

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

In the Matter of:	)	
	)	
T M. L	)	OAH No. 16-0002-ADQ
	)	DPA Case No.
_____	)	FCU Case No.

**DECISION AND ORDER**

**I. Introduction**

T L is a former recipient of Food Stamp benefits. On January 5, 2016 the Division of Public Assistance (DPA or Division) initiated this Administrative Disqualification case against Ms. L, alleging that she committed a first-time Intentional Program Violation (IPV) of Food Stamp program regulations. This decision concludes, based on the evidence presented, that Ms. L intentionally withheld information from the Division concerning her receipt of Food Stamp benefits issued by the state of Washington, thereby causing her to receive Food Stamp benefits from the state of Alaska, during the period from May 2015 through August 2015, to which she was not legally entitled. In doing so, Ms. L committed a first-time Intentional Program Violation of Food Stamp program regulations, and she is therefore disqualified from participation in the Food Stamp program for a period of 12 months.

**II. Facts**

On May 4, 2015, Ms. L submitted an application for Food Stamp benefits to the Washington State Department of Social and Health Services ("Washington").<sup>1</sup> Ms. L's Food Stamp application was granted,<sup>2</sup> and she began receiving Food Stamp benefits from Washington on May 4, 2015.<sup>3</sup> She received electronic credits on her Washington Food Stamp program debit card, (known as an EBT card), on May 4, June 4, July 4, August 4, September 4, and October 4, 2015.<sup>4</sup> Ms. L received a total of \$1,144.00 in Food Stamp benefits from Washington during this five month period, and she redeemed those benefits in Washington, Alaska, and Texas.<sup>5</sup>

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<sup>1</sup> Ex. 9 pp. 1 - 8.

<sup>2</sup> C C's hearing testimony. Mr. C is a fraud investigator employed by the state of Washington.

<sup>3</sup> Ex. 9 p. 11; C C's hearing testimony.

<sup>4</sup> Ex. 9 pp. 9 - 11; C C's hearing testimony.

<sup>5</sup> Ex. 9 pp. 9 - 11; C C's hearing testimony.

On May 26, 2015, Ms. L completed, signed, and submitted an application for Food Stamp benefits to the state of Alaska Department of Health and Social Services ("Alaska").<sup>6</sup> The application form contained a question asking whether Ms. L was receiving any form of public assistance, including Food Stamp benefits, in any other state.<sup>7</sup> Ms. L responded "no" to this question.<sup>8</sup> On the last page of the application form, Ms. L signed a statement certifying, under penalty of perjury, that the information contained in her application was true and correct.<sup>9</sup>

On May 28, 2015, Ms. L participated in an eligibility interview with a DPA eligibility technician (ET).<sup>10</sup> The notes taken by the ET state that Ms. L told the ET that she had previously received Food Stamp benefits in North Carolina, but that her North Carolina Food Stamp case had been closed two months earlier on March 31, 2015.<sup>11</sup> The ET's notes also state that Ms. L told her that she had been in Oregon prior to moving to Alaska, but that she did not apply for or receive Food Stamp benefits from Oregon.<sup>12</sup> There is no indication whatsoever in the ET's notes that Ms. L reported that she had been in Washington immediately prior to coming to Alaska, or that she had applied for (and was currently receiving) Food Stamp benefits from Washington.<sup>13</sup> Ms. L did, however, confirm to the ET that she had read the "Rights and Responsibilities" section of the Food Stamp application,<sup>14</sup> and that she understood her rights and responsibilities under the Food Stamp program and had no questions about them.<sup>15</sup>

On May 29, 2015, Alaska notified Ms. L that she had been approved to receive two months of Food Stamp benefits.<sup>16</sup> Alaska subsequently issued Food Stamp benefits to Ms. L, for the months of May, June, July, and August, 2015, in the total amount of \$724.00.<sup>17</sup> Ms. L subsequently used (redeemed) all of these benefits.<sup>18</sup> Accordingly, during the months of May through August 2015, Ms. L was receiving and redeeming Food Stamp benefits, issued by two different states, at the same time.

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<sup>6</sup> Ex. 7 pp. 5 - 16.

<sup>7</sup> Ex. 7 p. 14, item 118.

<sup>8</sup> Ex. 7 p. 14, item 118.

<sup>9</sup> Ex. 7 p. 16.

<sup>10</sup> Ex. 8 p. 1.

<sup>11</sup> Ex. 8 p. 1.

<sup>12</sup> Ex. 8 p. 1.

<sup>13</sup> Ex. 8 p. 1.

<sup>14</sup> A copy of the "Rights and Responsibilities" section of the Division's application form is contained in the record at Ex. 7 pp. 1 - 4.

<sup>15</sup> Ex. 8 p. 1.

<sup>16</sup> Ex. 8 pp. 2 - 3.

<sup>17</sup> Ex. 8 p. 4; Ex. 10 p. 1; Amanda Holton's hearing testimony.

<sup>18</sup> Ex. 10 p. 1; Amanda Holton's hearing testimony.

On August 5, 2015 the Division became aware that Ms. L had been receiving Food Stamp benefits in both Alaska and Washington at the same time.<sup>19</sup> The Division then initiated a fraud investigation which culminated in this case.<sup>20</sup>

The Division notified Ms. L of its filing of this case, and of her hearing date, on January 5, 2016.<sup>21</sup> On the same date the Office of Administrative Hearings (OAH) mailed Ms. L a separate notice confirming that her hearing had been scheduled for February 9, 2016.

Ms. L's hearing began as scheduled on February 9, 2016. Ms. L did not attend the hearing and could not be reached by phone. The hearing proceeded in Ms. L's absence as required by 7 C.F.R. Section 273.16(e)(4). Kenneth Cramer, an investigator employed by the Division's Fraud Control Unit, participated in the hearing by phone and represented the Division. DPA eligibility technician Amanda Holton, and Washington fraud investigator C C, participated in the hearing by phone and testified on behalf of the Division. The record closed at the end of the hearing.

### **III. Discussion**

In order to prove that Ms. L committed an Intentional Program Violation of the Food Stamp program, the Division must prove, by clear and convincing evidence,<sup>22</sup> that Ms. L "made a false or misleading statement, or misrepresented, concealed, or withheld facts" in connection with her May 26, 2015 application for Food Stamp benefits, and that this misrepresentation / concealment was intentional.<sup>23</sup> Initially, it is clear that Ms. L did not report her receipt of Food Stamp benefits from the state of Washington either on her Alaska application form or during her Alaska eligibility interview. This constitutes misrepresentation by omission, concealment, and/or withholding.

The next issue is whether Ms. L's misrepresentation was intentional. Ms. L did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence. Her failure to disclose her receipt of Food Stamp benefits from another state could theoretically have been merely negligent. However, Ms. L had applied for Food Stamps in Washington only three weeks before she applied for them in Alaska. Further, Ms. L's application indicates that she had no other source of money or food during May 2015, so the fact that she was receiving Food Stamp benefits from Washington would have been hard for her to forget, as Ms. L was completely dependent on those benefits at the time. Finally, it would be hard to miss the "Statement of Truth"

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<sup>19</sup> Ex. 2 p. 1.

<sup>20</sup> Exs. 1, 3.

<sup>21</sup> Exs. 1, 3, 4.

<sup>22</sup> 7 C.F.R. § 273.16(e)(6).

<sup>23</sup> 7 C.F.R. § 273.16(c).

provision directly above the Food Stamp application form's signature line. Together, these factors constitute clear and convincing evidence that Ms. L's failure to disclose her receipt of Food Stamp benefits from Washington was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. L committed an Intentional Program Violation as defined by the Food Stamp program regulations. This is Ms. L's first known Intentional Program Violation.<sup>24</sup>

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

Ms. L has committed a first-time Intentional Program Violation of the regulations 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 to her as a result of her Intentional Program Violation.<sup>25</sup> The Food Stamp disqualification period shall begin April 1, 2015.<sup>26</sup> This disqualification applies only to Ms. L and not to any other individuals who may be included in her household.<sup>27</sup> For the duration of the disqualification period, Ms. L's needs will not be considered when determining eligibility and benefit amounts for her household. However, Ms. L must report her income and resources as they may be used in these determinations.<sup>28</sup> The Division shall provide written notice to Ms. L 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>29</sup> If over-issued Food Stamp benefits have not been repaid, Ms. L or any remaining household members are now required to make restitution.<sup>30</sup> If Ms. L disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.<sup>31</sup>

Dated this 10th day of February, 2016.

*Signed*

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Jay Durych

Administrative Law Judge

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<sup>24</sup> Ex. 1 p. 6.

<sup>25</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>26</sup> 7 USC 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>27</sup> 7 C.F.R. § 273.16(b)(11).

<sup>28</sup> 7 C.F.R. § 273.11(c)(1).

<sup>29</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>30</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>31</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 23rd day of February, 2016.

By: Signed \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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