

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

In the Matter of)
)
 M S) OAH No. 15-0249-ADQ
) FCU No.

DECISION and ORDER

I. Introduction

M S received Food Stamp¹ benefits in most months between November of 2011 and December of 2012. On March 6, 2015, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program in connection with some of those benefits.²

A hearing took place in two sessions on April 8 and 15, 2015. Kenneth Cramer, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Ms. S attended by telephone, but she elected not to testify, submit evidence, or make arguments. Exhibits 1 – 11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. S committed a first Intentional Program Violation of the Food Stamp program. She must be barred from Food Stamps for twelve months.

II. Facts

Ms. S began receiving Food Stamp benefits in 2011.³ On June 22, 2012 she submitted an Eligibility Review Forms (ERF) to recertify her eligibility.⁴ On that application, she apparently left many items blank, including the block for reporting employment. These items were completed on July 4, 2012 in a telephone interview with eligibility technician Denise B., who filled in the blanks according to information provided by Ms. S.⁵ The written record indicates clearly that Ms. S revealed only one job for the household, which was her son’s father’s

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

² Ex. 3.

³ Ex. 9, p. 4.

⁴ Ex. 8.

⁵ *Id.*, p. 2; Ex. 9.

employment at the No Name Hotel. The written materials Ms. S was given with the forms instructed of her obligation to report any employment or changes in employment.⁶ In addition, these obligations were discussed in the DPA interview with her on July 4, 2012.⁷

At the time she made this representation, Ms. S held two jobs. From May 30 to July 6, 2012, she worked as a telemarketer for No Name Business A.⁸ From June 19 to August 20, 2012, she worked as a payment processor for No Name Business B.⁹ Ms. S has no response to the clear implication that she withheld information when asked about the employment of household members.

The earnings from these unreported jobs totaled about \$4,000,¹⁰ and had this income been counted Ms. S would not have qualified for Food Stamps in July and August of 2012. DPA has calculated the resulting excessive benefits at \$326.¹¹

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹² In this case, DPA seeks to establish an IPV. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹³ No evidence has been offered that Ms. S has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that it is a first-time violation. Except for someone with prior IPVs in his or her record or who has other circumstances (not applicable here) that can lead to enhanced penalties, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . concealed or withheld facts” in connection with the program.¹⁴

Ms. S had significant jobs and earnings at the time of her recertification, and she denied having any. She knew employment, income, and changes in income are a key part of Food Stamps eligibility, having discussed them with the DPA representative in her interview and been told of the obligation to report. Because she knew she was supposed to mention her employment

⁶ Holton testimony; Ex. 7, p. 1.

⁷ Holton testimony; Ex. 9.

⁸ Ex. 10, p. 5.

⁹ Ex. 10, p. 2.

¹⁰ Ex. 10.

¹¹ Ex. 11; Holton testimony.

¹² *See, e.g.*, 7 U.S.C. § 2015(b).

¹³ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

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

when the eligibility technician was filling her form out with her over the phone, her failure to do so was an intentional misrepresentation of facts. It follows that she has committed a first IPV.

IV. Conclusion and Order

Ms. S has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.¹⁵ The Food Stamp disqualification period shall begin on July 1, 2015.¹⁶ This disqualification applies only to Ms. S, and not to any other individuals who may be included in her household.¹⁷ For the duration of the disqualification period, Ms. S's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, she must report her income and resources so that they can be used in these determinations.¹⁸

DPA shall provide written notice to Ms. S 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.¹⁹

If over-issued Food Stamp benefits have not been repaid, Ms. S or any remaining household members are now required to make restitution.²⁰ If Ms. S disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²¹

DATED this 24th day of April, 2015.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹⁵ 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).

¹⁶ 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).

¹⁷ 7 C.F.R. § 273.16(b)(11).

¹⁸ 7 C.F.R. § 273.11(c)(1).

¹⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

²¹ 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 11th day of May, 2015.

By: Signed _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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