

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

In the Matter of	)	OAH No. 15-0868-ADQ
	)	Division No.
K G	)	Fraud Control Case No.
_____	)	Food Stamp Program

**DECISION AND ORDER**

**I. Introduction**

K G is a Food Stamp<sup>1</sup> recipient, who has been receiving Food Stamp benefits intermittently since 1995.<sup>2</sup> On July 10, 2015, the Department of Health and Social Services, Division of Public Assistance (Division), initiated this Administrative Disqualification case against her, alleging she had committed a third Intentional Program Violation of the Food Stamp program.<sup>3</sup>

Ms. G's hearing was held on August 14, 2015. Ms. G did not participate in the hearing and it proceeded in her absence.<sup>4</sup>

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. All of the Division's exhibits were admitted. This decision concludes that Ms. G committed a third Intentional Program Violation of the Food Stamp program, which permanently bars her from receiving Food Stamp benefits.

**II. Facts**

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

Ms. G was a Food Stamp recipient who applied to renew those benefits. Her renewal application is date stamped as having been received on October 6, 2014; it was signed on

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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. 9.

<sup>3</sup> Ex. 3.

<sup>4</sup> Ms. G was telephoned at her last known telephone number. This number belonged to another woman, who answered the phone on the third attempt, after two voicemail messages had been left for Ms. G, advising her that the hearing would proceed in her absence if she did not return the call. The woman who answered the telephone stated that Ms. G was choosing not to attend the hearing. 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 if there was good cause for the failure to appear.

October 2, 2014.<sup>5</sup> The renewal application contained a question asking whether anyone in her household was working. Ms. G answered that question with a “na” indicating she was not employed, further stating that her employment status was not likely to change soon.<sup>6</sup> Ms. G signed the application, certifying that the information contained in it was correct.<sup>7</sup> The Food Stamp application was approved and benefits were issued.<sup>8</sup>

Ms. G, however, began working on October 3, 2014, three days before she filed her October 6, 2014 renewal application with the Division. She was still working for that same employer when she applied to renew her Food Stamp benefits on May 1, 2015.<sup>9</sup> As part of that application, she again reported that she was not working.<sup>10</sup>

The Division initiated a fraud investigation which culminated in this case.<sup>11</sup> The Division calculated Ms. G received \$946 in Food Stamp benefits that she was not entitled to receive during the period from November 2014 through April 2015.<sup>12</sup>

Ms. G has two previous Food Stamp Intentional Program Violations, both of which were based on her intentional failure to notify the Division that she was receiving income, specifically child support income, on multiple Food Stamp applications.<sup>13</sup>

### **III. Discussion**

In order to prevail, the Division must prove by clear and convincing evidence<sup>14</sup> that Ms. G committed an Intentional Program Violation of the Food Stamp program: that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to either her October 6, 2014 or her May 1, 2015 application.<sup>15</sup> It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.<sup>16</sup>

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<sup>5</sup> Ex. 7, pp. 1 – 5.

<sup>6</sup> Ex. 7, p. 3.

<sup>7</sup> Ex. 7, p. 5.

<sup>8</sup> Ex. 9, p. 1.

<sup>9</sup> Ex. 7, pp. 6 – 10; Ex. 11, p. 2.

<sup>10</sup> Ex. 7, p. 8.

<sup>11</sup> Ex. 2.

<sup>12</sup> Ex. 13.

<sup>13</sup> Ex. 14, Alaska Dept. of Health and Social Services’ Office of Hearings and Appeals Case Nos. 08-ADH-20 (decision entered on July 17, 2008) and 08-ADH-53 (decision entered on March 5, 2009).

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

<sup>15</sup> 7 C.F.R. § 273.16(c).

<sup>16</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

The evidence is clear that Ms. G did not list her employment on either Food Stamp application, despite there being an explicit question regarding it. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Ms. G failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.<sup>17</sup> Ms. G has two prior Intentional Program Violations and has been receiving Food Stamp benefits since 1995. Based upon those prior violations and her 20-year history of receiving Food Stamp benefits, she was clearly aware of the requirement that she accurately report her income on her Food Stamp applications. Based upon Ms. G's prior experience with the Food Stamp program and its requirement that an applicant disclose his or her income, the Division has met its burden of proof and shown by clear and convincing evidence that Ms. G's failure to list her employment on both her October 6, 2014 and May 1, 2015 Food Stamp renewal applications was intentional. Because Ms. G has two prior Intentional Program Violations, she has committed a third Intentional Program Violation of the Food Stamp program.

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

Ms. G has committed a third time Intentional Program Violation of the Food Stamp program. She is therefore permanently disqualified from receiving Food Stamp benefits and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.<sup>18</sup> The Food Stamp program disqualification period shall begin November 1, 2015.<sup>19</sup> This disqualification applies only to Ms. G, and not to any other individuals who may be included in her household.<sup>20</sup> For the duration of the disqualification period, Ms. G'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.<sup>21</sup>

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<sup>17</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>18</sup> 7 C.F.R. § 273.16(b)(1)(iii); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>19</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>20</sup> 7 C.F.R. § 273.16(b)(11).

<sup>21</sup> 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to Ms. G 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.<sup>22</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. G or any remaining household members are now required to make restitution.<sup>23</sup> If Ms. G disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.<sup>24</sup>

Dated this 25th day of August, 2015.

*Signed*  
\_\_\_\_\_  
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 9th day of September, 2015.

By: *Signed*  
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Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge/OAH

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

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<sup>22</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>23</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>24</sup> 7 C.F.R. § 273.15.