(9)(ii).

If over-issued Food Stamp benefits have not been repaid, Ms. X or any remaining household members are now required to make restitution.²⁵ If Ms. X disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²⁶

Dated this 10th day of September, 2014.

Signed

Rebecca L. Pauli
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 24th day of September, 2014.

By: *Signed*

Name: Rebecca L. Pauli
Title: Admin. Law Judge, DOA/OAH

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

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

²⁶ 7 C.F.R. § 273.15.