

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

In the Matter of:)
)
 L T) OAH No. 15-0404-ADQ
) Agency No.

DECISION and ORDER

I. Introduction

The issue in this case is whether L T committed an Intentional Program Violation (IPV) of the Food Stamp program¹ by misrepresenting in her application for benefits that her children were living with her.

Ms. T's hearing was held on May 15, 2015. Dean Rogers, an investigator employed by the Fraud Control Unit of the Division of Public Assistance (Division), represented and testified for the Division. Amanda Holton, a Division Eligibility Technician, testified on behalf of the Division. F J, great-grandmother to Ms. T's children, also testified on behalf of the Division. Mr. Rogers and the Division's other witnesses appeared telephonically.

The Division provided Ms. T with advance notice of the hearing, by both certified mail and standard First Class mail sent to her address of record.² At the time of the hearing, Ms. T was called twice at the phone number provided by the Division, but she did not answer her phone, which was either turned off or disconnected. Consequently, the hearing went forward in her absence pursuant to Food Stamp regulations.³

This decision concludes that the Division proved by clear and convincing evidence that Ms. T committed a first-known IPV of the Food Stamp program.

II. Facts

Ms. T applied for Food Stamp benefits on February 4, 2015.⁴ As part of her application, she certified that she was living in a household in No Name, Alaska consisting of: herself, her

¹ In 2008 Congress amended the Food Stamp Act, at which time Congress changed the name of the Food Stamp program to the Supplemental Nutrition Assistance Program ("SNAP"). This decision follows the common practice of referring to SNAP as the Food Stamp program.

² See Ex. 4; Ex. 5; Ex. 6.

³ The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an IPV. 7 C.F.R. § 273.16(e)(4).

⁴ Ex. 7.

husband, their two daughters, and their son.⁵ Ms. T participated in an in-person intake interview on February 4, 2015, during which an Eligibility Technician explained disclosure requirements and reviewed the Division’s Rights and Responsibilities document with her.⁶

Ms. T’s Food Stamp application was subsequently approved for a five-person household (Ms. T, her husband, and the three minor children).⁷ The household received Food Stamp benefits for the months of February 2015 through March 2015, for a five-person household, in the total amount of \$1,707.⁸

On March 4, 2015, F J, great-grandmother to Ms. T’s minor children, notified the Division that the children had been residing in her household since August 2014.⁹ Ms. J presented a signed and notarized Delegation of Powers by Parent or Guardian form filled out by Ms. T.¹⁰ Ms. J sent this form, and a letter which explained the children’s housing to the Division.¹¹ Ms. J is 81 and retired.¹² At the hearing, she testified that Ms. T had claimed she would get Food Stamps for the children, and then give Ms. J either money or food to help her care for the children.¹³ Ms. J notified the Division when Ms. T failed to provide her with assistance.¹⁴ Ms. J further testified that L T and H T, III were using heroin and methamphetamine, which is why the children had been placed in her care.¹⁵

The Division calculated that as a result of Ms. T’s misrepresentation of the size of her household, she received \$918 in Food Stamp benefits that she was not entitled to receive.¹⁶

III. Discussion

The Division has the burden of proof to show, by clear and convincing evidence,¹⁷ that Ms. T committed an Intentional Program Violation of the Food Stamp program: *i.e.*, that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld

⁵ Ex. 7, pp. 1-6.
⁶ Ex. 7, pp. 14-17; Testimony of Amanda Holton.
⁷ Ex. 8.
⁸ Ex. 11.
⁹ Ex. 1, p. 2; Ex. 10, p. 1.
¹⁰ Ex. 10, p. 2.
¹¹ Ex. 10.
¹² Testimony of F J.
¹³ *Id.*
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ Ex. 11.
¹⁷ 7 C.F.R. § 273.16(e)(6).

facts” with regard to her Food Stamp benefits.¹⁸ Food Stamp eligibility and benefit amount determinations are based, in part, on the number of persons residing in the applicant’s household.¹⁹

It is not disputed that Ms. T listed the three children as living with her on her February 2015 application, although the children had been living with their maternal great-grandmother since August 2014. It can reasonably be inferred from the evidence that since Ms. T filled out the Delegation of Powers by Parent or Guardian form which gave responsibility for the children to Ms. J in August of 2014, she was aware that the children were not living with her when she completed the Food Stamp application.²⁰ Additionally, Ms. T had informed Ms. J she would get Food Stamp benefits for the children to give to Ms. J, which also indicates that she knew the children were residing with their great-grandmother.²¹ Consequently, Ms. T knew at the time she signed the February 4, 2015 application that the children were not living in her household.

An Eligibility Technician explained the Division’s Rights and Responsibilities document to Ms. T during the in-person interview on February 4, 2015.²² Therefore, she knew “hiding information or making false statements” constitutes an intentional violation of the Food Stamp Program as defined in 7 C.F.R. § 273.16.²³ Consequently, Ms. T intentionally misrepresented in her application that her three children were living with her, when they were not.

The Division has therefore met its burden of proof and established that Ms. T made an intentional misrepresentation on her February 4, 2015 Food Stamp application. As a result, Ms. T committed a first-known IPV.

IV. Conclusion and Order

Ms. T has committed a first-known Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the IPV.²⁴ The Food Stamp disqualification period shall begin September 1, 2015.²⁵ This

¹⁸ 7 C.F.R. § 273.16(c).

¹⁹ 7 C.F.R. § 273.10(e)(2)(i) and (ii)(A).

²⁰ Ex. 10, p. 2; Ex 7.

²¹ Testimony of F J.

²² Ex. 7, pp. 14-17.

²³ Ex. 7, p. 17.

²⁴ 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).

²⁵ 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.²⁶ 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 as they may be used in these determinations.²⁷

The Division 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.²⁸

If over-issued Food Stamp benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.²⁹ If Ms. T disagrees with the Division's calculation of the amount of over-issued benefits to be repaid, she may request a separate hearing on that limited issue.³⁰

Dated this 20th day of July, 2015.

Signed _____

Andrew M. Lebo
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 4th day of August, 2015.

By: *Signed* _____

Name: Andrew M. Lebo

Title: Administrative Law Judge/OAH

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

²⁶ 7 C.F.R. § 273.16(b)(11).

²⁷ 7 C.F.R. § 273.11(c)(1).

²⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁰ 7 C.F.R. § 273.15.