

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

In the Matter of:)	
)	OAH No. 14-1841-ADQ
D D. E)	DPA/FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

D D. E was a Food Stamp¹ recipient. On October 24, 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 because he failed to inform the DPA of employment and income that exceeded the maximum allowed for a household of his size.

A hearing was scheduled in this case for November 25, 2014. On November 14, 2014, the DPA sent Mr. E notice of the claim against him and the date and time for the hearing.² Mr. E signed for the notice on November 15, 2014.³ At the appointed time, a call was made to his telephone number of record, but he did not answer, nor was there an opportunity to leave a voice mail message for him. The hearing went forward in his absence.⁴

Kenneth Cramer, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Eligibility Technician III Amanda Holton testified on behalf of DPA. Exhibits 1-10 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. E committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months and make restitution for the Food Stamps received while he was ineligible.

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

² Ex. 5.

³ Ex. 6.

⁴ Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 C.F.R. § 273.16(c)(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.

II. Facts

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

Mr. E was a Food Stamp recipient who applied to renew those benefits on July 25, 2013 and again on January 16, 2014.⁵ The July 2013 renewal application contained a question asking whether anyone in the household was employed and earning wages. Mr. E answered the question by indicating that he worked part-time for Facility A.⁶ Mr. E signed the application, certifying that the information contained in it was correct.⁷ Mr. E then participated in an eligibility interview on August 3, 2013, where he informed the Division that he worked part-time at Facility A. The Food Stamp application was approved and benefits were issued.⁸

As in the earlier renewal, the January 2014 renewal application contained a question asking whether anyone in Mr. E's household was employed and earning wages. Once again, Mr. E answered the question by indicating that he worked part-time for Facility A.⁹ Mr. E signed the application, certifying that the information contained in it was correct.¹⁰ Mr. E then participated in an eligibility interview on February 3, 2014. During the interview, he was asked about a job at Facility B, which appeared on his wage report from the Alaska Department of Labor during the third quarter of 2013. Mr. E responded that he worked there in July 2013, and his job ended in September 2013.¹¹ The Food Stamp application was approved and benefits were issued.¹²

Contrary to the information he provided to the Division, Mr. E worked at Facility B from June 5, 2013 through October 2, 2013.¹³ Records provided by the company indicate he was working there and earning income at the time of his July 25, 2013 Food Stamp renewal application.¹⁴ Also, Department of Labor records indicate Mr. E began working for another company, Facility C, during the first quarter of 2014, and that he earned \$10,443.75 during the second quarter alone.¹⁵ Records from Facility C show that Mr. E worked there from February 2,

⁵ Ex. 7, pgs. 5, 10.

⁶ Ex. 7, p. 11.

⁷ Ex. 7, p. 13.

⁸ Ex. 8, p. 3.

⁹ Ex. 7, p. 7.

¹⁰ Ex. 7, p. 9.

¹¹ Ex. 8, p. 1.

¹² Ex. 8, p. 1.

¹³ Ex. 9, p. 1.

¹⁴ Ex. 9, p. 1.

¹⁵ Ex. 9, p. 13.

2014 to July 20, 2014.¹⁶ Mr. E did not report these earnings to the Division at any time. Mr. E's income exceeded the maximum allowable amount during each month from August 2013 to July 2014.¹⁷

The Division initiated a fraud investigation which culminated in this case.¹⁸ The Division calculated Mr. E received \$620 in Food Stamp benefits that he was not entitled to receive during the period from August 2013 through July 2014.¹⁹

III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.²⁰

In this case, DPA seeks to establish an Intentional Program Violation (IPV) by Mr. E. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.²¹ DPA concedes that Mr. E has never been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation.

In general, except for someone with prior IPV's in his or her record, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally ... made a false or misleading statement, or misrepresented, concealed or withheld facts" in connection with the program.²²

It is clear that Mr. E failed to report his other employment at Facility B and Facility C from August 2013 to July 2014. During this period he was also receiving Food Stamps. His monthly earnings placed him well over the threshold amount of \$1,555 per month. A Food Stamp recipient is required to report changes in income within ten days of when the change becomes known.²³ Mr. E did not. Therefore, the remaining issue is whether the failure to report was intentional.

Mr. E failed to appear for or testify at his hearing, but his intent can be deduced from circumstantial evidence. Mr. E was employed at Facility B as of June 5, 2013, *before* his eligibility interview in July 2013. Employment and income is a central focus of the eligibility

¹⁶ Ex. 9, p. 9.

¹⁷ Ex. 10, p. 1.

¹⁸ Ex. 2.

¹⁹ Holton testimony; Ex. 10.

²⁰ *See, e.g.*, 7 U.S.C. § 2015(b).

²¹ 7 C.F.R. § 273.16 (e)(6).

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

²³ 7 C.F.R. § 273.12(a)(2).

review form and of the eligibility interview. It is not credible that Mr. E's second job slipped his mind and that he merely forgot to report it. The evidence is therefore clear and convincing that Mr. E's misrepresentation was intentional, and it follows that he committed a first IPV.

IV. Conclusion and Order

Mr. E 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 \$620 for benefits that were overpaid as a result of the Intentional Program Violation.²⁴ The Food Stamp disqualification period shall begin March 1, 2015.²⁵ This disqualification applies only to Mr. E, and not to any other individuals who may be included in his household.²⁶ For the duration of the disqualification period, Mr. E'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.²⁷

DPA shall provide written notice to Mr. E 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.²⁸

If over-issued Food Stamp benefits have not been repaid, Mr. E or any remaining household members are now required to make restitution.²⁹ If Mr. E disagrees with DPA's calculation of the amount of over issuance to be repaid, \$620, he may request a separate hearing on that limited issue.³⁰

Dated this 31st day of December, 2014.

Signed

Kay L. Howard
Administrative Law Judge

²⁴ 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).

²⁵ See 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

²⁶ 7 C.F.R. § 273.16(b)(11).

²⁷ 7 C.F.R. § 273.11(c)(1).

²⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁰ 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 16th day of January, 2015.

By: Signed
Name: Kay L. Howard
Title: Admin. Law Judge, DOA/OAH

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