

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

In the Matter of)
)
D R. Q)
_____)

OAH No. 14-1226-ADQ
Agency No.
FCU No.

DECISION and ORDER

I. Introduction

D R. Q received Food Stamp¹ benefits from December 2013 through May 2014. The 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 by claiming her daughter as a member of her household.

A hearing convened in this case on August 26, 2014. Ms. Q was provided advance notice of the hearing by both certified mail and standard First Class mail.² Ms. Q did not attend the hearing and could not be reached at the telephone number she had provided to the program.³ The hearing went forward in her absence.⁴

DPA was represented at the hearing by Wynn Jennings, an investigator employed by DPA's Fraud Control Unit. Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. 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. Q committed a first Intentional Program Violation of the Food Stamp program. By regulation, Ms. Q must be barred from Food Stamps for twelve months.

II. Facts

Ms. Q received Food Stamps benefits continuously from December 2013 through May 2014.⁵ As part of a routine eligibility review, she completed and signed an eligibility review

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

² Ex. 3; Ex. 4; Ex. 5; Ex. 6. The notice sent first class mail was not returned; the certified mail was returned unclaimed. Notice was effective. 7 C.F.R. 273.16(e)(3)(i), (e)(4).

³ The administrative law judge left messages for Ms. Q to call the Office of Administrative Hearings as soon as possible.

⁴ 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 C.F.R. § 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.

⁵ Ex. 12; Holton testimony.

form, dated November 25, 2013.⁶ On the form, she listed her daughter, K, as living with her.⁷ She also listed K's father.

She completed and signed another review eligibility form, dated April 22, 2014.⁸ On the April form she again listed her daughter and K's father as living with her.⁹ This form was received by DPA on April 25, 2014.¹⁰

K is not in her mother's custody. She was taken into state custody by the Office of Children's Services on June 1, 2012.¹¹ She returned home for a trial visit from October 5, 2012 through July 2013.¹² The visit was unsuccessful. K returned to state custody August 1, 2013 and, as of May 12, 2014, remained in state custody.¹³

DPA re-approved Food Stamp benefits for Ms. Q.¹⁴ Benefits were issued for a household of three and redeemed during months in which K clearly did not reside in the home. Ms. Q's Food Stamp benefit should have been lower.¹⁵ DPA has calculated that Ms. Q received an overpayment of Food Stamp benefits in the amount of \$1,074.¹⁶

III. Discussion

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.^{17 18}

In this case, DPA seeks to establish an IPV in the Food Stamp program in which Ms. Q was enrolled. To establish this, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁹ No evidence has been offered that Ms. Q has ever 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.

⁶ Ex. 8, p. 4.
⁷ Ex. 8, p. 1.
⁸ Ex. 8, p. 9.
⁹ Ex. 8, p. 5.
¹⁰ *Id.*
¹¹ Ex. 2
¹² Ex. 2
¹³ Ex. 2
¹⁴ Ex. 10.
¹⁵ Holton testimony; Ex. 12.
¹⁶ *Id.*; Ex. 12.
¹⁷ *See, e.g.*, 7 U.S.C. § 2015(b).
¹⁸ 7 AAC 45.580(n).
¹⁹ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

Except for someone with prior IPV's in his or her record, someone who falls in the ten-year provision, or someone who has used food stamps in a drug or weapons transaction, 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.²⁰

It is clear that Ms. Q claimed that K was living with her at a time when she was in the legal and physical custody of the State of Alaska. For Ms. Q to claim K was residing in her home was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. Q failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Household composition is a central focus of any eligibility interview. It simply cannot have slipped Ms. Q's mind that her daughter was in foster care and the household composition she was describing was fictional. This is clear and convincing evidence that Ms. Q's misrepresentation was intentional. She has therefore committed a first IPV.

IV. Conclusion and Order

Ms. Q has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp program benefits for a 12 month period, and is required to reimburse the DPA for benefits that were overpaid to her as a result of her Intentional Program Violation.²¹ The Food Stamp program disqualification period shall begin on November 1, 2014.²² This disqualification applies only to Ms. Q and not to any other individuals who may be included in her household.²³ For the duration of the disqualification period, Ms. Q's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for her household. However, Ms. Q must report her income and resources as they may be used in these determinations.²⁴ The DPA shall provide written notice to Ms. Q 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

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

²¹ 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).

²² 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).

²³ 7 C.F.R. § 273.16(b)(11).

²⁴ 7 C.F.R. § 273.11(c)(1).

has expired.²⁵ If over-issued Food Stamp program benefits have not been repaid, Ms. Q or any remaining household members are now required to make restitution.²⁶ If Ms. Q disagrees with the DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²⁷

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(e)(9)(ii).

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

²⁷ 7 C.F.R. § 273.15.