

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

In the Matter of:)
) OAH No. 14-1367-ADQ
 Q R. F) Fraud Control Case No.
) DPA Case No.

DECISION AND ORDER

I. Introduction

Q R. F was a Food Stamp recipient.¹ On August 8, 2014, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against him, alleging he had committed a second Intentional Program Violation (“IPV”) of the Food Stamp program by intentionally failing to disclose a felony drug conviction.

A hearing was held September 12, 2014. Mr. F participated by telephone. Exhibits 1 through 12 were admitted into evidence without objection and without restriction. The Division’s case was presented by investigator Dean Rogers. Amanda Holton, a DPA Eligibility Technician, testified on behalf of the Division.

This decision concludes that the Division proved by clear and convincing evidence that Mr. F committed a second Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for 24 months and make restitution for the Food Stamps received while he was ineligible.

II. Facts

On March 13, 2009, a judgment of conviction was entered against Mr. F for the crime of Fourth Degree Misconduct Involving a Controlled Substance.² This was a felony offense under Alaska law.³

On March 5, 2014, Mr. F applied for food stamps.⁴ The application form asks certain questions, including whether anyone in the household had been convicted of a drug-related felony.⁵ The unchallenged testimony establishes that Mr. F first marked the box “yes,” but he recalled being

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

² Ex. 10.

³ AS 11.71.040(d).

⁴ Ex. 7.

⁵ Ex. 7 at 10, Question 119.

told by another resident at the halfway house where he was staying that because he was convicted of possessing rather than selling drugs, he could answer “no.” So he scratched out the mark indicating “yes” and changed it to “no.” On the last page of the application, Mr. F signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of his knowledge.⁶ Mr. F reasoned that he would find out at his interview how to answer the question.⁷

Mr. F had his eligibility interview March 5, 2014. The Case Note Display Screen for his eligibility review interview indicates that during the interview, Mr. F informed the Division that he was incarcerated for five years and had been released the previous day, March 4, 2014. The Division represented at the hearing that when the eligibility technician found out about the incarceration, s/he would be expected to inquire further to determine if the applicant had been incarcerated for a drug-related crime. Mr. F did not recall the eligibility technician asking him about a drug conviction. As is often the case with hindsight, Mr. F testified that perhaps he should have inquired since he was unsure how to answer.

Based on his application and interview the Division approved Mr. F for food stamps. The Division has calculated that he received food stamp benefits totaling \$422 for March 2014 (\$196) and April 2014 (\$226) to which he was not entitled.⁸

III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.⁹

In this case, the Division seeks to establish a second IPV by Mr. F. To do so, the Division must prove the elements of a second IPV by clear and convincing evidence.¹⁰ Mr. F concedes that he had a prior (first) IPV, where, although not admitting to the facts presented by the Division, he waived his right to an Administrative Disqualification Hearing on that IPV.¹¹ Therefore the IPV alleged in this matter will be evaluated as a second-time violation.

Because he has a prior IPV in his record, federal Food Stamp law provides that a twenty-four-month disqualification must be imposed on him if he is proven to have “intentionally . . . made

⁶ Ex. 7 at 12.

⁷ F Testimony.

⁸ Exh. 11; Holton Testimony.

⁹ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁰ 7 C.F.R. § 273.16(e)(6).

¹¹ Ex. 12

a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹²

It is undisputed that on March 13, 2009, Mr. F was convicted of a felony drug violation. On March 5, 2014, he applied for Food Stamps. The evidence establishes that in response to the question asking about felony drug convictions he first marked the “yes” box but after thinking about it he chose to answer “no.” His initial “yes” answer was the correct answer. Mr. F knew he had been convicted of a drug-related felony. By answering “no” when he knew he had been convicted of a felony drug conviction, Mr. F made a “false or misleading statement, or misrepresented, concealed, or withheld facts.”¹³ The remaining issue is whether these misrepresentations / concealments were intentional.¹⁴

Theoretically, Mr. F’s failure to disclose his felony drug conviction could have been negligent rather than intentional. However, he intentionally switched his answer from “yes” to “no,” thereby withholding a key fact concerning his felony conviction. Any assertion that he made an honest mistake because he thought it only applied to felony drug sale convictions is untenable. The question does not ask if there was a felony conviction for the sale of drugs; it simply asks if anyone has been convicted of a drug-related felony. Even if an acquaintance 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; rather, he opted to wait and see if the eligibility tech asked him about it. He read into the question something that is not apparent on its face. The program places the burden on the applicant to provide the requested information in response to the straightforward questions in the application. Mr. F’s asserted reliance on the faulty advice of an acquaintance, and his apparent attempt to place the burden on the Division to correct his erroneous reliance, fail to establish that this was not an intentional act.

The Division has met its burden of proof and has established, by clear and convincing evidence, that Mr. F failed to disclose his felony conviction and that the failure was intentional. It follows that he has committed a second IPV.

IV. Conclusion and Order

Mr. F has committed a second time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp program benefits for a 24-month

¹² 7 C.F.R. §§ 273.16(b)(1)(ii); 273.16(c)(1).

¹³ 7 C.F.R. § 273.16(c)(1).

¹⁴ 7 C.F.R. § 273.16(c).

period, and is required to reimburse the Division for benefits that were overpaid to him as a result of his Intentional Program Violation.¹⁵ The Food Stamp program disqualification period shall begin on February 1, 2015.¹⁶ This disqualification applies only to Mr. F, and not to any other individuals who may be included in his household.¹⁷ For the duration of the disqualification period, Mr. F's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. F must report his income and resources so they can be used in these determinations.¹⁸ The Division shall provide written notice to Mr. F 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.¹⁹ If over-issued Food Stamp program benefits have not been repaid, Mr. F or any remaining household members are now required to make restitution.²⁰ If Mr. F disagrees with the Division's calculation of the amount of over-issued benefits to be repaid, he may request a separate hearing on that limited issue.²¹

Dated this 28th day of November, 2014.

Signed _____
Andrew M. Lebo
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 16th day of December, 2014.

By: *Signed* _____
Name: Andrew M. Lebo
Title: Administrative Law Judge

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

¹⁵ 7 C.F.R. § 273.16(b)(1)(ii); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

¹⁶ 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).

¹⁷ 7 C.F.R. § 273.16(b)(11).

¹⁸ 7 C.F.R. § 273.11(c)(1).

¹⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

²¹ 7 C.F.R. § 273.15.