

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

In the Matter of)	
)	OAH No. 14-1299-ADQ
D P. M)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

D P. M was a Food Stamp¹ recipient. 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 because she failed to report her husband's income. Had she reported his income, the household's monthly income would have exceed the maximum allowed for a household of her size.²

A hearing was scheduled in this case for September 5, 2014. Ms. M received notice of the hearing and the exhibits by certified mail.³ At the appointed time, her telephone number was called, only to remain unanswered.⁴ The hearing went forward in her absence.⁵

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 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.

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

² Ex. 3.

³ Ex. 4, 5.

⁴ At the time of Ms. M's hearing, her husband called. He had been scheduled for the preceding hearing time but was unavailable. His hearing was rescheduled. Hoping that Ms. M would appear in Mr. M's rescheduled hearing, this decision was not written until after Mr. M's record closed on September 24, 2014.

⁵ 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). 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.

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. Ms. M's form is dated as signed on June 24, 2011, and stamped as received by the DPA on July 12, 2011. On her eligibility review form, Ms. M reported that no one in the household was employed at that time, and that she anticipated no change to that situation.⁶ During the review process, DPA discovered that O M, her husband, was employed.⁷ Ms. M was aware that she was required to report changes in income.⁸

Contrary to the representation in her application, a member of the household was employed. Payroll information from Mr. M's employer reveals that he was working as early as April 2011 through November 2011.⁹ On October 13, 2011, a Fraud Complaint was initiated.¹⁰

Ms. M received Food Stamp benefits from August 2011 through July 2012.¹¹ The household's income exceeded the threshold amount for the months of August 2011, September 2011, and October 2011, so she did not qualify to receive assistance. DPA has calculated the excessive benefits at \$2,679.¹²

III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.¹³

In this case, DPA seeks to establish an IPV by Ms. M. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ DPA 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, someone like Ms. 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

⁶ Ex. 7, p. 2 – 3.
⁷ Ex. 8 p. 1; Ex. 1 p. 7.
⁸ Ex. 7 pp. 5 – 8; *see also* Ex. 9.
⁹ Ex. 10.
¹⁰ Ex. 2.
¹¹ Ex. 8 p. 3.
¹² Ex. 12.
¹³ *See, e.g.*, 7 U.S.C. § 2015(b).
¹⁴ 7 C.F.R. § 273.16(e)(6).

“intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁵

Mr. M was working in April 2011 and continued working up through October 2012.¹⁶ During this period, Ms. M was also receiving Food Stamps. Mr. M’s monthly earnings placed the household well over the threshold amount. A Food Stamp recipient is required to report changes in income within ten days of when the change becomes known.¹⁷ Ms. M did not. Therefore, the remaining issue is whether the failure to report was intentional.

Ms. M failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Mr. M started work in April 2011, well before the DPA received the completed Eligibility Review Form. Employment and income is a central focus of the eligibility review form and of the eligibility interview. It is unlikely that her husband’s employment would have slipped Ms. M’s mind, or that any increase in income that exceeded the maximum allowable income for the household should go unreported. The evidence is therefore clear and convincing that Ms. M’s misrepresentation was intentional, and it follows that she has committed a first IPV. The claim of no income cannot have been a mere oversight.

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 DPA \$2,679 for benefits that were overpaid as a result of the Intentional Program Violation.¹⁸ The Food Stamp disqualification period shall begin December 1, 2014.¹⁹ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.²⁰ 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 household. However, she must report her income and resources so that they can be used in these determinations.²¹

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

¹⁶ See generally Ex. 9 (Interview of Ms. M by investigator).

¹⁷ 7 C.F.R. § 273.12(a)(2).

¹⁸ 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).

¹⁹ See 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

²⁰ 7 C.F.R. § 273.16(b)(11).

²¹ 7 C.F.R. § 273.11(c)(1).

DPA 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.²²

If over-issued Food Stamp benefits have not been repaid, Ms. M or any remaining household members are required to make restitution.²³ If Ms. M disagrees with DPA's calculation of the amount of over issuance to be repaid, \$2,679, she may request a separate hearing on that limited issue.²⁴

Dated this 8th day of October, 2014.

Signed _____
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 20th day of October, 2014.

By: *Signed* _____
Name: Christopher Kennedy
Title: Admin. Law Judge, DOA/OAH

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

²² 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁴ 7 C.F.R. § 273.15.