

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

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| In the Matter of |) | OAH No. 15-1360-ADQ |
| |) | Division No. |
| K B |) | Fraud Control Case No. |
| _____ |) | Food Stamp Program |

DECISION AND ORDER

I. Introduction

K B is a former Food Stamp¹ recipient. On October 2, 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 first time Intentional Program Violation of the Food Stamp program.²

Ms. B’s hearing began on November 4, 2015. Ms. B appeared telephonically. She represented herself. The hearing was continued until November 25, 2015 to allow Ms. B to pick up the Division’s evidence packet and prepare for the hearing. Ms. B did not appear for the November 25 hearing, either in-person or telephonically. The hearing proceeded in her absence, as authorized by 7 C.F.R. § 273.16(e)(4).

Ken Cramer, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division. Mike Giovanelli, an eligibility technician employed by the Fraud Control Unit, testified for the Division.

This decision concludes that Ms. B committed a first Intentional Program Violation of the Food Stamp program.

II. Facts

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

Ms. B was a Food Stamp recipient who applied to renew those benefits on May 7, 2014. As part of the application process, she was provided a copy of the “Rights and Responsibilities”

¹ 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.

² Ex. 3.

instructions, for which she acknowledged receipt. Those “Rights and Responsibilities” instructions inform a Food Stamp recipient that he or she is required to notify the Division when his or her household income exceeds the income limit for his or her household size.³ Ms. B has a two person household, consisting of herself and her mother. At the time of her May 7 renewal application, both Ms. B and her mother had part-time jobs.⁴ Ms. B’s May 7 renewal application was approved and she was sent written notice on June 25, 2014 that the income limit for her household was \$2,100 and she was required to notify the Division, within 10 days, if that income limit was exceeded.⁵

Ms. B obtained a new job on June 20, 2014, which was in addition to her previous part-time job.⁶ Ms. B’s mother continued in her part-time job. The combination of Ms. B’s part-time job, her additional job, and the mother’s part-time job resulted in Ms. B’s total household income to exceed the \$2,100 income limit in either July or August of 2014.⁷ Ms. B did not report the new job to the Division.⁸

Ms. B applied to renew her Food Stamp benefits in November 2014. She was still working her part-time job and her new job. Her application only mentioned her mother’s part-time job and her part-time job. It did not mention the job she started in June.⁹

The Division initiated a fraud investigation which culminated in this case.¹⁰ The Division calculated Ms. B received \$69 in Food Stamp benefits that she was not entitled to receive during the period from September 2014 through November 2014.¹¹

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹² that Ms. B committed an Intentional Program Violation of the Food Stamp program: that she intentionally

³ Ex. 7; Ex. 8, pp. 1 – 5.

⁴ Ex. 8, pp. 1, 3; Ex. 9, pp. 3 – 4.

⁵ Ex. 9, p. 5; Mike Giovanelli’s testimony.

⁶ Ex. 10, p. 6.

⁷ Ms. B’s mother earned an average of \$1,494 per month in the third quarter (July, August, and September) 2014. Ex. 10, p. 4. Ms. B earned \$1,343.90 in July 2014 for her one job, not including her first part-time job. Her income for August, not including her first part-time job, was \$2,389.25 (August had three paychecks). Ex. 10, p. 9. Because the record does not show the actual monthly income for either Ms. B’s or her mother’s part-time jobs, it is possible that their income was substantially below their normal average in July, and their total income could have therefore been under the \$2,100 limit. However, it is clear that their joint total income exceeded the \$2,100 limit in August.

⁸ Mike Giovanelli’s testimony.

⁹ Ex. 8, pp. 6 – 10.

¹⁰ Ex. 2.

¹¹ Mike Giovanelli’s testimony; Ex. 11.

“made a false or misleading statement, or misrepresented, concealed, or withheld facts” either by failing to notify the Division within 10 days of an increase in her income that exceeded the \$2,100 income limit for her Food Stamp household or by failing to disclose her second job on her November 14, 2014 Food Stamp renewal application.¹³ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.¹⁴

The evidence is clear that Ms. B’s total household income exceeded \$2,100 in either July or August of 2014 and she did not report it. She also did not list the job she obtained in June 2014 on her November 2014 Food Stamp renewal application; she did list both her and her mother’s part-time jobs. The question then arises as to whether these were intentional misrepresentations. Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. However, Ms. B did not appear for her hearing. As a result, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹⁵ The fact that Ms. B was notified of her reporting obligation, by written notice, only days after she began her new job, supports a factual conclusion that she knew of the obligation to report her new income within 10 days and consciously disregarded it. Her completion of the November renewal application, with its omission of her June 2014 job, while it listed her and her mother’s part-time jobs, was a clear intentional omission. As a result, the Division has met its burden of proof and demonstrated, by clear and convincing evidence, that Ms. B intentionally did not report her June 2014 new job within 10 days of her knowledge that her total household income would exceed \$2,100, and she also intentionally failed to list that job on her November 2014 Food Stamp application. Consequently, Ms. B has committed a first Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

Ms. B has committed a first time 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

¹² 7 C.F.R. § 273.16(e)(6).

¹³ 7 C.F.R. § 273.16(c).

¹⁴ 7 C.F.R. § 273.10(e)(1)(i)(A).

¹⁵ 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”

Intentional Program Violation.¹⁶ The Food Stamp program disqualification period shall begin February 1, 2016.¹⁷ This disqualification applies only to Ms. B, and not to any other individuals who may be included in her household.¹⁸ For the duration of the disqualification period, Ms. B'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.¹⁹

The Division shall provide written notice to Ms. B 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.²⁰

If over-issued Food Stamp benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.²¹ If Ms. B disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.²²

Dated this 8th day of December, 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 22nd day of December, 2015.

By: Signed

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge/OAH

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

¹⁶ 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).

¹⁷ 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).

¹⁸ 7 C.F.R. § 273.16(b)(11).

¹⁹ 7 C.F.R. § 273.11(c)(1).

²⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

²² 7 C.F.R. § 273.15.