

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

In the Matter of:)
)
 B P. X) OAH No. 15-1278-ADQ
) Agency No.
_____)

DECISION AND ORDER

I. Introduction

B P. X was a Food Stamp recipient.¹ On September 29, 2015, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program by intentionally failing to disclose a felony drug conviction. A hearing was scheduled in this case for October 30, 2015.

This decision concludes that the DPA proved by clear and convincing evidence that Mr. X committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months and make restitution for the Food Stamps received while he was ineligible.

II. Facts

On August 30, 2013, a judgment of conviction was entered against Mr. X for the crime of Fourth Degree Misconduct Involving a Controlled Substance.² This constitutes a felony offense under Alaska law.³ The Superior Court sentenced Mr. X to serve 36 months with 33 months suspended and 3 years of probation.⁴

On February 27, 2014, DPA received Mr. X's Application for Services, on which Mr. X requested aid in the form of Food Stamps.⁵ The application asks certain questions, including whether anyone in the household had been convicted of a drug-related felony.⁶ In response to this question, Mr. X marked "no."⁷ On the last page of the application, Mr. X signed a statement certifying under penalty of perjury that the information contained in the application was correct

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 10, at 1.

³ AS 11.71.040(d).

⁴ Ex. 10, at 1.

⁵ Ex. 7, at 1.

⁶ Ex. 7, at 10.

⁷ Ex. 7, at 10.

to the best of his knowledge.⁸ Further, at his interview he stated that he had not been convicted of a drug-related felony.⁹

DPA approved Mr. X's application and issued Food Stamp benefits to him from February 2014 through May 2014.¹⁰ DPA has calculated the excessive benefits at \$696.¹¹

III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.¹²

In this case, DPA seeks to establish an IPV by Mr. X. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹³ DPA does not claim that Mr. X 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.

In the case of a first-time violation, not involving the use of Food Stamps in a drug or weapons transfer, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally . . . committed any act that constitutes a violation of the Food Stamp Act . . . for the purpose of acquiring . . . coupons."¹⁴ A coupon includes any "coupon, stamp, type of certificate, authorization card, cash or check" issued "for the purchase of eligible food."¹⁵

It is clear that on August 30, 2013, Mr. X was convicted of a felony drug violation. In February 2014, he applied for Food Stamps. The unchallenged evidence establishes that, on that application, he replied "no" when asked if anyone on the application had been convicted of a drug felony. Thus, the application was incorrect. If Mr. X had answered "yes," he would have been denied Food Stamp benefits. By answering "no," Mr. X violated the Food Stamp Act by withholding or concealing the fact that he had been convicted of a felony drug conviction.

Theoretically, Mr. X's failure to disclose his felony drug conviction could have been negligent rather than intentional. However, when directly asked at his interview whether he had been convicted of a drug-related felony, Mr. X responded in the negative. If Mr. X negligently

⁸ Ex. 7, at 12.

⁹ Ex. 8, at 2.

¹⁰ Ex. 8, at 3; Ex. 3, at 15.

¹¹ Ex. 3, at 15.

¹² *See, e.g.*, 7 U.S.C. § 2015(b).

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(2).

¹⁵ 7 C.F.R. § 273.2.

or mistakenly marked “no” on his application, he failed to correct his error at the interview. Failing to disclose this information at his interview constitutes clear and convincing evidence that Mr. X intentionally failed to report his felony drug conviction on his application in order to receive Food Stamp benefits. Therefore, Mr. X has committed a first IPV.

IV. Conclusion and Order

Mr. X 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. The Food Stamp disqualification period shall begin on January 1, 2016.¹⁶ This disqualification applies only to Mr. X, and not to any other individual who may be included in his household at some future date.¹⁷ For the duration of the disqualification period, Mr. X’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.¹⁸

The Division shall provide written notice to Mr. X 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.¹⁹

If over-issued Food Stamp benefits have not been repaid, Mr. X is now required to make restitution.²⁰ If Mr. X disagrees with DPA’s calculation of the amount of Food Stamps to be repaid, he may request a separate hearing on that limited issue.²¹

Dated this 30th day of November, 2015.

Signed

Rebecca Pauli
Administrative Law Judge

¹⁶ 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).

¹⁷ Mr. X, in his Applications, only applied for Food Stamp benefits for himself. However, should the size of his household subsequently increase, Mr. X is on notice that it is he who is disqualified from Food Stamp benefits in Alaska, rather than others in his household.

¹⁸ 7 C.F.R. § 273.11(c)(1).

¹⁹ 7 C.F.R. § 273.16(e)(9)(ii).

²⁰ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(E)(8)(iii).

²¹ 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 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.]