

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

In the Matter of)	
)	OAH No. 14-1717-ADQ
K U)	DPA/FCU No.
_____)	Agency No.

DECISION

I. Introduction

K U applied for and received Food Stamps benefits. Mr. U did not disclose in his application that he had a prior drug-related felony. The Division of Public Assistance (Division) alleged that this constituted an Intentional Program Violation (IPV).

A hearing was held on November 11, 2014. Mr. U participated by phone and represented himself. William Schwenke, investigator, appeared on the Division’s behalf. The evidence presented established an IPV by clear and convincing evidence.

II. Facts

Mr. U applied for Food Stamps in May and December 2010.¹ Question 4 on the application asks “Have you or anyone in your household been convicted of a drug-related felony for an offense that occurred on or after August 22, 1996?”² Mr. U answered “no” to this question.³ The Division approved Mr. U’s Food Stamp application based on the answers he provided. Mr. U received \$2,319 in Food Stamp benefits from May 2010 – May 2011.⁴

Mr. U had in fact been convicted of a felony in Washington in 2002.⁵ He was found guilty of Possession of a Controlled Substance, RCW 69.50.401(d), a class C felony.⁶

Mr. U submitted another Food Stamp application in August 2012. He disclosed his drug related felony conviction on this application and to a Division eligibility technician during an eligibility interview.⁷ The eligibility technician realized Mr. U had received Food

¹ Exhibit 7; Exhibit 8. Mr. U also received Food Stamp benefits in 2008. The Division is not pursuing repayment of those benefits.

² Exhibit 7; Exhibit 8.

³ *Id.*

⁴ Exhibit 14.

⁵ Exhibit 12.

⁶ Exhibit 12; Exhibit 13.

⁷ Exhibit 6.

Stamp benefits after his conviction and referred the matter the fraud control unit for investigation.⁸

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[.]”⁹ In order to prevail, the Division must prove this violation by clear and convincing evidence.¹⁰ Proof of facts by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.¹¹ This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

A person who is found to have committed an IPV is disqualified from receiving Food Stamps for 12 months for a first time violation, 24 months for a second violation, and permanently for a third IPV.¹² In addition, the household must repay any benefits wrongfully received.¹³

In calculating the 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.¹⁴ Convictions that count towards this exclusion are those for which an element of the offense is possession, use, or distribution of a controlled substance as defined by the Controlled Substance Act, 21 U.S.C. 802(6).¹⁵

Mr. U was asked if he had a felony conviction, and he answered falsely. Mr. U was aware of his own conviction, knew that it was drug-related, and knew that it was a felony conviction. Mr. U testified at the hearing that he thought he had always disclosed his conviction on any benefit application. However, the record demonstrates that Mr. U failed to disclose the conviction on May and December 2010. Therefore, the Division has proven an IPV by clear and convincing evidence.

⁸ Exhibit 6.

⁹ 7 C.F.R. § 273.16(c)(1).

¹⁰ 7 C.F.R. § 273.16(e)(6).

¹¹ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

¹² 7 C.F.R. § 273.16(b)(1).

¹³ 7 C.F.R. § 273.16(b)(12).

¹⁴ 7 C.F.R. § 273.11(m). There are exceptions to this rule if the state legislature has enacted legislation that exempts them from this exclusion.

¹⁵ *Id.*

IV. Conclusion and Order

Mr. U falsely stated on his application that he did not have a prior drug-related felony conviction. The Division met its burden of proving this first known Intentional Program Violation of the Food Stamps program. Mr. U is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and required to reimburse the Division for benefits that were overpaid as a result of the intentional program violation.¹⁶ The Food Stamp disqualification period shall begin January 1, 2015.¹⁷ This disqualification applies only to Mr. U, and not to any other individuals who may be included in his household.¹⁸ For the duration of the disqualification period, Mr. U'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.¹⁹

The Division shall provide written notice to Mr. U 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.²⁰

If over-issued Food Stamp benefits have not been repaid, Mr. U or any remaining household members are now required to make restitution.²¹ If Mr. U disagrees with the Division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.²²

Dated November 26, 2014.

Signed

Bride Seifert
Administrative Law Judge

¹⁶ 7 C.F.R. § 273.16(b)(1); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

¹⁷ 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).

¹⁸ 7 C.F.R. § 273.16(b)(11).

¹⁹ 7 C.F.R. § 273.11(c)(1).

²⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

²² 7 C.F.R. § 273.15.

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1),.

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 29th day of December, 2014.

By: Signed
Name: Bride Seifert
Title/Division: ALJ/OAH

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