

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

In the Matter of)	
)	
N K. N)	OAH No. 15-1330-ADQ
<hr style="width:45%; margin-left:0"/>)	Agency No.

DECISION

I. Introduction

In a June 2015 application for Food Stamps benefits, N N answered “no” to the question whether she had ever been convicted of a “drug-related felony.” The Division of Public Assistance alleged that Ms. N’s failure to disclose a 2005 conviction for drug-related money laundering constituted an Intentional Program Violation (IPV) of the Food Stamps program, and, further, that this was Ms. N’s third such violation. After a full hearing and based on the evidence in the record, the Division proved Ms. N’s third IPV by clear and convincing evidence. Accordingly, its decision is affirmed.

II. Facts

In 2004, N N and three codefendants were indicted in federal district court on seven counts related to a drug-trafficking conspiracy.¹ In April 2005, Ms. N entered a guilty plea to felony money laundering under Count 7 of the Second Superseding Indictment in that case.² The Second Superseding Indictment specifically alleges that Ms. N and her codefendants were engaged in a conspiracy to possess and distribute drugs.³ In her written plea agreement, Ms. N admitted to engaging in financial transactions to further “some form of unlawful activity.”⁴ While she denied knowing what specific unlawful activity was actually being conducted, she admitted that she could be convicted regardless of “whether [she] knew that the specified unlawful activity was in fact drug trafficking as charged in the indictment.”⁵ As a result of her plea agreement, a judgment was entered against Ms. N, finding her guilty of felony money laundering under 18 USC § 1956(a)(1)(A), (B)(i), and (B)(ii).⁶

In August 2009, Ms. N was charged with first and second-degree theft arising out of her receipt of Alaska public assistance and unemployment insurance benefits.⁷ The allegations

¹ Ex. 10, pp. 23-34.
² Ex. 10, p. 21.
³ Ex. 10, pp. 32-33.
⁴ Ex. 10, p. 10.
⁵ Ex. 10, p. 10.
⁶ Ex. 10, p. 2.
⁷ Ex. 11, pp. 9-33.

related to theft of public assistance benefits included her failure to disclose, variously: (1) her ownership of a business whose income would have disqualified her from receiving benefits, (2) her access to various bank accounts, (3) “her drug related felony conviction for money laundering in July 2005;” and (4) her receipt of No Name unemployment insurance benefits at the same time she was receiving Alaska public assistance benefits.⁸

In July 2012, Ms. N, represented by counsel, entered a guilty plea of felony theft in the second degree based on these charges.⁹ In entering the plea agreement, Ms. N “admit[ted] the conduct alleged by the probable cause statement in the complaint.”¹⁰ As a result of the plea agreement, Ms. N was sentenced to 36 months in prison, with 18 months suspended.¹¹ Additionally, Ms. N was temporarily disqualified from the Food Stamps program for “for her second intentional program violation.”¹²

In June 2015, Ms. N again applied for Food Stamps.¹³ The application contains a section titled “Felony Convictions.” Question 119 asks: “has anyone been convicted of [a] drug-related felony?” Ms. N checked “No.”¹⁴ Ms. N’s application was approved, and the family again began receiving Food Stamps.¹⁵

On October 7, 2015, the Fraud Control Unit of the Division of Public Assistance notified Ms. N that she was suspected of an Intentional Program Violation.¹⁶ After a period of delay requested by Ms. N, the hearing on these allegations was held on December 21, 2015.¹⁷ Ms. N represented herself and testified on her own behalf. Dean Rogers represented the Division and offered his own testimony as well as the testimony of DPA Eligibility Technicians Amanda Holton and Mike Giovanelli. Exhibits 1 – 14 were admitted into evidence. Following the hearing, the record was held open for the parties to submit written post-hearing briefing, which

⁸ Ex. 11, pp. 10-20.

⁹ Ex. 11, p. 1.

¹⁰ Ex. 11, p. 1; Testimony of Dean Rogers.

¹¹ Ex. 11, p. 2.

¹² Ex. 11, p. 2. Ms. N received her first intentional program violation penalty from the No Name Division of Welfare and Supportive Services in September 2005. Ex. 13. In October 2012, Ms. N signed an Administrative Disqualification Hearing Waiver agreeing to a 24-month suspension of Food Stamp benefits based on her second IPV. Ex. 14.

¹³ Ex. 7.

¹⁴ Ex. 7, p. 9.

¹⁵ Ex. 8.

¹⁶ Ex. 3.

¹⁷ In the interim, on October 27, 2015, Ms. N pleaded guilty in Anchorage Superior Court to unsworn falsification, a crime of dishonesty. Testimony of Ms. N; Anchorage Superior Court Case No. 3AN-14-00000CR.

the Division did. The record closed on January 14, 2016, and the matter was taken under advisement at that time.

III. Discussion

Federal law prohibits a person from obtaining Food Stamps by making a false or misleading statement, or by misrepresenting, concealing or withholding facts¹⁸ In order to prove an Intentional Program Violation of the Food Stamps program, the Division must prove by clear and convincing evidence that Ms. N intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts” on her application.¹⁹ A person who is found to have committed an IPV is disqualified from receiving Food Stamps for 12 months for a first time violation, 24 months for a second violation, and permanently for a third IPV.²⁰ In addition, the household must repay any benefits wrongfully received.²¹

A. Ms. N’s 2005 Conviction is a Drug-Related Felony Conviction.

Individuals who have been convicted of a drug-related felony are ineligible for Food Stamps.²² Convictions that count towards this exclusion are those for which an element of the offense is possession, use, or distribution of a controlled substance as defined by the Controlled Substance Act, 21 U.S.C. 802(6).²³

In 2005, Ms. N pleaded guilty to felony money laundering under 18 U.S.C. 1956 § (a)(1)(A)(i), (B)(i), and (B)(ii).²⁴ Those sections penalize parties who conduct financial transactions involving the proceeds of unlawful activity, as follows:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A) (i) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

¹⁸ 7 U.S.C. § 2015(b); 7 C.F.R. § 273.16(c)(1).

¹⁹ 7 C.F.R. § 273.16(c)(1); 7 C.F.R. § 273.16(e)(6).

²⁰ 7 C.F.R. § 273.16(b)(1).

²¹ 7 C.F.R. § 273.16(b)(12)

²² 7 C.F.R. § 273.11(m). Federal law allows exceptions to this rule if a state’s legislature has enacted legislation exempting them from this exclusion, but the Alaska legislature has not enacted any such legislation.

²³ 7 C.F.R. § 273.11(m).

²⁴ Ex. 10, pp. 2, 9.

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

In Ms. N's case, two separate "specified unlawful activities" were identified in the indictment: (1) "conspiracy to distribute and to possess with intent to distribute cocaine, a violation of 21 U.S.C. § 846," and (2) "the distribution and possession with intent to distribute cocaine, violations of 21 U.S.C. § 841(a)(1)."²⁵ Thus, in Ms. N's case, the distribution of cocaine was an element of her money laundering conviction.²⁶

Ms. N argues that her professed ignorance of the drug trafficking conspiracy should insulate her from the conviction being treated as "drug-related." This argument is not persuasive. The specific count to which Ms. N pleaded guilty charged her with using her bank account "to make cash deposits in Alaska consisting of drug trafficking proceeds, to accumulate drug trafficking proceeds in those bank accounts, and to make withdrawals outside of Alaska of those drug trafficking proceeds[.]"²⁷

The money laundering conviction requires that Ms. N's actions have been done in furtherance of a "specified unlawful activity." In Ms. N's case, that particular activity was identified as "the distribution and possession with intent to distribute" cocaine. In this case, then, the conviction "has as an element the possession . . . or distribution of a controlled substance."²⁸ Ms. N's plea agreement admits that her illegal acts were done "to facilitate and promote the commission of the specified unlawful activity," identified in the indictment as possession and distribution of cocaine. While not all money laundering convictions would fall under 21 U.S.C. § 862a(a)'s prohibitions, Ms. N's – which required the "specified unlawful activit[ies]" of drug possession and distribution – does. Her denial of knowledge that the "specified illegal activity" involved drugs does not alter the elements of the conviction.

Because Ms. N's conviction was for money laundering based on the "specified unlawful activit[ies]" of drug possession and drug distribution, it falls within the definition of a drug-related felony under 21 U.S.C. § 862a(a)(2). Ms. N thus committed a misrepresentation in her application for Food Stamps when she answered no to the question whether she had a drug-related felony conviction.

²⁵ Ex. 10, pp. 32-33.

²⁶ *Accord* OAH No. 14-0642-ADQ (Commissioner of Health and Social Services 2014).

²⁷ Ex. 10. P. 33.

²⁸ *See* 21 USC 862a(a).

B. The Division Proved an Intentional Program Violation.

In order to prove an IPV, the Division must also show that Ms. N’s misrepresentation was intentional. The Division has met its burden.

Ms. N argued at the hearing that her conviction was not drug-related because the language of her plea agreement disavowed awareness that the “specified illegal activity” involved drugs. She also testified generally that she has some health problems and a bad memory. This testimony is insufficient to overcome the strong evidence of an intentional misrepresentation.

Ms. N was charged in federal court in a multi-count drug trafficking conspiracy, and ultimately entered into a plea agreement while represented by counsel. Ms. N was then charged in state court with multiple counts of theft related to public assistance benefits, including, specifically, theft by failing to disclose the federal drug-related felony conviction in subsequent applications for Food Stamps. Again with the assistance of counsel, she entered a guilty plea admitting that conduct.

In addition to the strong inference of intentionality presented by these facts, the record contains evidence of multiple crimes of dishonesty, including a very recent conviction for “unsworn falsification.” And one such crime – the 2012 felony theft conviction – specifically involves the same factual events giving rise to the current dispute. Ms. N’s multiple crimes of dishonesty render her testimony less credible.²⁹

Under the totality of these circumstances, it is impossible to view the misrepresentation in this case as anything other than “intentional.” Ms. N’s self-serving protestations of poor memory are insufficient to overcome the evidence that her violation was intentional. The Division has met its burden of proving an IPV by clear and convincing evidence.

C. This Was Ms. N’s Third Intentional Program Violation.

The penalty for an IPV depends on how many prior IPVs an individual has. Here, the Division seeks to impose a third IPV, the result of which is permanent disqualification of the individual from the Food Stamps program.³⁰ While Ms. N argues that an IPV committed in No Name should not count against her in Alaska, she is incorrect as a matter of law. The contours of IPVs are established by federal law, and IPVs carry over between states, with a federal database

²⁹ See Alaska R. Evid. 609.

³⁰ As with all periods of disqualification for IPVs, this disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.

existing specifically to ensure that states may track IPV's between states.³¹ The Division proved that Ms. N had two prior IPV's – the first in No Name in 2005, and the second in Alaska in 2012.³² Accordingly, this is her third IPV.

IV. Conclusion

Ms. N 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 also required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³³

This disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.³⁴ Henceforth, Ms. N'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.³⁵

The Division shall provide written notice to Ms. N and any remaining household members of the benefits they will receive as a result of this disqualification, or that they must reapply because the certification period has expired.³⁶

If over-issued Food Stamp benefits have not been repaid, Ms. N or any remaining household members are now required to make restitution.³⁷ If Ms. N disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³⁸

DATED January 20, 2016.

Signed _____
Cheryl Mandala
Administrative Law Judge

³¹ Testimony of Mr. Giovanelli.

³² Ex. 13; Ex. 14; Testimony of Mr. Giovanelli.

³³ 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).

³⁴ 7 C.F.R. § 273.16(b)(11).

³⁵ 7 C.F.R. § 273.11(c)(1).

³⁶ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁸ 7 C.F.R. § 273.15.

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of February 2016.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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