

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

In the Matter of	)	OAH No. 15-0125-ADQ
	)	Division No.
	)	Fraud Control Case No.
E A. K	)	Food Stamp Program
_____	)	

**DECISION**

**I. Introduction**

E K applied for Food Stamp<sup>1</sup> benefits in August of 2014, notwithstanding that he had a felony drug conviction in his past that made him ineligible. The Department of Health and Social Services, Division of Public Assistance (DPA) paid him benefits for five months before realizing that he should not have received them. DPA then initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program, requesting a twelve-month disqualification, and requesting that he be ordered to repay the benefits.

Mr. K’s hearing took place on March 20, 2015. He participated telephonically and testified on his own behalf. Dean Rogers, an investigator employed by the DPA’s Fraud Control Unit, represented and testified for the Division. Michael Giovanelli, an eligibility technician employed by the Division, also testified for DPA. Exhibits 1-11 were admitted without objection. The hearing was recorded.

This decision concludes that Mr. K cannot be found to have committed a first Intentional Program Violation on the basis of the evidence supplied. Nonetheless, Mr. K is in fact ineligible for Alaska Food Stamps for the rest of his life (unless the law changes, or his conviction is expunged in the future), and he must repay any benefits erroneously paid to him.

**II. Facts**

On August 27, 2014, while he was in the hospital for a heart attack,<sup>2</sup> friends brought Mr. K a Food Stamps application which they had filled out for him. He signed the front page.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> Mr. K’s testimony that he was in the hospital is verified by the agency case note at Ex. 8, p. 2.

<sup>3</sup> Although he did not have the application in front of him during the hearing, Mr. K admits signing the application, and the signature on the front page matches his credible testimony about the way he signs his name.

Someone else signed at other places on the form, including the Statement of Truth.<sup>4</sup> On the August 27 application, the “no” box is checked on the 16<sup>th</sup> page next to the question, “Has anyone been convicted of any of the following types of felonies,” under which “Drug-related felony” is one of the listed types. There does not seem to have been an in-person interview connected with the August 27 application, although rights and responsibilities were apparently read to Mr. K over the phone to his hospital room.<sup>5</sup> He visited a DPA location three weeks later to show his ID, but there is no indication that the contents of his application were discussed.<sup>6</sup>

Mr. K submitted a recertification application on October 27, 2014, at a time when he was again in the hospital. The application is filled out in completely different handwriting with different signatures from either of the ones on the August 27 application. Mr. K reports that the application was again filled out by friends. The “no” box is again marked regarding the drug felony question on page 16.

As he readily admits, Mr. K had in fact been convicted in 2004 of third degree misconduct involving a controlled substance, which is a Class B felony.<sup>7</sup> Mr. K says it is no excuse, but his friends did not know that he had been convicted of a felony and he just signed the applications. He admits that he did not really review the applications. The Division did not inquire as to whether Mr. K knew of the effect of a drug felony on eligibility.

Mr. K’s Food Stamps were approved, and he received benefits for August through December of 2014.<sup>8</sup> However, his conviction made him ineligible for these benefits. DPA calculates that Mr. K received \$943 in Food Stamp benefits that he was not entitled to receive.<sup>9</sup>

### **III. Discussion**

In order to establish an Intentional Program Violation of the Food Stamp program, DPA must show that Mr. K *intentionally* “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to his eligibility.<sup>10</sup> The Division must prove these elements by clear and convincing evidence.<sup>11</sup> Clear and convincing evidence is stronger than a preponderance of evidence but weaker than evidence beyond a reasonable doubt. “If clear and

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<sup>4</sup> The other signatures (Ex. 7, pp. 8, 9, 10) are quite different, and were clearly written by a different person.

<sup>5</sup> See Ex. 8, p. 1.

<sup>6</sup> Ex. 8, p. 4.

<sup>7</sup> See Ex. 10.

<sup>8</sup> Ex. 9.

<sup>9</sup> Ex. 11; Giovanelli testimony.

<sup>10</sup> 7 C.F.R. § 273.16(c).

<sup>11</sup> 7 C.F.R. § 273.16(e)(6).

convincing proof is required, there must be induced a belief that the truth of the asserted facts is highly probable.”<sup>12</sup> Intent can be deduced from circumstantial evidence.<sup>13</sup>

In this case, it is possible that Mr. K deliberately made a false answer about his conviction. But in light of his hospitalization for a serious illness—a fact recorded in the Division’s own records—and the strange appearance of the applications with several people having apparently filled them out in different handwriting, the evidence is too sparse to make it “clear and convincing” that Mr. K was deliberately engaging in fraud. Because the Division has not proved the element of intentionality to the required level of certainty, it has not met its burden of proof to establish an IPV.

Nonetheless, the Division has established—through Mr. K’s frank admission and other proof—that Mr. K has a drug felony conviction. This leads to largely the same result as establishing a third IPV: in Alaska, Mr. K will be ineligible for Food Stamps for the rest of his life, barring a change of law or a change in his conviction status.<sup>14</sup> Because the conviction predated the Food Stamp benefits he received in 2014, he was ineligible for those benefits and, in the absence of exceptional circumstances, he will have to repay them.

#### **IV. Conclusion**

Mr. K has not been proven by clear and convincing evidence to have committed a first Intentional Program Violation of the Food Stamp program. Nonetheless, it is established that he has a drug felony conviction that, under current law, creates a life-long bar to receiving Food Stamps in Alaska in the future. The same conviction disqualified him from the benefits he received in August to December of 2014.

DPA may seek to require Mr. K to make restitution of incorrectly issued benefits.<sup>15</sup> If Mr. K disagrees with the Division’s restitution demand, he may request a separate hearing on that issue.<sup>16</sup>

Dated this 13th day of April, 2015.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

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<sup>12</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>13</sup> 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 . . . .”

<sup>14</sup> See 7 C.F.R. § 273.11(m). Alaska has adopted no time limit or exception regarding this exclusion.

<sup>15</sup> 7 C.F.R. § 273.18(a).

<sup>16</sup> 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 30th day of April, 2015.

By: Signed  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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