

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

| | | |
|------------------|---|---------------------|
| In the Matter of |) | |
| |) | OAH No. 15-0250-ADQ |
| U T |) | DPA/FCU No. |
| _____ |) | Agency No. |

DECISION and ORDER

I. Introduction

U T received Food Stamp¹ benefits throughout the year 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.²

A hearing took place on April 30, 2015, with Ms. T having been sent advance notice of the hearing by both certified mail and standard First Class mail and having received the evidence packet by hand delivery. Ms. T participated in the hearing by telephone. 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. Exhibits 1 – 10, and Ms. T’s Exhibit A, were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that, although her intent may or may not have been fraudulent, Ms. T did commit a first Intentional Program Violation of the Food Stamp program. She must be barred from Food Stamps for twelve months.

II. Facts

Ms. T applied for Food Stamp benefits on an Eligibility Review Form on January 6, 2012.³ She correctly listed herself and her daughter, a high school student, as household members.⁴ On the second page, where she was required to list “MONEY RECEIVED” and “if you or anyone in your household is working”, she wrote “None.”⁵ However, from May of 2011

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. 8.

⁴ Ex. 8, p. 1; T testimony.

⁵ Ex. 8, p. 2.

to September of 2012 Ms. T's daughter was working a steady job at No Name Business,⁶ and thus the answer was untrue.

Ms. T frankly admits all this, and says "I wrote none and I shouldn't have."⁷ She says she had the erroneous idea that the income was under threshold to affect her benefits, and did not realize how much her daughter was making. She points out that eventually (in late November of 2012)⁸ she did turn in a document reporting to DPA that her daughter had held a job at No Name Business.

The income from the daughter's job was enough to greatly reduce the benefit they were eligible for. DPA has calculated the resulting excessive benefits at \$1842 over the course of ten months of 2012.⁹

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁰

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.¹¹ DPA concedes that it is not aware that Ms. T has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated as a first-time violation.

Except for someone with prior IPV's 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.¹²

Ms. T understood the question on her 2012 application and, knowing that her daughter had a job, she knowingly put "None" in the blank for listing work and income. She explains that she did not think the income was enough to affect her benefits, but the fact remains that she chose to put down an incorrect answer on her application and not disclose her daughter's job. Even if her recollection is correct that she did not think her benefits would be affected either way, the intentional concealment was an intentional program violation.

⁶ Ex. A, Ex. 9.

⁷ Testimony of Ms. T.

⁸ Ex. A.

⁹ Ex. 11.

¹⁰ *See, e.g.*, 7 U.S.C. § 2015(b).

¹¹ 7 C.F.R. § 273.16(e)(6).

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

IV. Conclusion and Order

Ms. T 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.¹³ The Food Stamp disqualification period shall begin July 1, 2015.¹⁴ This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.¹⁵ For the duration of the disqualification period, Ms. T's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations.¹⁶

DPA shall provide written notice to Ms. T 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.¹⁷

If over-issued Food Stamp benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.¹⁸ If Ms. T disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.¹⁹

Dated this 30th day of April, 2015.

Signed

Christopher Kennedy
Administrative Law Judge

¹³ 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).

¹⁴ 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).

¹⁵ 7 C.F.R. § 273.16(b)(11).

¹⁶ 7 C.F.R. § 273.11(c)(1).

¹⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

¹⁹ 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 20th day of May, 2015.

By: *Signed*

Name: Lawrence A. Pederson

Title: Administrative Law Judge

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