

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

In the Matter of)
)
 Q C)
_____)

OAH No. 15-0052-ADQ
DPA/FCU No.
Agency No.

CORRECTED¹ DECISION and ORDER

I. Introduction

Q C applied for Supplemental Nutrition Assistance Program (SNAP or Food Stamps) benefits in March 2013. On January 26, 2015, the Department of Health and Social Services, Division of Public Assistance (DPA or the Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing convened in this case on March 27, 2015, with Mr. C participating by telephone. DPA was represented at the hearing by Kenneth Cramer, an investigator employed by DPA's Fraud Control Unit. Mr. Cramer and Michael Giovanelli, a DPA Eligibility Technician, testified on behalf of DPA. DPA Exhibits 1-11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. C committed a first Intentional Program Violation of the Food Stamp programs. He must be barred from Food Stamp benefits for 12 months, and he is required to repay the benefits he received while he was ineligible.

II. Facts

Mr. C filed a new application for Food Stamp benefits on March 26, 2013.³ On the application, he checked the box for "no" in response to a question regarding employment, and he left the space blank in response to a question regarding sources of income.⁴ He signed the form under penalty of perjury.⁵

¹ A manifest error has been corrected in the case caption to reflect the correct agency case numbers.
² Ex. 3.
³ Ex. 8.
⁴ Ex. 8, pp. 7, 22.
⁵ Ex. 8, p. 28.

Mr. C attended an eligibility interview on April 3, 2013 in connection with the same application. His rights and responsibilities were explained to him and he indicated he understood and had no questions.⁶

Relying on the representations of Mr. C in his application and in his eligibility interview, the Division approved his application and issued Food Stamp benefits to him from March 2013 through January 2014.⁷ The Division subsequently learned that Mr. C became employed in April 2013, but he failed to report that employment or the income he received from it while receiving Food Stamp benefits.⁸ In addition, Mr. C filed a “recertification application” with the Division on July 3, 2013,⁹ and he filed a new application for Food Stamp benefits on February 24, 2014;¹⁰ on both occasions he failed to report his employment and income.

The Division has determined that Mr. C’s undisclosed employment and income put him over the income limit for Food Stamp eligibility for the months of July 2013 through January 2014.¹¹ As a result, he received Food Stamp benefits to which he was not entitled during those months, in an amount calculated to be \$1,516.¹²

Mr. C attended the hearing of this matter by telephone, but he did not controvert the Division’s recitation of the facts or provide any explanation regarding his failure to report his employment and related income. Nor did he argue that he misunderstood the Food Stamp program requirements that are pertinent to this case.

III. Discussion

A. Food Stamps

Federal law prohibits a person from seeking Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹³ In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ No evidence has been offered that Mr. C has ever been found to have committed a

⁶ Exh. 9; Giovanelli testimony.

⁷ Exh. 9.

⁸ Exh. 1, p. 5.

⁹ Exh. 8, p. 16.

¹⁰ Exh. 8, p. 17.

¹¹ Giovanelli testimony.

¹² Exh. 11.

¹³ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6).

prior IPV, and therefore this alleged IPV will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV's in his or her record, and other exceptions not relevant here, 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.¹⁵

It is clear, and essentially undisputed, that Mr. C obtained employment and received income from that employment during the relevant months in 2013 and 2014; and that he failed to disclose that employment and income to DPA during those months. The failure to disclose the employment and income was a misrepresentation by omission. The remaining issue is whether the misrepresentation was intentional. As discussed in the facts section above, the clear and convincing import of the evidence was that Mr. C knew he was required to report new employment and income to DPA, and that he was misstating facts by omitting them from his applications to DPA. This is enough to constitute an IPV.

IV. Conclusion and Order

Mr. C has committed a first time Intentional Program Violation of the Food Stamp program. He is disqualified from receiving Food Stamps benefits for a twelve-month period.¹⁶ The Food Stamps disqualification period shall begin June 1, 2015.¹⁷ This disqualification applies only to Mr. C, and not to any other individuals who may be included in his household.¹⁸ For the duration of the disqualification period, Mr. C's needs will not be considered when determining Food Stamps eligibility and benefit amounts for his household. However, he must report his income and resources so that they can be used in these determinations.¹⁹

DPA shall provide written notice to Mr. C 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

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

¹⁶ 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).

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 § 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).

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

Dated this 7th day of April, 2015.

Signed

Andrew M. Lebo

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 21st day of April, 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.]

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.