

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

In the Matter of)
)
 B T. E) OAH No. 14-1784-ADQ
 Agency No.

DECISION and ORDER

I. Introduction

Ms. B E received Food Stamp benefits during 2012 -2013.¹ The Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she committed an Intentional Program Violation (IPV) of the Food Stamp program. The basis for the IPV was Ms. E' failure to disclose Temporary Assistance for Needy Family (TANF) benefits she received from the Central Council, Tlingit and Haida Indian Tribes of Alaska.²

A hearing convened in this case on November 11, 2014. DPA sent Ms. E advance notice of the hearing by both certified mail and standard First Class mail to her address of record.³ Ms. E did not attend the hearing and could not be reached at the telephone number she had provided to the program.⁴ The hearing went forward in her absence.⁵ William Schwenke, an investigator employed by DPA's Fraud Control Unit, represented DPA and Buffy Chapman, a DPA Eligibility Technician, testified on its behalf.

This decision concludes that DPA proved by clear and convincing evidence that Ms. E committed her first Intentional Program Violation of the program. She must pay \$2,460 in restitution and is barred from receiving Food Stamps for twelve months.

II. Facts

Ms. E filled out four Food Stamp eligibility review applications from May 2012 – September 2013.⁶ Question 8, listed under the Money Received Information, states, “List any

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

² Ex. 1.

³ Ex. 3 – 5. The certified mail was left unclaimed. The first-class mail was not returned and DPA presumes delivery occurred.

⁴ A message was left for Ms. E, but the OAH did not receive a call back.

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 – 11.

other money you or anyone in your household receives...including Native benefits.”⁷ Ms. E wrote “N/A” or not applicable on each application. Certified records from Central Council, Tlingit & Haida Tribes confirm that Ms. E received TANF benefits from March 2012 through October 2013.⁸

Because Ms. E failed to report her TANF benefits, DPA issued Ms. E excessive Food Stamps benefits from April 2012 through October 2013.⁹ The total overpayment amount is \$1,210.¹⁰ This is Ms. E’ first IPV.¹¹

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹² In this case, DPA seeks to establish a first IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹³

Federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual found to have committed a first IPV.¹⁴ An intentional program violation is defined as “having intentionally . . . made a false or misleading statement, or misrepresented, concealed, or withheld facts” in connection with the program.¹⁵

It is clear that Ms. E was receiving TANF benefits when she filled out each of her Food Stamp recertification applications during the time period from May 2012 – September 2013. She did not report these benefits to DPA.¹⁶ This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. E failed to appear for or testify at her hearing, but her intent can be inferred from circumstantial evidence. It is highly unlikely that Ms. E did not remember that she was receiving between \$514 and \$1,044 per month in TANF benefits when she filled out her recertification applications. Accordingly, the evidence is clear and convincing that Ms. E’ misrepresentation was intentional and she has therefore committed her first IPV.

⁷ Ex. 8 – 11.
⁸ Ex. 14.
⁹ Ex. 16; Schwenke testimony; Chapman testimony.
¹⁰ Ex. 16.
¹¹ Ex. 1; Schwenke testimony.
¹² *See*, 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).
¹⁵ 7 C.F.R. § 273.16(c)(1).
¹⁶ Ex. 7. pg. 2.

IV. Conclusion and Order

Ms. E has committed a first Intentional Program Violation of the Food Stamp program. She is 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 IPV.¹⁷ The Food Stamp disqualification period shall begin February 1, 2015.¹⁸ This disqualification applies only to Ms. E, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. E' needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations.²⁰

DPA shall provide written notice to Ms. E regarding the disqualification and reimbursement requirement.²¹

Dated this 3rd day of December, 2014.

Signed

Bride Seifert
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 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.]

¹⁷ 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).

¹⁸ 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).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii); 7 C.F.R. § 273.18(d)(3).