

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

In the Matter of)	
)	OAH No. 14-2393-ADQ
D L)	DPA/FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

D L is a former Food Stamp¹ recipient. On December 31, 2014, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

Mr. L's hearing was held on February 6, 2015. The Division sent him advance notice of the hearing, by both certified mail and by first class mail. That mail was sent to his last known address.³ The certified notice was unclaimed as of the date of hearing,⁴ but Mr. L did receive and sign for the evidence packet for the hearing, and a telephone conversation he had with a Division representative showed him to be fully aware of the hearing.⁵ Mr. L did not appear for the hearing and could not be reached on the telephone number he had provided to the program.⁶ The hearing was held in his absence.⁷

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented the Division and supplied testimony both orally and by affidavit. Amanda Holton, an eligibility technician employed by the Division's Fraud Control Unit, also testified on the Division's behalf. The Division's exhibits were admitted into evidence.

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 Ex. 3.

³ Ex. 1, p. 3.

⁴ *Id.*; Ex. 4.

⁵ Ex. 6; Rogers testimony.

⁶ Mr. L was telephoned at XXX-XXX-XXXX at the scheduled time of hearing, and again ten minutes later. He did not answer the call, and the number would not accept voice mails.

⁷ The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 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 cause for the failure to appear.

This decision concludes that Mr. L committed a first Intentional Program Violation of the Food Stamp program.

II. Facts

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

Mr. L applied for Food Stamp benefits twice, once on September 28, 2013 and once on October 7, 2014.⁸ The applications contained a question asking if he had been convicted of a drug-related felony. He answered “no” to that question on both occasions.⁹ However, only ten months before his first application, Mr. L had been convicted of Fourth Degree Misconduct Involving a Controlled Substance, a Class C felony.¹⁰ He served time in prison for the offense.¹¹

Mr. L’s first application was denied for reasons unrelated to the felony conviction, but his second application was approved and he was issued Food Stamp benefits from October through December 2014.¹² The Division calculated that Mr. L was issued \$533 in Food Stamp benefits to which he was not entitled, as a result of his inclusion in the household for which his second application was approved.¹³

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁴ that Mr. L intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁵ To meet this standard, the division must show that it is highly probable that Mr. L intended to provide or knowingly provided incorrect information.¹⁶

Mr. L had a recent conviction for a drug felony, but represented in his Food Stamp application that he did not. The question then arises as to whether this was an intentional misrepresentation.

⁸ Ex. 7.

⁹ Ex. 7, pp. 8, 20.

¹⁰ Ex. 10.

¹¹ *Id.*

¹² Exs. 8, 9.

¹³ Holton testimony; Ex. 11. All of these benefits were redeemed.

¹⁴ 7 C.F.R. § 273.16(e)(6).

¹⁵ 7 C.F.R. § 273.16(c).

¹⁶ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

Intent can be deduced from circumstantial evidence.¹⁷ Mr. L was convicted for, and incarcerated for, a drug felony less than a year before he applied for Food Stamps. It is exceedingly improbable for him to have forgotten about that conviction at the time he applied for benefits. His denial of a conviction on the application was unequivocal, and he reiterated the denial in a second application the following year. In the absence of an alternative explanation from Mr. L, these facts make it highly probable that, in giving false information in support of his applications, he was acting deliberately.

The Division has therefore met its burden of proof and established that Mr. L made intentional misrepresentations on his 2013 and 2014 applications for benefits. This was his first Intentional Program Violation.

IV. Conclusion and Order

Mr. L has committed a first Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and he is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.¹⁸ The Food Stamp program disqualification period shall begin April 1, 2015.¹⁹ This disqualification applies only to Mr. L, and not to any other individuals who may be included in his household.²⁰ For the duration of the disqualification period, Mr. L'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.²¹

The Division shall provide written notice to Mr. L 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.²²

If over-issued Food Stamp benefits have not been repaid, Mr. L or any remaining household members are now required to make restitution.²³ If Mr. L disagrees with the

¹⁷ 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”

¹⁸ 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).

¹⁹ 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).

²⁰ 7 C.F.R. § 273.16(b)(11).

²¹ 7 C.F.R. § 273.11(c)(1).

²² 7 C.F.R. § 273.16(e)(9)(ii).

Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²⁴

Dated this 6th day of February, 2015.

Signed _____

Christopher Kennedy
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 20th day of February 2015.

By: *Signed* _____

Name: Christopher M. Kennedy
Title: Administrative Law Judge

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

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

²⁴ 7 C.F.R. § 273.15.