

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

In the Matter of)	
)	
E E)	OAH No. 15-0003-ADQ
<hr style="width:40%; margin-left:0;"/>)	Agency No.

DECISION AND ORDER

I. Introduction

E E submitted four applications for Food Stamps¹ between November 14, 2012, and November 12, 2014. He failed to declare a drug-related felony conviction on each of those applications. As a result, Mr. E subsequently received Food Stamp benefits to which he otherwise was not entitled to receive during the period from November of 2012 through January of 2015. The Department of Health and Social Services, Division of Public Assistance (“Division”), initiated this Administrative Disqualification Case against him, alleging that Mr. E had committed a first-known Intentional Program Violation (IPV) of the Food Stamp Program.

A hearing was convened in this case on February 15, 2015. The Division provided Mr. E with advance notice of the hearing, by both certified mail and standard First Class mail sent to his address of record.² At the time of the hearing, Mr. E was called at the phone number provided by the Division. When Mr. E did not answer his phone, a message was left on Mr. E’s phone asking him to call into the hearing, but he did not do so. Consequently, the hearing went forward in his absence pursuant to § 7 C.F.R. § 273.16(e)(4).³

Dean Rogers, an Investigator III with Division’s Fraud Control Unit, represented the Division and attended the hearing in person. Michael Giovanelli, an Eligibility Technician III for the Division, also participated in person and testified on behalf of the Division. The testimony presented and evidence admitted at hearing held on February 15, 2015 established a first-time IPV of the Food Stamps Program by clear and convincing 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 See Ex. 1, at p. 3; see also Ex. 4, at p. 1.

³ The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an IVP. 7 C.F.R. § 273.16(e)(4).

Shortly after the hearing had concluded, Mr. E contacted staff at the Office of Administrative Hearings (OAH) to explain why he had been unable to appear at the hearing.⁴ Staff instructed him to put his reasons in writing, which he did not do. However, the applicable federal regulations do not require that the reasons for a failure to appear be submitted in writing.⁵

A status conference subsequently was convened on April 27, 2015 to allow Mr. E the opportunity to explain on the record why he was not present at the hearing. Mr. E and Mr. Rogers both appeared telephonically at that status conference and both gave testimony. Mr. Rogers testified that the Division had provided Mr. E with the requisite notice of the hearing.⁶ Mr. Rogers also testified that Mr. E had contacted him after he received that notice, and advised Mr. Rogers that he wanted to avoid a hearing.⁷ Mr. E corroborated Mr. Rogers' testimony, stating that he was informed of the date and time of the hearing.⁸ Mr. E testified that he had simply forgotten about the hearing.⁹ He further testified that he was not asking for another hearing, and candidly admitted that he wanted to accept responsibility for his actions.¹⁰ Since Mr. E has failed to establish "good cause" for his failure to appear at the hearing held on February 15, 2015, a new hearing is not required.¹¹

II. Facts

Mr. E submitted an application for Food Stamps on or about November 14, 2012, September 13, 2013, February 18, 2014, and November 12, 2014.¹² Question 4 on the applications Mr. E submitted in November of 2012 and September 13, 2013 contained the following question: "Has anyone been convicted of any of the following types of felonies?" and had a check-off box for a "Drug-Related felony."¹³ Mr. E checked "no" in response to Question 4 on both of these applications.¹⁴ On the third application,¹⁵ which Mr. E submitted on February

⁴ The federal Food Stamp 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. 7 C.F.R. § 273.16(e)(4). Since Mr. E contacted OAH either the same day of the hearing or the day after the hearing had concluded, he acted within the time frame contemplated by the regulations. *See* 7 C.F.R. § 273.16(e)(4).

⁵ *See* 7 C.F.R. § 273.16(e)(4).

⁶ *See* Ex. 3, at p. 2.

⁷ Testimony of Mr. Rogers (status conference).

⁸ Testimony of Mr. Rogers (status conference).

⁹ Testimony of Mr. E (status conference).

¹⁰ Testimony of Mr. E (status conference).

¹¹ *See* 7 C.F.R. § 273.16(e)(4).

¹² Testimony of Mr. Giovanelli; *see also* Ex. 1, at p. 7; Ex. 7, at pp. 1, 9, 17 & 22.

¹³ Ex. 7, at pp. 2 & 10.

¹⁴ Ex. 7, at pp. 2 & 10; *see also* Testimony of Mr. Giovanelli.

¹⁵ The third application was entitled "Eligibility Review Form."

18, 2014, the same question concerning a drug-related felony was asked in an unnumbered question with a corresponding check-off box on the second page of the application.¹⁶ Mr. E checked “no” in response to that question.¹⁷ The fourth application, which Mr. E submitted on November 12, 2014, had a section entitled, in bold-face type, “**Felony Convictions.**”¹⁸ Question 119 in that section asked whether any member of the household had been convicted of a drug-related felony.¹⁹ Once again, Mr. E checked “no” in response to that question.²⁰

Mr. E signed each of these four applications, stating that:

Under penalty of perjury, I certify that all information contained in this application, is true and correct to the best of my knowledge.

I have read or had read to me the “Rights and Responsibilities” section of the application and I understand my rights and responsibilities, including fraud penalties²¹

In fact, Mr. E had been convicted on January 24, 2003 of third degree misconduct involving a controlled substance in violation of AS 11.71.030(a)(3)(A). A violation of this statute is a class B felony.²² This conviction resulted from conduct which had occurred on July 24, 2001.²³ Mr. E was sentenced to two years of jail time for this offense.²⁴

Based upon the answers he provided in each of his Food Stamp applications, Mr. E received Food Stamps benefits during the period from November, 2012 through January, 2015.²⁵ Because of his failure to report his prior drug-related felony conviction, the Division calculated that Mr. E had received \$2,723.00 in Food Stamp benefits which he was not entitled to receive.²⁶ The Division has characterized his failure to disclose his drug-felony conviction as a first-known IPV for Mr. E.²⁷

¹⁶ Ex. 7, at p. 18.

¹⁷ Ex. 7, at p. 18.

¹⁸ Ex. 7, at p. 31.

¹⁹ Ex. 7, at p. 31.

²⁰ Ex. 7, at p. 31; *see also* Testimony of Mr. Giovanelli.

²¹ Testimony of Mr. Giovanelli; *see also* Ex. 7, at pp. 8, 16, 21 & 33.

²² *See* AS 11.71.030(c).

²³ Ex. 10, at p. 1.

²⁴ Ex. 10, at p. 2.

²⁵ Ex. 11.

²⁶ Ex. 11; *see also* Testimony of Mr. Giovanelli.

²⁷ *See* Ex. 1, at p. 2.

Mr. E received the requisite notice of his administrative disqualification hearing from the Division on January 9, 2015.²⁸

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”²⁹ In order to prevail, the Division must prove this violation by clear and convincing evidence.³⁰ 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.³¹ 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.³² In addition, the household must repay any benefits wrongfully received.³³ In calculating a 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.³⁴ Since Mr. E only sought Food Stamp benefits for himself, this drug-related felony bars him from receiving Food Stamps because he is the sole member of his household.³⁵

It is highly probable that Mr. E was aware of his own conviction, knew that it was drug-related, and knew that it was a felony conviction in light of his two-year sentence. Since he had a drug-related felony conviction, Mr. E was required to disclose this in each of his four applications for Food Stamps.³⁶ If Mr. E had answered the question related to his status as a drug-related felon truthfully on each of the four applications for Food Stamps that he submitted, he would have been denied Food Stamps.³⁷ Instead, Mr. E gave false answers to that question in each of the four applications, which resulted in his receiving Food Stamps that he was not

²⁸ Ex. 3, at p. 2; *see also* Ex. 5, at p. 1.

²⁹ 7 C.F.R. § 273.16(c)(1).

³⁰ 7 C.F.R. § 273.16(e)(6).

³¹ *DeNuptiss v. Unocal Corp.*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

³² 7 C.F.R. § 273.16(b)(1).

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

³⁴ 7 C.F.R. § 273.11(m). There exceptions to this rule -- not applicable here -- if the state legislature has enacted legislation that exempts them from this exclusion.

³⁵ *See* Ex. 7; *see also* 7 C.F.R. § 273.11(m).

³⁶ *See* Ex. 10, at p. 1.

³⁷ *See* 7 C.F.R. § 273.1(b)(7)(vii).

entitled to receive during the period from November, 2012 through January, 2015.³⁸

Accordingly, the Division has shown by clear and convincing evidence that Mr. E has committed a first IPV of the Food Stamps Program.

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 12-month period. The Food Stamp disqualification period shall begin on June 1, 2015.³⁹ This disqualification applies only to Mr. E, and not to any other individual who may be included in his household at some future date.⁴⁰ 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 as they may be used in these determinations.⁴¹

The Division shall provide written notice to Mr. E and, if applicable, 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.⁴² If over-issued Food Stamp benefits have not been repaid, Mr. E is now required to make restitution.⁴³ If Mr. E disagrees with the Division's calculation of the amount of Food Stamps to be repaid, he may request a separate hearing on that limited issue.⁴⁴

Dated this 27th day of April, 2015.

Signed

Kathleen A. Frederick
Administrative Law Judge

³⁸ See Ex. 7, at pp. 2, 10, 17 & 21.

³⁹ 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).

⁴⁰ Mr. E in his Applications only applied for Food Stamps benefits for himself. However, should the size of his household subsequently increase, Mr. E is on notice that it is he who is disqualified from Food Stamp benefits in Alaska, rather than others in his household.

⁴¹ 7 C.F.R. § 273.11(c)(1).

⁴² 7 C.F.R. § 273.16(e)(9)(ii).

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

⁴⁴ 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 13th day of May, 2015.

By: Signed _____
Name: Andrew M. Lebo
Title: Administrative Law Judge/OAH

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