

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

In the Matter of	)	
	)	
C F. N	)	OAH No. 15-1458-ADQ
_____	)	Agency No.

**DECISION AND ORDER (Corrected)<sup>1</sup>**

**I. Introduction**

C F. N is a former Food Stamp<sup>2</sup> recipient. On November 19, 2015, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.<sup>3</sup>

Mr. N failed to appear or otherwise participate in the December 22, 2015 hearing. He could not be reached on the telephone number he had provided to the program.<sup>4</sup> The hearing was held in his absence.<sup>5</sup>

Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented the Division and supplied testimony by affidavit. The Division’s exhibits were admitted into evidence.

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

**II. Facts**

Mr. N applied for, received, and redeemed Food Stamp benefits from February 2011 through November 2014.<sup>6</sup> He filed a total of nine applications.<sup>7</sup> The applications contained a

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<sup>1</sup> The introductory paragraphs have been corrected to reflect that this is Mr. N’s *first* IVP. Prior to the correction, the introductory paragraphs referenced a third IVP. The correction does not alter the decision and order in this matter.

<sup>2</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>3</sup> Ex. 3.

<sup>4</sup> C F. N was telephoned at 000-000-0000 at the time of hearing. Mail addressed to the address he provided was returned to sender. Ex. 4; Ex. 5.

<sup>5</sup> 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 and have a new hearing if there was good cause for the failure to appear.

<sup>6</sup> Ex. 6; Ex. 8.

<sup>7</sup> Ex. 6.

question asking if he had been convicted of a drug-related felony. He answered “no” to that question on each application.<sup>8</sup>

Mr. N was convicted of two counts of Misconduct Involving a Controlled Substance in the Fourth Degree.<sup>9</sup> The offense was committed on November 21, 1997.<sup>10</sup> He was convicted by a jury on March 10, 1999.<sup>11</sup> On July 12, 2001, his drug convictions were affirmed.<sup>12</sup>

Mr. N’s applications were approved and he was issued Food Stamp benefits in most months between April of 2013 and February of 2015. The Division calculated that Mr. N was issued \$10,437 in Food Stamp benefits to which he was not entitled, as a result of his Food Stamp application being approved.<sup>13</sup>

### III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence<sup>14</sup> that Mr. N intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>15</sup> To meet this standard, the Division must show that it is *highly probable* that Mr. N intended to provide or knowingly provided incorrect information.<sup>16</sup>

A review of the facts demonstrates that Mr. N has two drug felony convictions, but represented in his Food Stamp applications that he did not. The question then arises as to whether this was an intentional misrepresentation.

Intent can be deduced from circumstantial evidence.<sup>17</sup> Mr. N was convicted for, and incarcerated for, two drug felonies long before he applied for Food Stamps. His case was appealed and went before the Alaska Court of Appeals. It is exceedingly improbable for him to have forgotten about these convictions at the time he applied for benefits. His denial of a conviction on the application was unequivocal. In the absence of an alternative explanation from

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<sup>8</sup> Ex. 6, pp. 2, 9, 13, 17, 22, 29, 33, 38, 43.

<sup>9</sup> Ex. 9.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Ex. 10.

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

<sup>15</sup> 7 C.F.R. § 273.16(c).

<sup>16</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003) (defining clear and convincing standard).

<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 . . . .”

Mr. N, these facts make it highly probable that, in giving false information in support of his application, he was acting deliberately.

The Division has therefore met its burden of proof and established that Mr. N made an intentional misrepresentation on his nine applications for benefits. This was his first Intentional Program Violation.

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

Mr. N has committed a first Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and he 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 March 1, 2016.<sup>19</sup> This disqualification applies only to Mr. N, and not to any other individuals who may be included in his household.<sup>20</sup> For the duration of the disqualification period, Mr. N'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.<sup>21</sup>

The Division shall provide written notice to Mr. N and any remaining household members of the benefits that 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, Mr. N or any remaining household members are now required to make restitution.<sup>23</sup> If Mr. N disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.<sup>24</sup>

Dated this 26th of January *nunc pro tunc* January 22, 2016.

Signed

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Rebecca L. Pauli  
Administrative Law Judge

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<sup>18</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>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).

<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.

## 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 5th day of February, 2016.

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

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