

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

In the Matter of	)	OAH No. 15-0337-ADQ
	)	Division No.
N T	)	Fraud Control Case No.
_____	)	Food Stamp Program

**DECISION AND ORDER**

**I. Introduction**

N T is a Food Stamp<sup>1</sup> recipient. On March 26, 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 time Intentional Program Violation of the Food Stamp program.<sup>2</sup>

Mr. T's hearing began on April 28, 2015. Mr. T appeared telephonically and requested a postponement. The hearing was continued until May 21, 2015. Mr. T did not appear for that hearing and it was held in his absence, as authorized by 7 C.F.R. § 273.16(e)(4).<sup>3</sup>

Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton and Rueben Lumbab, both of whom are employed by the Division, testified on its behalf. C K also testified for the Division.

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

**II. Facts**

The following facts were established by clear and convincing evidence except where otherwise noted.

With the exception of three months in 2011, Mr. T has been receiving Food Stamp benefits continuously since December of 2006.<sup>4</sup> As part of every Food Stamp application, an applicant is informed that selling or trading Food Stamp benefits or the benefit debit card (EBT

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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> Ex. 3.

<sup>3</sup> Mr. T submitted a request on May 29, 2015 asking for a new hearing. That request was denied on June 5, 2015, because Mr. T failed to demonstrate good cause for his failure to appear on May 21, 2015.

<sup>4</sup> Ex. 8.

card), is an intentional program violation which could cause criminal prosecution and/or the loss of Food Stamp benefit eligibility.<sup>5</sup> Mr. T's most recent application for Food Stamp benefits was completed on November 17, 2014. He signed the application stating that he understood the "Rights and Responsibilities" section of the application.<sup>6</sup> The "Rights and Responsibilities" section of the application contains the warning about trading or selling Food Stamp benefits.<sup>7</sup> Mr. T participated in an interview on December 1, 2014, where his "Rights and Responsibilities" were explained to him.<sup>8</sup> His application was approved.<sup>9</sup>

Mr. T sold his Food Stamp EBT card to C K on January 5, 2015. Mr. T represented that there were \$227 in benefits on the EBT card. He was going to sell the EBT card to someone else for \$80, and Ms. K bought it for \$100.<sup>10</sup> On January 8, 2015, Mr. T reported that the EBT card had been stolen and was issued a replacement EBT card.<sup>11</sup> Ms. K tried to use the EBT card which she had purchased from Mr. T at No Name on January 12, 2015, where it was rejected as a stolen card.<sup>12</sup> Ms. K tried to call Mr. T at his mother's home. He did not return the call and Ms. K then reported her transaction with Mr. T to the Division.<sup>13</sup>

### **III. Discussion**

In order to prevail, the Division must prove by clear and convincing evidence<sup>14</sup> that Mr. T committed an Intentional Program Violation of the Food Stamp program: that he intentionally trafficked in Food Stamp benefits.<sup>15</sup> The Division's evidence demonstrates that Mr. T was intimately familiar with the Food Stamp program and its requirements, having been a Food Stamp benefit recipient since December 2006. He was notified, as part of every application for those benefits, that selling or transferring Food Stamp benefits was a violation of Food Stamp rules. However, he broke those rules by selling his benefits to Ms. K on January 5, 2015.

The question then arises as to whether Mr. T's sale of his EBT card was an intentional violation. Ordinarily, the only direct evidence of a person's intent is testimony from that person

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<sup>5</sup> See, e.g., Ex. 7, p. 6.

<sup>6</sup> Ex. 7, pp. 7 -18.

<sup>7</sup> Ex. 7, p. 6.

<sup>8</sup> Ex. 9; Ms. Holton's testimony.

<sup>9</sup> Ex. 10.

<sup>10</sup> Ex. 11; Ms. K's testimony.

<sup>11</sup> Mr. Lumbab's testimony.

<sup>12</sup> Ms. K's testimony; Mr. Lumbab's testimony; Exs. 11, 12.

<sup>13</sup> Ex. 11; Ms. K's testimony.

<sup>14</sup> 7 C.F.R. § 273.16(e)(6).

<sup>15</sup> 7 C.F.R. § 273.16(c)(2).

on that subject. However, Mr. T did not appear for his hearing. As a result, there is no direct evidence of his intent in the record.

Intent can, however, also be deduced from circumstantial evidence.<sup>16</sup> Mr. T was notified in writing, and orally at his interview, that it was a violation of the Food Stamp program's rules to sell or transfer his Food Stamp benefits. This is in addition to the numerous times he had previously received that same notification, since he has been applying for Food Stamp benefits since 2006. Absent any explanation or contrary testimony, which he did not present, the weight of the evidence leads to the conclusion, by clear and convincing evidence, that Mr. T intentionally broke the Food Stamp program's rules by selling his Food Stamp EBT card to Ms. K.

The Division has therefore met its burden of proof and demonstrated, by clear and convincing evidence, that Mr. T committed a first Intentional Program Violation of the Food Stamp program.

#### **IV. Conclusion and Order**

Mr. T has committed a first time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12-month period.<sup>17</sup> The Food Stamp program disqualification period shall begin August 1, 2015.<sup>18</sup> This disqualification applies only to Mr. T, and not to any other individuals who may be included in his household.<sup>19</sup> For the duration of the disqualification period, Mr. T'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.<sup>20</sup>

The Division shall provide written notice to Mr. T and any remaining household

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<sup>16</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>17</sup> 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).

<sup>18</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>19</sup> 7 C.F.R. § 273.16(b)(11).

<sup>20</sup> 7 C.F.R. § 273.11(c)(1).

members of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired.<sup>21</sup>

Dated this 9<sup>th</sup> day of June, 2015.

*Signed*

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Lawrence A. Pederson  
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 23<sup>rd</sup> day of June, 2015.

By: *Signed*

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Name: Lawrence A. Pederson  
Title: Administrative Law Judge, DOA/OAH

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

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<sup>21</sup> 7 C.F.R. § 273.16(e)(9)(ii).