

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

In the Matter of:	)	
	)	
E L. T, SR.	)	OAH No. 15-1462-ADQ
	)	DPA Case No.
_____	)	FCU Case No.

**DECISION AND ORDER**

**I. Introduction**

E L. T is a former recipient of Food Stamp program<sup>1</sup> benefits.<sup>2</sup> On November 19, 2015, the State of Alaska Division of Public Assistance (Division) initiated this Administrative Disqualification case against Mr. T, alleging that he committed a first-time Intentional Program Violation (IPV) of the Food Stamp program by intentionally failing to disclose a felony drug conviction on a benefit application form. This decision concludes, based on the evidence presented, that Mr. T did in fact commit an Intentional Program Violation of the Food Stamp program by intentionally failing to report a felony drug conviction. Mr. T is therefore disqualified from participation in the Food Stamp program for a period of twelve months.

**II. Facts**

On June 9, 2000, a judgment of conviction was entered against Mr. T for the crime of Fourth Degree Misconduct Involving a Controlled Substance.<sup>3</sup> This was a felony offense under Alaska law.<sup>4</sup> The conviction was based on conduct which occurred on April 7, 2000.<sup>5</sup>

Mr. T has received Food Stamp benefits sporadically from February 1, 1984 until September 1, 2015.<sup>6</sup> On July 16, 2015, Mr. T completed, signed, and submitted an application for Food

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<sup>1</sup> Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP). However, the program is still most commonly referred to as the "Food Stamp program," and this decision will therefore also refer to the program as the "Food Stamp" program.

<sup>2</sup> Ex. 9.

<sup>3</sup> Ex. 10 p. 1.

<sup>4</sup> Mr. T was convicted of violating Alaska Statute (A.S.) § 11.71.040(a)(3)(A). That statute, titled "Misconduct Involving a Controlled Substance in the Fourth Degree," provides in relevant part:

(a) Except as authorized in [inapplicable], a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person . . . (3) possesses . . . any amount of a schedule IA or IIA controlled substance . . .

. . . .

(d) Misconduct involving a controlled substance in the fourth degree is a Class C felony.

<sup>5</sup> Ex. 10 p. 1.

<sup>6</sup> Ex. 9 p. 1.

Stamps and other forms of public assistance.<sup>7</sup> In response to a question asking whether anyone in his household had been convicted of a drug-related felony, Mr. T answered “no.”<sup>8</sup> On the last page of the application, Mr. T signed a statement certifying, under penalty of perjury, that the information in his application was true and correct to the best of his knowledge.<sup>9</sup>

On July 21, 2015, Mr. T participated in an eligibility interview with a DPA eligibility technician (ET).<sup>10</sup> There is no indication in the notes taken by the ET that Mr. T mentioned his felony drug conviction during his interview.<sup>11</sup> The Division subsequently approved Mr. T's Food Stamp application and issued Food Stamp benefits to him for the next three months.<sup>12</sup>

On September 17, 2015, the Division became aware of Mr. T's felony drug conviction and initiated a fraud investigation which culminated in the Division's filing of this case.<sup>13</sup> The Division notified Mr. T of its filing of this case, and of his hearing date, on November 19, 2015.<sup>14</sup> On November 20, 2015, the Office of Administrative Hearings independently mailed a notice to Mr. T informing him of the pendency of these proceedings and the date of his hearing.

Mr. T's hearing was held on December 22, 2015. Mr. T did not attend and could not be reached by phone. The hearing proceeded in his absence as authorized by 7 C.F.R. 73.16(e)(4). Dean Rogers, an investigator employed by the Division's Fraud Control Unit, participated in the hearing by phone and represented the Division. Eligibility technician Amanda Holton participated in the hearing by phone and testified on behalf of the Division. The record closed at the end of the hearing.

### **III. Discussion**

#### **A. Intentional Program Violations Under the Food Stamp Program**

In order to prove that Mr. T committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove by clear and convincing evidence<sup>15</sup> that Mr. T “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting

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<sup>7</sup> Ex. 7 pp. 1 - 12.

<sup>8</sup> Ex. 7 p. 10.

<sup>9</sup> Ex. 7 p. 12.

<sup>10</sup> Ex. 8.

<sup>11</sup> Ex. 8.

<sup>12</sup> Ex. 8 pp. 2 - 3; Ex. 9 p. 1.

<sup>13</sup> Exs. 1, 2.

<sup>14</sup> Ex. 3 p. 2.

<sup>15</sup> 7 C.F.R. § 273.16(e)(6).

his July 16, 2015 application for Food Stamp benefits, and that these misrepresentations / concealments were intentional.<sup>16</sup>

**B. Disqualification of Persons Convicted of Drug-Related Felonies**

Persons who have been convicted of felonies involving controlled substances are disqualified from participation in the Food Stamp program.<sup>17</sup> Although the states have the discretion to exempt recipients from the drug felony disqualification rule,<sup>18</sup> the State of Alaska has not enacted legislation either exempting Alaska state residents from disqualification or limiting the period of program ineligibility.<sup>19</sup>

**C. Mr. T Committed an Intentional Program Violation**

Initially, it is clear that Mr. T did not report his felony drug conviction on his July 16, 2015 Food Stamp application form.<sup>20</sup> This constitutes misrepresentation by omission or the concealment and/or withholding of facts.

The next issue is whether Mr. T's misrepresentation was intentional. A person's state of mind (for example, whether the person acted intentionally or merely recklessly or negligently) must often be inferred from circumstantial evidence.<sup>21</sup> In this case, Mr. T did not participate in his hearing, so his state of mind can only be inferred from circumstantial evidence.

Theoretically, Mr. T's failure to disclose his felony drug conviction could have been negligent rather than intentional. However, the renewal application signed by Mr. T contained a certificate requiring him to confirm, under penalty of perjury, that the application had been completed truthfully and accurately. In addition, Mr. T certified that he had read, and understood, a statement of his legal rights and responsibilities which was attached to the renewal application.<sup>22</sup> This document reiterated that it is illegal to make false statements on a Food Stamp application, and that an individual can be disqualified from participating in the program for doing so. Accordingly,

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<sup>16</sup> 7 C.F.R. § 273.16(c).

<sup>17</sup> 21 U.S.C. § 862a (a)(1) provides in relevant part that “[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of Title IV of the Social Security Act [42 U.S.C. § 601 et seq.].” This includes the Food Stamp program. 7 C.F.R. § 273.11(m), one of the implementing regulations for 21 U.S.C. § 862a (a)(1), provides in relevant part that “[a]n individual convicted (under federal or state law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member . . . .”

<sup>18</sup> See 21 U.S.C. § 862a(d)(1) and 7 C.F.R. § 273.11(m) (quoted above).

<sup>19</sup> See A.S. §§ 47.25.975 – 990; 7 AAC § 46.010 *et. seq.*

<sup>20</sup> Ex. 7.

<sup>21</sup> *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

<sup>22</sup> Ex. 7 pp. 12 - 16.

it is reasonable to infer that Mr. T understood the importance of truthfully and accurately completing his application for Food Stamps. Together, these factors constitute clear and convincing evidence that Mr. T's failure to report his felony drug conviction was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Mr. T committed an Intentional Program Violation as defined by applicable Food Stamp program statutes and regulations. This is Mr. T's first Intentional Program Violation of the Food Stamp program.<sup>23</sup>

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

Mr. T has committed a first-time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp program benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid to him as a result of his Intentional Program Violation.<sup>24</sup> The Food Stamp program disqualification period shall begin on March 1, 2016.<sup>25</sup> This disqualification applies only to Mr. T and not to any other individuals who may be included in his household.<sup>26</sup> For the duration of the disqualification period, Mr. T's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. T must report his income and resources as they may be used in these determinations.<sup>27</sup> The Division shall provide written notice to Mr. T 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>28</sup> If over-issued Food Stamp benefits have not been repaid, Mr. T or any remaining household members are now required to make restitution.<sup>29</sup> If Mr. T 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>30</sup>

Dated this 13th day of January, 2016.

*Signed*

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Jay Durych

Administrative Law Judge

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<sup>23</sup> Ex. 1 pp. 1, 7.

<sup>24</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>25</sup> 7 U.S.C. 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>26</sup> 7 C.F.R. § 273.16(b)(11).

<sup>27</sup> 7 C.F.R. § 273.11(c)(1).

<sup>28</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>29</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>30</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 22nd day of January, 2016.

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

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