

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

In the Matter of)	OAH No. 14-1482-ADQ
)	Division No.
F X)	Fraud Control Case No.
_____)	

DECISION AND ORDER

I. Introduction

F X is a former Food Stamp¹ recipient. On August 27, 2014, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation of the Food Stamp program.²

Ms. X's hearing was held on October 3, 2014. Ms. X participated telephonically and represented herself. Kenneth Cramer, 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, also testified on the Division's behalf. The Division's exhibits were admitted into evidence. The record was held open until October 13 to allow the Division to submit additional documentation and for Ms. X to respond. The Division's documentation was received. Ms. X did not submit a response.

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

II. Facts

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

Ms. X applied for Food Stamp benefits on January 17, 2014.³ The application form contains a question asking if she had been convicted of a drug-related felony. She answered

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

² Ex. 3.

³ Ex. 7, pp. 1 - 12.

“no” to that question.⁴ However, only one day earlier, on January 16, 2014, she was convicted of a drug felony for a 2013 offense.⁵ Ms. X’s application was approved. Ms. X then filed a new Food Stamp application on May 16, 2014.⁶ Ms. X again answered “no” to the question which asked if she had a felony drug conviction.⁷ Ms. X was issued Food Stamp benefits for January, February, May, June, and July 2014 as a result of her two applications. Those Food Stamp benefits were redeemed.⁸ The Division calculated that Ms. X received \$568 in Food Stamp benefits to which she was not entitled.⁹

Ms. X stated that she had a drug conviction from quite some time ago, which she forgot about, but that she had not been convicted for a felony drug conviction in 2014. She also stated that she did not use the Food Stamp benefits in question; her Food Stamp electronic benefit card was received by another person, who spent the benefits.

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁰ that Ms. X 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 Ms. X intended to provide or knowingly provided incorrect information.¹²

A review of the facts demonstrates that Ms. X has a conviction for a drug felony, but represented that she did not. The question then arises as to whether this was an intentional misrepresentation.

Ms. X was convicted for her drug felony on January 16, 2014. She then applied for Food Stamp benefits the next day, January 17, 2014. Given the fact that she applied for benefits the very next day after her conviction, her statement that it occurred quite some time ago and that she forgot about it is simply not credible. Similarly, because her May 16, 2014 Food Stamp

⁴ Ex. 7, p. 10.

⁵ Ex. 9.

⁶ Ex. 7, pp. 13 – 24.

⁷ Ex. 7, pp. 22.

⁸ Ex. 11, p. 1.

⁹ Amanda Holton’s testimony; Ex. 11.

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).

application was submitted only five months after her conviction date, her statement regarding having forgotten her conviction is also not credible.

The Division has therefore met its burden of proof and established that Ms. X made an intentional misrepresentation on her January 17, 2014 and May 16, 2014 applications for benefits. This was her first Intentional Program Violation.¹³

IV. Conclusion and Order

Ms. X has committed a first Intentional Program Violation of the Food Stamp program. She 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 Ms. X, and not to any other individuals who may be included in her household.¹⁶ For the duration of the disqualification period, Ms. X's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in those determinations.¹⁷

The Division shall provide written notice to Ms. X 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

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¹³ The only issue in this case is whether Ms. X made an intentional misrepresentation on her applications. The issue of whether Ms. X actually received and redeemed the benefits is not relevant to that question.

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).

¹⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

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

Signature
Andrew M. Lebo

Name
Admin. Law Judge, DOA/OAH

Title/Agency

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

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.