

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

In the Matter of)	
)	OAH No. 14-1492-ADQ
H A. U-B)	DPA/FCU No.
_____)	Agency No.

DECISION

I. Introduction

H A. U-B received Food Stamp benefits¹ from December of 2012 through October of 2013. The Department of Health and Social Services, Division of Public Assistance (DPA), initiated this Administrative Disqualification case against her, alleging that she had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing in this case was held on October 7, 2014. The Division attempted to provide Ms. U-B with advance notice of the hearing, by both certified mail and standard First Class mail to her address of record.³ However, this correspondence was returned by the U.S. Postal Service with the annotation “unable to forward.”⁴ The Fraud Control Unit of DPA also left several messages at the phone number of record for Ms. U-B but she did not return those phone calls.⁵ At the time of the hearing, Ms. U-B was called at the phone number provided by DPA and her daughter answered the phone. Ms. U-B’s daughter confirmed that the number reached was her mother’s phone number, but said that her mother could not come to the phone at that time. The daughter was given the phone number of the hearing room and a recess was taken for ten minutes to allow Ms. U-B to call into the hearing. Ms. U-B did not call during the recess and a second phone call to her number was not answered. A message was left on Ms. U-B’s phone asking her to call into the hearing, but she did not do so. Consequently, the hearing went forward in her absence.⁶

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 See Ex. 3, at p. 2.

³ See Ex. 1, at p. 3.

⁴ See Ex. 4, at pp. 1-2.

⁵ Exh. 1, at p. 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 IVP. 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

Wynn Jennings, an Investigator employed by DPA's Fraud Control Unit, represented the DPA at the hearing and attended in person. Amanda Holton, an Eligibility Technician III for the DPA, appeared telephonically and testified on behalf of the Division.

This decision concludes that the Division has proven by clear and convincing evidence that Ms. U-B committed a first IPV by failing to disclose her employment and income from Facility X during the time she was receiving food stamps from December of 2012 through October of 2013.

II. Facts

Ms. U-B applied for food stamps on November 15, 2012 for herself and her five children by filing an Eligibility Review Form ("First Form").⁷ In response to question 7 on the First Form, Ms. U-B indicated that nobody in her household was working.⁸ On May 10, 2013, Ms. U-B completed another eligibility review form ("Second Form") and again requested Food Stamp benefits for her household, which consisted of herself and five children.⁹ In response to question 7 on the Second Form, Ms. U-B again indicated that nobody in her household was working.¹⁰ At the time Ms. U-B's Second Form was approved, she was provided with a statement from the DPA which advised her as follows: "IT IS VERY IMPORTANT THAT YOU REPORT ALL INCOME YOU ARE RECEIVING."¹¹

The First Form and the Second Form each contained an acknowledgement signed by Ms. U-B stating that she had read or been read the Rights and Responsibilities form applicable to Food Stamps recipients.¹² The Rights and Responsibilities form states that it is an intentional program violation if a Food Stamp recipient knowingly gives false or incorrect information to obtain benefits that the individual is not otherwise entitled to receive.¹³

On March 21, 2013, Amanda Holton submitted a fraud complaint report to the Fraud Control Unit concerning Ms. U-B.¹⁴ The complaint stated that Ms. U-B had been working for Facility X during the 3rd quarter of 2012 but had failed to declare this income on the First

cause for the failure to appear. However, Ms. U-B did not contact staff to request a new hearing date despite being on notice from two phone calls to her on October 7, 2014 advising her that the hearing was being held that day.

⁷ Exh. 8, at pp. 1-4.

⁸ Exh. 8, at p. 2.

⁹ Exh. 8, at pp. 5-8.

¹⁰ Exh. 8, at p. 6.

¹¹ Exh. 10, at p. 2 [original text in capital letters].

¹² Exh. 8, at pp. 4 & 8; *see also* Exh. 7.

¹³ Exh. 7, at p. 4.

¹⁴ Exh. 2; *see also* Testimony of Ms. Holton.

Form.¹⁵ At the hearing, Ms. Holton testified that, as part of her work at DPA, she was assigned to a project in which she compared individuals who were PCA providers against recipients of public assistance.¹⁶ During that project, she discovered that Ms. U-B had been working for Facility X since the third quarter of 2012 but had not disclosed this employment or the income she received from it on either her November 15, 2012 or May 10, 2013 Eligibility Review form.¹⁷ Payroll records for Ms. U-B dated October 3, 2013 from Facility X revealed that Ms. U-B had been employed by Facility X since June 29, 2012 and that she was still employed there as of October 3, 2013.¹⁸

Because of her failure to report the income she was receiving as a PCA from Facility X, the Division calculated that Ms. U-B received \$2,901.00 in Food Stamp benefits that she was not entitled to receive.¹⁹

III. Discussion

In order to establish an IPV, the Division must prove by clear and convincing evidence²⁰ that Ms. U-B intentionally “made a false or misleading statement, or misrepresented, concealed or withheld facts.”²¹ To meet this standard, the Division must show it is *highly probable* that Ms. U-B intended to provide or knowingly provided incorrect information.²²

A review of the facts demonstrates that Ms. U-B was employed from June of 2012 through October of 2013,²³ yet represented on both the First Form and the Second Form that she was unemployed and had no income.²⁴ Since Ms. U-B failed to appear at the hearing, there is no direct evidence of her intent in the record.

Intent can, however, be deduced from circumstantial evidence.²⁵ Ms. U-B was employed for almost five months before she submitted the First Form and was still employed in the same

¹⁵ Exh. 2.

¹⁶ Testimony of Ms. Holton.

¹⁷ Testimony of Ms. Holton.

¹⁸ Exh. 11.

¹⁹ Exh. 12, at p. 2.

²⁰ 7 C.F.R. § 273.16(e)(6).

²¹ 7 C.F.R. § 273.16(c).

²² *DeNuptiss v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska2003)(defining clear and convincing standard).

²³ *See* Exh. 11.

²⁴ *See* Exh. 8, at pp. 2 & 6.

²⁵ 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”

job at the time she submitted the Second Form.²⁶ She was informed about her rights and responsibilities and was given notice that she needed to report any income she received at the time she was approved for Food Stamp benefits in connection with the Second Form.²⁷ Consequently, the only conclusion that can be drawn from these facts is that Ms. U-B misrepresented her income and employment in order to receive Food Stamp benefits that she was otherwise not entitled to receive.

The Division has, therefore, met its burden of proof and has established that Ms. U-B made an intentional misrepresentation on both her November 15, 2012 Eligibility Review form and her May 10, 2014 Eligibility Review form.

IV. Conclusion and Order

Ms. U-B has committed a first-time IPV 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 any benefits that were overpaid as a result of the IPV.²⁸ The Food Stamp disqualification period shall begin on February 1, 2014.²⁹ This disqualification applies only to Ms. U-B, and not to any other individual who may be included in her household.³⁰ However, she must report her income and resources as they may be used in these determinations.³¹ The Division shall provide written notice to Ms. U-B 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.³²

If over-issued Food Stamp benefits have not been repaid, Ms. U-B or any remaining household members are now required to make restitution.³³ If Ms. U-B disagrees with the

²⁶ Compare Exh. 11 with Exh. 8, at pp. 4 & 8.

²⁷ See Exh 10, at p. 2.

²⁸ 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16~~(8)~~(iii).

²⁹ 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).

³⁰ 7 C.F.R. § 273.16(b)(11).

³¹ 7 C.F.R. § 273.11(c)(1).

³² 7 C.F.R. § 273.16(e)(9)(ii).

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

Division's calculation of the amount of Food Stamps to be repaid, she may request a separate hearing on that limited issue.³⁴

Dated this 2nd day of December, 2014.

Signed _____
Kathleen A. Frederick
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: Kathleen A. Frederick
Title/Agency: Admin. Law Judge, DOA/OAH

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

³⁴ 7 C.F.R. § 273.15.