

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

In the Matter of	)	
	)	OAH No. 14-1298-ADQ
O N. M	)	DPA/FCU No.
_____	)	Agency No.

**DECISION and ORDER**

**I. Introduction**

O N. M was a Food Stamp<sup>1</sup> recipient. The Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program because he failed to inform the DPA when his household’s monthly income exceed the maximum allowed for a household of his size.<sup>2</sup>

A hearing was scheduled in this case for September 5, 2014. Mr. M asked that the hearing be rescheduled so he could go to the post office to pick up the evidence package for this proceeding. The hearing was continued to September 24, 2014. On this date, Mr. M was called at the time of hearing. The envelope containing the evidence submitted by DPA had been returned unclaimed. Mr. M stated that he knew he had certified mail, but had not picked it up. The notice was sent to the last address of record by certified and first class mail, so notice was effective.<sup>3</sup> He elected to go forward without having the exhibits.

Kenneth Cramer, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. Eligibility Technician III Amanda Holton testified on behalf of DPA. Exhibits 1-12 were admitted into evidence without objection and without restriction.

This decision concludes that DPA has not proved by clear and convincing evidence that Mr. M committed a first Intentional Program Violation of the Food Stamp program.

**II. Facts**

Food Stamp recipients are certified to participate in the program for a distinct period of time. They must complete an application to be certified. Mr. M’s wife, D M, completed the household’s eligibility review form. Mr. M signed the form. As of the date it was completed and filed, the form indicates that no one in the household was employed at that time, and that the

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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> The certified mail was returned, marked “Unclaimed.” Ex. 6. The address used matches the one given on the eligibility review form (Ex. 7).

household anticipated no change to that situation.<sup>4</sup> During the review process, DPA discovered that Mr. M was employed.<sup>5</sup>

Mr. M does not recall signing the form his wife filled out, and that if he did sign it, he is fairly sure he did not read the form.<sup>6</sup>

Contrary to the representation in the form, Mr. M was working. Payroll information from his employer reveals that he was working as early as April 2011 through November 2011.<sup>7</sup>

Mr. M received Food Stamp benefits from August 2011 through July 2012.<sup>8</sup> His household income exceeded the threshold amount for the months of August 2011, September 2011, and October 2011, so he did not qualify to receive assistance. DPA has calculated the excessive benefits at \$2,679.<sup>9</sup>

### **III. Discussion**

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.<sup>10</sup>

In this case, DPA seeks to establish an IPV by Mr. M. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.<sup>11</sup> DPA concedes that Mr. 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, someone like Mr. M, who has not used Food Stamps in a drug or weapon's transfer, 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>12</sup>

It is clear that Mr. M was working in April 2011 and continued working up through October 2012.<sup>13</sup> During this period, he was also receiving Food Stamps. His monthly earnings placed the household well over the threshold amount. A Food Stamp recipient is required to

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<sup>4</sup> Ex. 7, p. 2 – 3.

<sup>5</sup> Ex. 8 p. 1; Ex. 1 p. 7.

<sup>6</sup> Ex. 9.

<sup>7</sup> Ex. 10.

<sup>8</sup> Ex. 8 p. 3.

<sup>9</sup> Ex. 12.

<sup>10</sup> *See, e.g.*, 7 U.S.C. § 2015(b).

<sup>11</sup> 7 C.F.R. § 273.16(e)(6).

<sup>12</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

<sup>13</sup> *See generally* Ex. 9 (Interview of Ms. M by investigator).

report changes in income within ten days of when the change becomes known.<sup>14</sup> Mr. M did not. Therefore, the remaining issue is whether the failure to report was intentional.

Here, the circumstantial evidence establishes that Ms. M completed the review form and Mr. M signed the form. This is not uncommon among married persons. Signing the form is not evidence, circumstantial or otherwise, that Mr. M intended to submit a form that intentionally misrepresented, concealed, or withheld facts. The division did not present persuasive evidence that Mr. M knew his wife was submitting an incorrect form. His actions (not reading the form before signing) establish neglect, but a signature on a form does not establish by clear and convincing evidence that Mr. M committed an intentional program violation.

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

The DPA has not proven that O N. M committed an Intentional Program Violation.

Dated this 8<sup>th</sup> day of October, 2014.

*Signed*

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Rebecca 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 20<sup>th</sup> day of October, 2014.

By: *Signed*

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Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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

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<sup>14</sup> 7 C.F.R. § 273.12(a)(2).