

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

In the Matter of	)	
	)	
O G	)	OAH No. 14-1481-ADQ
	)	Agency No.
_____	)	DPA/FCU No.

**DECISION AND ORDER**

**I. Introduction**

O G submitted four applications for Food Stamps<sup>1</sup> between January 4, 2012, and June 24, 2013. He failed to declare a drug-related felony conviction on each of those applications. As a result, Mr. G subsequently received Food Stamp benefits to which he otherwise was not entitled to receive during the period from January of 2012 through August of 2013. The Department of Health and Social Services, Division of Public Assistance (“Division”), initiated this Administrative Disqualification Case against him, alleging that Mr. G had committed a first Intentional Program Violation (IPV) of the Food Stamp Program.

A hearing initially was convened in this case on November 7, 2014. Mr. G appeared telephonically and requested a continuance so that he could have an attorney represent him at the hearing. The continuance was granted over the Division’s objection. Mr. G was advised on the record and by written notice of the date and time of the continued hearing.

The continued hearing commenced on November 26, 2014. No attorney had entered an appearance on behalf of Mr. G, so Mr. G was contacted by telephone at the time of the continued hearing. When Mr. G did not answer his phone, a message was left which provided Mr. G with a phone number to call in for the hearing, but he did not do so. Consequently, the hearing was held in Mr. G’s absence pursuant to 7 C.F.R. § 273.16(e)(4).<sup>2</sup> Dean Rogers, an Investigator with Division’s Fraud Control Unit, participated in person; he represented the Division and also

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<sup>1</sup> 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.

<sup>2</sup> If an accused individual or his representative does not appear at an administrative disqualification hearing, the hearing goes forward without that individual or his representative. 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.

provided testimony on behalf of the Division. Amanda Holton, an Eligibility Technician III for the Division, also participated in person and testified on behalf of the Division.

The testimony presented and evidence admitted at hearing established a first-time IPV of the Food Stamp Program by clear and convincing evidence.

## II. Facts

O G submitted an application for Food Stamps on January 4, 2012, October 1, 2012, June 4, 2013, and June 24, 2014.<sup>3</sup> Question 4 on the applications Mr. G submitted in January of 2012, October of 2012, and on June 24, 2013 contained the following question: “Has anyone been convicted of any of the following types of felonies?” and had a check-off box for a “Drug-Related felony.”<sup>4</sup> Mr. G checked “no” in response to Question 4 on each of those three applications.<sup>5</sup> On the fourth application, which Mr. G submitted on June 4, 2013, the same question concerning a drug-related felony was asked in an unnumbered question with a check-off box on the first page of the application.<sup>6</sup> Once again, Mr. G checked “no” in response to that question.<sup>7</sup> Mr. G signed each of these applications, stating that:

Under penalty of perjury, I certify that all information contained in this application, is true and correct to the best of my knowledge.

I have read or had read to me the “Rights and Responsibilities” section of the application and I understand my rights and responsibilities, including fraud penalties . . . .<sup>8</sup>

In fact, Mr. G had been convicted on June 18, 2009 of third degree misconduct involving a controlled substance in violation of AS 11.71.030(a)(1). A violation of this statute is a class B felony.<sup>9</sup> This conviction resulted from conduct which had occurred on April 14, 2007.<sup>10</sup>

Based upon the answers he provided in each of his Food Stamp applications, Mr. G received Food Stamps during the period from January, 2012 through August, 2013.<sup>11</sup> Because of his failure to report his prior drug-related felony conviction, the Division calculated that Mr. G

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<sup>3</sup> Testimony of Ms. Holton; *see also* Exh. 1, at pp. 1-2 & Exh. 7.

<sup>4</sup> Exh. 7, at pp. 2, 10 & 22.

<sup>5</sup> Exh. 7, at pp. 2, 10 & 22; *see also* Testimony of Ms. Holton.

<sup>6</sup> Exh. 7, at p. 17.

<sup>7</sup> Exh. 7, at p. 17; *see also* Testimony of Ms. Holton.

<sup>8</sup> Testimony of Ms. Holton; *see also* Exh. 7, at pp. 6, 16, 20 & 28.

<sup>9</sup> *See* AS 11.71.030(c).

<sup>10</sup> Exh. 10, at p. 1; *see also* Testimony of Ms. Holton.

<sup>11</sup> Exh. 11.

had received \$3,981.00 in Food Stamp benefits which he was not entitled to receive.<sup>12</sup> The Division has characterized his failure to disclose his drug-felony conviction as a first-known IPV for Mr. G, who has sporadically received Food Stamps since 2002.<sup>13</sup>

Mr. G received the requisite notice of his administrative disqualification hearing from the Division on August 29, 2014.<sup>14</sup>

### **III. Discussion**

For Food Stamp recipients, an IPV is defined to include having intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts . . . .”<sup>15</sup> In order to prevail, the Division must prove this violation by clear and convincing evidence.<sup>16</sup> A person who is found to have committed an IPV is disqualified from receiving Food Stamps for 12 months for a first time violation.<sup>17</sup> In addition, the household must repay any benefits wrongfully received.<sup>18</sup> In calculating a household’s benefits, individuals who have been convicted of a state or federal drug-related felony for conduct occurring after August 22, 1996 may not be included as a household member.<sup>19</sup> Since Mr. G only sought Food Stamp benefits for himself, this drug-related felony bars him from receiving Food Stamps because he is the sole member of his household.<sup>20</sup>

Since he had a drug-related felony conviction, Mr. G was required to disclose this in each of his four applications for Food Stamps.<sup>21</sup> If Mr. G had answered the question related to his status as a drug-related felon truthfully on each of the four applications for Food Stamps that he submitted, he would have been denied Food Stamps.<sup>22</sup> Instead, Mr. G gave false answers to that question in each of the four applications, which resulted in his receiving Food Stamps that he was not entitled to receive during the period from January, 2012 through August, 2014.<sup>23</sup>

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<sup>12</sup> Exh. 11; *see also* Testimony of Ms. Holton.

<sup>13</sup> *See* Exh. 1, at p. 2; *see also* Exh. 9.

<sup>14</sup> Exh. 3, at p. 2; *see also* Testimony of Mr. Rogers.

<sup>15</sup> 7 C.F.R. § 273.16(c)(1).

<sup>16</sup> 7 C.F.R. § 273.16(e)(6).

<sup>17</sup> 7 C.F.R. § 273.16(b)(1).

<sup>18</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(b)(1); 7 C.F.R. § 16(e)(8)(iii).

<sup>19</sup> 7 C.F.R. § 273.11(m). There exceptions to this rule -- not applicable here -- if the state legislature has enacted legislation that excepts them from this exclusion.

<sup>20</sup> *See* Exh. 7; *see also* 7 C.F.R. § 273.11(m).

<sup>21</sup> *See* Exh. 10, at p. 1.

<sup>22</sup> *See* 7 C.F.R. § 273.1(b)(7)(vii).

<sup>23</sup> *See* Exh. 7, at pp. 2, 10, 17 & 21.

Accordingly, the Division has shown by clear and convincing evidence that Mr. G has committed a first IPV of the Food Stamp Program.

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

Mr. G has committed a first-time Intentional Program Violation of the Food Stamp Program. He is, therefore, disqualified from receiving Food Stamp benefits for a 12-month period. The Food Stamp disqualification period shall begin on February 1, 2015.<sup>24</sup> This disqualification applies only to Mr. G, and not to any other individual who may be included in his household at some future date.<sup>25</sup> For the duration of the disqualification period, Mr. G'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.<sup>26</sup>

The Division shall provide written notice to Mr. G 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>27</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. G is now required to make restitution.<sup>28</sup> If Mr. G disagrees with the Division's calculation of the amount of Food Stamps to be repaid, he may request a separate hearing on that limited issue.<sup>29</sup>

Dated this 5th day of December, 2014.

Signed

Kathleen A. Frederick  
Administrative Law Judge

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<sup>24</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>25</sup> Mr. G in his Applications only applied for Food Stamps benefits for himself. However, should the size of his household subsequently increase, Mr. G is on notice that it is he who is disqualified from Food Stamp benefits in Alaska, rather than others in his household.

<sup>26</sup> 7 C.F.R. § 273.11(c)(1).

<sup>27</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>28</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(E)(8)(iii).

<sup>29</sup> 7 C.F.R. § 273.15.

## 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 19th day of December, 2014.

By: *Signed* \_\_\_\_\_

Name: Kathleen A. Frederick

Title/Agency: Admin. Law Judge, DOA/OAH

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