

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

In the Matter of: )  
 ) OAH No. 14-1365-ADQ  
 S T ) Fraud Control Case No.  
 ) DPA Case No.

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**DECISION AND ORDER**

**I. Introduction**

S T was a Food Stamp recipient.<sup>1</sup> On June 30, 2014, 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 by intentionally failing to disclose a felony drug conviction.

A hearing was scheduled in this case for September 12, 2014. It was continued at Mr. T's request to October 10, 2014. Mr. T participated by telephone. Exhibits 1 – 12 were admitted into evidence without objection and without restriction. The DPA's case was presented by Dean Rogers.

This decision concludes that the DPA proved by clear and convincing evidence that Mr. T committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months and make restitution for the Food Stamps received while he was ineligible.

**II. Facts**

On September 16, 2002, a judgment of conviction was entered against Mr. T for the crime of Fourth Degree Misconduct Involving a Controlled Substance.<sup>2</sup> This was a felony offense under Alaska law.<sup>3</sup>

In March 2012, Mr. T was released to a substance abuse program (No Name Program). Mr. T contends that, upon his arrival, No Name Program completed a Food Stamp application for his signature.<sup>4</sup> The application has a place where Mr. T could identify someone who was authorized to help him complete his application. This line was left blank.<sup>5</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. 10.

<sup>3</sup> AS 11.71.040(d).

<sup>4</sup> Testimony of T; Ex. 7 at 1 – 8.

<sup>5</sup> *Id.*

The application asks certain questions, including whether anyone in the household had been convicted of a drug-related felony.<sup>6</sup> The unchallenged testimony establishes that Mr. T told the No Name Program about his conviction, but recalled that No Name Program told him that, because it did not involve the sale of drugs, he did not have to answer that question “yes”. On the last page of the application, Mr. T signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of his knowledge.<sup>7</sup>

Mr. T continued to apply for and receive Food Stamps. He completed and signed the Food Stamp applications on June 25, 2012, May 3, 2013, and October 28, 2013.<sup>8</sup> They were all similar to his March 2012 application. In response to the question asking whether anyone in his household had been convicted of a drug-related felony, on each application he answered “no.”<sup>9</sup> As with his initial application, he signed below the statement certifying under penalty of perjury that the information contained in the applications was correct to the best of his knowledge.<sup>10</sup>

When asked why he did not answer the question regarding a drug felony “yes,” Mr. T explained he was following the instructions from No Name Program.<sup>11</sup> He was not at the No Name Program when he completed these applications. The DPA approved Mr. T’s applications and issued Food Stamp benefits to him from March 2012 through April 2014.<sup>12</sup> DPA has calculated the excessive benefits at \$4,069.<sup>13</sup>

### **III. Discussion**

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.<sup>14</sup>

In this case, DPA seeks to establish an IPV by Mr. T. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.<sup>15</sup> DPA concedes that Mr. T 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.

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<sup>6</sup> Ex. 7 at 2.

<sup>7</sup> Ex. 7 at 8.

<sup>8</sup> Ex. 7 at. 16, 24, 28.

<sup>9</sup> Ex. 7 at. 16, 24, 28.

<sup>10</sup> *Id.*

<sup>11</sup> T Testimony.

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

<sup>13</sup> Ex. 11.

<sup>14</sup> *See, e.g.*, 7 U.S.C. § 2015(b).

<sup>15</sup> 7 C.F.R. § 273.16(e)(6).

Except for someone with prior IPV's in his or her record, someone like Mr. T who has not used Food Stamps in a drug or weapons 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>16</sup>

It is clear that on September 16, 2002, Mr. T was convicted of a felony drug violation. In March 2012, he applied for Food Stamps. The unchallenged evidence establishes that, on that and each subsequent application, the question asking whether anyone in the household had been convicted of a felony drug conviction was answered "no." Each application was incorrect. By answering "no" when Mr. T knew he had been convicted of a felony drug conviction, he made a "false or misleading statement, or misrepresented, concealed, or withheld facts." The remaining issue is whether these misrepresentations / concealments were intentional.<sup>17</sup>

Theoretically, Mr. T's failure to disclose his felony drug conviction could have been negligent rather than intentional. However, he intended to sign the forms while withholding his felony conviction: there was a discussion with No Name Program about it. The question does not ask if there was a felony conviction for the sale of drugs. The question simply asks if anyone has been convicted of a drug-related felony. Even if No Name Program gave him incorrect advice, when he went in for an interview he could have asked whether he should respond to that question in the affirmative. He did not. He read into the question something that is not apparent on its face. The number of times he applied, knowing the form was asking for a felony drug conviction, was not accidental. Mr. T admits that he is the one ultimately responsible, as he signed the forms.

The evidence is clear and convincing that Mr. T's failure to disclose constitutes clear and convincing evidence that his failure to report his felony drug conviction was intentional, and it follows that he has committed a first IVP.

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

Mr. T has committed a first time Intentional Program Violation of the Food Stamp program. He 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 him as a result of his Intentional Program Violation.<sup>18</sup> The Food Stamp program disqualification period shall begin on December 1,

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<sup>16</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

<sup>17</sup> 7 C.F.R. § 273.16(c).

<sup>18</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).

2014.<sup>19</sup> This disqualification applies only to Mr. T, and not to any other individuals who may be included in his household.<sup>20</sup> For the duration of the disqualification period, Mr. T's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. T must report his income and resources as they may be used in these determinations.<sup>21</sup> The DPA shall provide written notice to Mr. T 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>22</sup> If over-issued Food Stamp program benefits have not been repaid, Mr. T or any remaining household members are now required to make restitution.<sup>23</sup> If Mr. T disagrees with the DPA's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.<sup>24</sup>

Dated this 4<sup>th</sup> day of November, 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 18<sup>th</sup> day of November, 2014.

By: *Signed* \_\_\_\_\_  
Name: Rebecca L. Pauli  
Title: Administrative Law Judge

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

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<sup>19</sup> 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 (9<sup>th</sup> Cir. 1995).

<sup>20</sup> 7 C.F.R. § 273.16(b)(11).

<sup>21</sup> 7 C.F.R. § 273.11(c)(1).

<sup>22</sup> 7 C.F.R. § 273.16(e)(9)(ii).

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

<sup>24</sup> 7 C.F.R. § 273.15.