

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

In the Matter of )  
 )  
 N D )  
\_\_\_\_\_ )

OAH No. 15-1197-ADQ  
FCU No.  
Agency No.

**DECISION AND ORDER**

**I. Introduction**

N D applied for Supplemental Nutrition Assistance Program (SNAP or Food Stamps) benefits on July 9, 2015, claiming her two children as minor dependents and members of the household.<sup>1</sup> On September 4, 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.<sup>2</sup>

A hearing convened in this case on October 9, 2015, with Ms. D failing to participate in person or by phone. DPA was represented at the hearing by Wynn Jennings, an investigator employed by DPA's Fraud Control Unit. Mike Giovanelli Holton, a DPA Eligibility Technician, testified on behalf of DPA. DPA Exhibits 1-10 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. D committed a first Intentional Program Violation of the Food Stamp program. By regulation, she must be barred from Food Stamp benefits for 12 months.

**II. Facts**

On July 9, 2015, Ms. D filed a GEN 72 eligibility report for Food Stamp benefits.<sup>3</sup> On the GEN 72 application form, she listed her two minor children as living with her.<sup>4</sup> Ms. D signed both forms under penalty of perjury.<sup>5</sup>

Both children had actually been in state custody since June 10, 2015.<sup>6</sup> They remained in state custody at least until August of 2015.<sup>7</sup>

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<sup>1</sup> Ex. 8, p.1 (The application signatures are dated July 9, 2015. The application is stamped as received by the DPA on July 10, 2015).

<sup>2</sup> Ex. 3. The application included another public assistance program but the DPA is only alleging a violation as to Food Stamps.

<sup>3</sup> Ex. 8.

<sup>4</sup> Ex. 8, pp. 1-5.

<sup>5</sup> Ex. 8, p. 5.

<sup>6</sup> Ex. 10, pp. 2-5.

Because the statement was discovered early in the process, no Food Stamp benefits were received by Ms. D.

### **III. Discussion**

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.<sup>8</sup> In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.<sup>9</sup> No evidence has been offered that Ms. D has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV's in his or her record, someone who falls in the federal ten-year exclusion provision, or someone who has used Food Stamps in a drug or weapons transaction, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.<sup>10</sup>

The unchallenged evidence establishes that Ms. D claimed that her two children were living with her at a time when they were, in fact, in foster care. Household composition is a central focus of an eligibility interview. It is unbelievable that it would have slipped Ms. D's mind that her children were not in her home. This is clear and convincing evidence that Ms. D's misrepresentation was intentional. This is enough to constitute an IPV.

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

Ms. D has committed a first-time Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a twelve-month period.<sup>11</sup> The Food Stamp disqualification period shall begin February 1, 2016.<sup>12</sup> This disqualification applies only to Ms. D, and not to any other individuals who may be included in her household.<sup>13</sup> For the duration of the disqualification period, Ms. D's needs will not be considered when

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<sup>7</sup> Ex. 10, pp. 2-5.

<sup>8</sup> See, e.g., 7 U.S.C. § 2015(b).

<sup>9</sup> 7 C.F.R. § 273.16(e)(6).

<sup>10</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

<sup>11</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>12</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 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>13</sup> 7 C.F.R. § 273.16(b)(11).

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.<sup>14</sup>

DPA shall provide written notice to Ms. D 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>15</sup>

Dated this 30th day of November, 2015.

*Signed*  
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Rebecca L. Pauli  
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 15th day of December, 2015.

By: *Signed*  
\_\_\_\_\_  
Name: Rebecca L. Pauli  
Title: Administrative Law Judge

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

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<sup>14</sup> 7 C.F.R. § 273.11(c)(1).

<sup>15</sup> 7 C.F.R. § 273.16(e)(9)(ii).