

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

In the Matter of)	
)	OAH No. 14-1714-ADQ
B D)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

B O D received Food Stamp¹ benefits during part of 2014. On October 3, 2014, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing took place on November 12, 2014, with Mr. D having been sent advance notice of the hearing by both certified mail and standard First Class mail to his address of record.³ Mr. D did not attend the hearing and could not be reached at the telephone number he had provided to the program.⁴ The hearing went forward in his absence.⁵ Kenneth Cramer, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Exhibits 1 - 11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. D committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months.

II. Facts

Mr. D applied for Food Stamp benefits in March of 2014.⁶ He disclosed no income on his application, and apparently he had none at the time. His application was approved, and he

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 3.

³ Mr. D signed for the certified mail.

⁴ The number was not receiving calls.

⁵ Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 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.

⁶ Ex. 8.

was instructed (both orally in an interview and by written notice) of his obligation to report any changes in his income that could bring him above the \$1,555 monthly threshold for eligibility.⁷

In April of 2014, Mr. D began working for No Name Company, receiving pay starting on the 15th of that month.⁸ He earned \$8000 from this job in April, \$12,400 in May, and \$2400 in June.⁹ He never disclosed this employment; it was discovered in late summer by a DPA investigator.¹⁰

The income put Mr. D well over the gross earnings limit for Food Stamps for his household. DPA has calculated the resulting excessive benefits at \$226, representing his total benefit for the month of June.¹¹

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹²

In this case, DPA seeks to establish an IPV. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹³ DPA concedes that it is not aware that Mr. D has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated as a first-time violation.

Except for someone with prior IPV's in his or her record or who has other circumstances, not applicable here, that can lead to enhanced penalties, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . concealed or withheld facts” in connection with the program.¹⁴

Mr. D had a spectacular jump in income in April of 2014. He knew income and changes in income are a key part of Food Stamps eligibility, having discussed it with a DPA representative only one month previously. It is not credible that he would not have known that his dramatic change in income would affect his eligibility. Because it has to be inferred that he knew that to be so, his failure to report the change was an intentional concealment or withholding of facts. It follows that he has committed a first IPV.

⁷ Holton testimony; Ex. 9, pp. 1, 2.

⁸ Ex. 10.

⁹ Ex. 10, p. 4.

¹⁰ Ex. 2.

¹¹ Ex. 11.

¹² *See, e.g.*, 7 U.S.C. § 2015(b).

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

IV. Conclusion and Order

Mr. D has committed a first time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.¹⁵ The Food Stamp disqualification period shall begin February 1, 2015.¹⁶ This disqualification applies only to Mr. D, and not to any other individuals who may be included in his household.¹⁷ 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 so that they can be used in these determinations.¹⁸

DPA 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.¹⁹

If over-issued Food Stamp benefits have not been repaid, Mr. D or any remaining household members are now required to make restitution.²⁰ If Mr. D disagrees with DPA's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.²¹

Dated this 12th day of November, 2014.

Signed

Christopher Kennedy
Administrative Law Judge

¹⁵ 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).

¹⁶ 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 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).

¹⁷ 7 C.F.R. § 273.16(b)(11).

¹⁸ 7 C.F.R. § 273.11(c)(1).

¹⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

²¹ 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 28th day of November, 2014.

By: Signed
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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