

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

In the Matter of)	OAH No. 14-1422-ADQ
)	Division No.
S D)	Fraud Control Case No.
_____)	

DECISION AND ORDER

I. Introduction

S D applied for Food Stamp¹ benefits. On August 22, 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. D's hearing was held on September 26, 2014. The Division attempted to provide him advance notice of the hearing, by both certified mail and by first class mail. That mail was sent to his last known address, which was current as of May 2014, the last month he received public assistance benefits.³ The notices sent by first class mail were not returned, and are presumed to have been delivered. The notices sent by certified mail were returned as unclaimed.⁴⁵ Mr. D did not appear for the hearing and it was held in his absence.⁶

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented and testified on behalf of the Division. Amanda Holton, an eligibility technician employed by the Division's Fraud Control Unit, testified on its behalf. The Division's exhibits were admitted into evidence and the case was submitted for consideration based on the record.

This decision concludes that Mr. D 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 See Ex. 9, p. 1, which shows that Mr. D received and redeemed Food Stamp benefits in May 2014.

⁴ Dean Rogers' testimony; Ex. 1, p. 3; Exs. 4, 6.

⁵ Ex. 1, p. 3; Ex. 3.

⁶ 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 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. D applied for Food Stamp benefits on two separate occasions: November 8, 2011, and January 29, 2013.⁷ On each of those applications, he stated that he had never been convicted of a drug-related felony for an offense that occurred after August 22, 1996.⁸ He signed each application, certifying that the information contained in it was correct.⁹ Mr. D is a Spanish speaker. He was assisted by his Spanish-speaking roommate during his interview for the 2011 application and by a telephonic interpreter during his interview for the 2013 application.¹⁰

Mr. D was convicted of a drug felony on December 7, 2006, for an offense that occurred on September 28, 2005. He was sentenced to 21 months of imprisonment.¹¹

The Division calculated that Mr. D received \$3,705 in Food Stamp benefits to which he was not entitled, as a result of his Food Stamp application being approved.¹²

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹³ that Mr. D intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁴ To meet this standard, the division must show that it is *highly probable* that Mr. D intended to provide or knowingly provided incorrect information.¹⁵

A review of the facts demonstrates that Mr. D 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. D failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

⁷ Ex. 7, pp. 1- 8, pp. 9 -16.

⁸ Ex. 7, pp. 2, 10.

⁹ Ex. 7, pp. 8, 16.

¹⁰ Ex. 8, pp. 1- 2.

¹¹ Ex. 10.

¹² Amanda Holton’s testimony; Ex. 11.

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. § 273.16(c).

¹⁵ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

Intent can, however, also be deduced from circumstantial evidence.¹⁶ Mr. D undoubtedly knew he had a felony drug conviction, an event not easily forgotten. Given that he is not an English speaker, the failure to mention his conviction could possibly be chalked up to inadvertence if it only occurred once. However, the failure to mention his drug conviction on two separate applications demonstrates that he meant to not answer the question truthfully. Consequently, Mr. D intentionally misrepresented both that he did not have a felony drug conviction on both applications.

The Division has therefore met its burden of proof and established that Mr. D made an intentional misrepresentation on his November 8, 2011, and January 29, 2013 applications for benefits. This was his first Intentional Program Violation.

IV. Conclusion and Order

Mr. D 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.¹⁷ The Food Stamp program disqualification period shall begin January 1, 2015.¹⁸ This disqualification applies only to Mr. D, and not to any other individuals who may be included in his household.¹⁹ For the duration of the disqualification period, Mr. D'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.²⁰

The Division shall provide written notice to Mr. D 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.²¹

If over-issued Food Stamp benefits have not been repaid, Mr. D or any remaining household members are now required to make restitution.²² If Mr. D disagrees with the

¹⁶ 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”

¹⁷ 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).

¹⁸ 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).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²³

Dated this 14th day of October, 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 28th day of October, 2014.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: 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(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

²³ 7 C.F.R. § 273.15.