

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

In the Matter of)	
)	OAH No. 15-0269-ADQ
L S)	DPA/FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

L S is a former Food Stamp¹ recipient. On March 6, 2015, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

Mr. S's hearing first convened on April 10, 2015. After the administrative law judge reviewed his rights with him, Mr. S requested a postponement, and a new hearing date of May 22, 2014 was set. Mr. S did not appear for the second hearing session and could not be reached on the telephone number he had provided to the program.³ The hearing was held in his absence.⁴

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented the Division and supplied testimony by affidavit. Amanda Holton, an eligibility technician employed by the Division's Fraud Control Unit, also testified on the Division's behalf. The Division's exhibits were admitted into evidence.

This decision concludes that L S committed a first Intentional Program Violation of the Food Stamp program.

II. Facts

Mr. S applied for Food Stamp benefits on three occasions: April 2, 2013, May 12, 2013, and November 6, 2014.⁵ The applications contained question asking if he had been convicted of a drug-related felony. He answered "no" to that question on his first two applications.⁶ On the

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 Ex. 3.

³ L S was telephoned at XXX-XXX-XXXX at the time of hearing. He did not answer the call. Voice mails were left on that number and on a message number he had provided at one time, XXX-XXX-XXXX.

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

⁵ Ex. 7.

⁶ Ex. 7, pp. 2, 10.

third application he left the question blank, but it is likely, based on Division procedures, that he was asked the question orally in a telephone interview and again responded in the negative.⁷

In fact, only twenty months before the first of these three applications Mr. S had been convicted of a drug felony that he had committed in 2007.⁸ He served time in prison for the offense.⁹

Mr. S's applications were approved and he was issued Food Stamp benefits in most months between April of 2013 and February of 2015.¹⁰ The Division calculated that Mr. S was issued \$3,584 in Food Stamp benefits to which he was not entitled, as a result of his Food Stamp application being approved.¹¹

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹² that Mr. S intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."¹³ To meet this standard, the division must show that it is *highly probable* that Mr. S intended to provide or knowingly provided incorrect information.¹⁴

A review of the facts demonstrates that Mr. S has a conviction for a drug felony, but represented in his Food Stamp applications that he did not. The question then arises as to whether this was an intentional misrepresentation.

Intent can be deduced from circumstantial evidence.¹⁵ Mr. S was convicted for, and incarcerated for, a drug felony not long before he applied for Food Stamps. It is exceedingly improbable for him to have forgotten about that conviction at the time he applied for benefits. His denial of a conviction on the application was unequivocal, and he seems to have reiterated the denial in at least one oral interview. In the absence of an alternative explanation from Mr. S,

⁷ Holton testimony.

⁸ Ex. 10.

⁹ *Id.*

¹⁰ Exs. 8, 9.

¹¹ Amanda Holton's testimony; Ex. 11.

¹² 7 C.F.R. § 273.16(e)(6).

¹³ 7 C.F.R. § 273.16(c).

¹⁴ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003) (defining clear and convincing standard).

¹⁵ 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"

these facts make it highly probable that, in giving false information in support of his application, he was acting deliberately.

The Division has therefore met its burden of proof and established that Mr. S made an intentional misrepresentation on his three applications for benefits. This was his first Intentional Program Violation.

IV. Conclusion and Order

Mr. S has committed a first Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and he is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.¹⁶ The Food Stamp program disqualification period shall begin August 1, 2015.¹⁷ This disqualification applies only to Mr. S, and not to any other individuals who may be included in his household.¹⁸ For the duration of the disqualification period, Mr. S'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.¹⁹

The Division shall provide written notice to Mr. S and any remaining household members of the benefits that they will receive during the period of disqualification, or that they must reapply because the certification period has expired.²⁰

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

Dated this 22nd day of May, 2015.

Signed

Christopher Kennedy
Administrative Law Judge

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 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).

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).

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.

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 10th day of June, 2015.

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

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