

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

In the Matter of)	OAH No. 14-1368-ADQ
)	Division No.
S N)	Fraud Control Case No.
_____)	

DECISION AND ORDER

I. Introduction

S N is a former Food Stamp¹ recipient. 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 first Intentional Program Violation of the Food Stamp program.²

Mr. N's hearing started on September 12, 2014. Mr. N was reached by telephone. The hearing was rescheduled until October 16, 2014 to allow him to attend in person. Mr. N was not available for the October 16, 2014 hearing, because he was incarcerated. The hearing was then rescheduled until October 31, 2014 to allow him to participate. Mr. N was still incarcerated on October 31, 2014. However, he did participate telephonically – at which time he refused to participate and hung up during the course of the hearing. The hearing was rescheduled again, until November 26, 2014, to allow him an opportunity to participate. Mr. N was not incarcerated on November 26, 2014. He, however, did not appear for the hearing and it was held in his absence.³

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented the Division. The Division's exhibits were admitted into evidence and the case was submitted for consideration based on the record.

This decision concludes that Mr. N committed a first Intentional Program Violation of the Food Stamp program.

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). The program is still commonly referred to as the Food Stamp program.

² Ex. 3.

³ The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4). The same regulations set out circumstances under which the recipient may seek to vacate this decision and have a new hearing if there was good cause for the failure to appear.

II. Facts

The following facts were established by clear and convincing evidence except where otherwise noted.

Mr. N applied for Food Stamp benefits on three separate occasions: January 3, 2012, November 16, 2012, and April 19, 2013.⁴ Each of those applications contained a question asking if he had been convicted of a drug-related felony. He answered “no” to that question on all three applications.⁵ However, Mr. N was convicted of Misconduct Involving a Controlled Substance in the Fourth Degree, a violation of AS 11.71.040(a)(3)(A), which is a felony, on December 3, 1999. That conviction was for an offense that occurred on September 30, 1999. He was sentenced to four years imprisonment, during three of which he was not eligible for parole.⁶ Mr. N’s applications were approved and he received Food Stamp benefits as a result.⁷

The Division calculated that Mr. N received \$3,622 in Food Stamp benefits to which he was not entitled, as a result of his Food Stamp applications being approved.⁸

III. Discussion

The Food Stamp program contains a number of conditions a person must satisfy before he or she is eligible to receive benefits. One of those conditions is that they must not have a felony conviction where an element of the crime is “the possession, use, or distribution of a controlled substance.”⁹

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁰ that Mr. N intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹¹ To meet this standard, the division must show that it is *highly probable* that Mr. N intended to provide or knowingly provided incorrect information.¹²

⁴ Ex. 7, pp. 1 - 8, 9 - 16, 17- 21.

⁵ Ex. 7, pp. 2, 10, 17

⁶ Ex. 10.

⁷ Ex. 9.

⁸ Ex. 11.

⁹ 7 C.F.R. § 273.11(m). There are exceptions to this rule if the state legislature has enacted legislation that exempts them from this exclusion. However, the Alaska legislature has not enacted any such legislation.

¹⁰ 7 C.F.R. § 273.16(e)(6).

¹¹ 7 C.F.R. § 273.16(c).

¹² *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

A review of the facts demonstrates that Mr. N has a conviction for a drug felony, but represented that he did not. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Mr. N failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹³ Mr. N repeatedly misrepresented that he did not have a felony drug conviction on three separate applications. It is highly unlikely that he would have forgotten a felony conviction that resulted in a four-year prison term. Consequently, the Division has shown that Mr. N's misrepresentation was intentional.

The Division has therefore met its burden of proof and established that Mr. N made an intentional misrepresentation on both his January 3, 2012, November 16, 2012, and April 19, 2013 applications. This was his first Intentional Program Violation.

IV. Conclusion and Order

Mr. N has committed a first Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.¹⁴ The Food Stamp program disqualification period shall begin February 1, 2015.¹⁵ This disqualification applies only to Mr. N, and not to any other individuals who may be included in his household.¹⁶ For the duration of the disqualification period, Mr. N's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in these determinations.¹⁷

¹³ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that "in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct . . ."

¹⁴ 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).

¹⁵ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995). Insofar as 7 C.F.R. § 273.16(e)(9)(ii) is inconsistent with this result, it must be disregarded as contrary to statute, as discussed in *Garcia* and in *Devi v. Senior and Disabled Serv. Div.*, 905 P.2d 846 (Or. App. 1995).

¹⁶ 7 C.F.R. § 273.16(b)(11).

¹⁷ 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to Mr. N 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.¹⁸

If over-issued Food Stamp benefits have not been repaid, Mr. N or any remaining household members are now required to make restitution.¹⁹ If Mr. N disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²⁰

Dated this 2nd day of December, 2014.

Signed _____
Lawrence A. Pederson
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 15th day of December, 2014.

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

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

¹⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁰ 7 C.F.R. § 273.15.