

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

In the Matter of:)	
)	
B M. E)	OAH No. 16-0010-ADQ
)	DPA Case No.
_____)	FCU Case No.

DECISION AND ORDER

I. Introduction

B E is a former recipient of Food Stamp benefits. On December 30, 2015, the Division of Public Assistance (DPA or Division) initiated this Administrative Disqualification case against Ms. E, alleging that she committed a first-time Intentional Program Violation (IPV) of Food Stamp program regulations.¹ This decision concludes, based on the evidence presented, that Ms. E intentionally withheld information from the Division concerning her employment and income, thereby causing her to receive Food Stamp benefits to which she was not legally entitled. In doing so, Ms. E committed a first-time Intentional Program Violation of Food Stamp program regulations. Accordingly, Ms. E is disqualified from receiving Food Stamp program benefits for a period of 12 months.

II. Facts

Ms. E lives with her husband and their four minor children.² On August 26, 2014, Ms. E completed, signed, and submitted an application form for Food Stamp and Medicaid benefits.³ The application form contained questions asking whether anyone in Ms. E's household was working and receiving income from employment or self-employment.⁴ Ms. E responded to the question by stating that she was working 20 hours per week for a company named Facility X.⁵ At the end of the application form, Ms. E signed a statement certifying, under penalty of perjury, that the information contained in her application was true and correct.⁶

On September 22, 2014, Ms. E participated in a telephonic eligibility interview conducted by a DPA eligibility technician (ET).⁷ The notes taken by the ET state that Ms. E told the ET that

¹ Ex. 3.
² Ex. 8 pp. 6 - 8; Ex. 9 p. 1.
³ Ex. 8 pp. 1- 21.
⁴ Ex. 8 p. 6.
⁵ Ex. 8 p. 6.
⁶ Ex. 8 p. 14.
⁷ Ex. 9 pp. 1 - 3.

her husband was not working at that time, and that her employment with Facility X was her household's only source of income at that time.⁸ The ET's notes also state that Ms. E confirmed that she had read the "Rights and Responsibilities" section of the application form,⁹ and that she understood her rights and responsibilities under the Food Stamp program and had no questions about them.¹⁰

Information obtained by the Division from an online employment and wage information clearinghouse for private employers indicates that Ms. E was hired by Facility Y on August 27, 2014, which was one day *after* she submitted her Food Stamp application, but 26 days *before* she participated in her eligibility interview.¹¹ Ms. E continued to work for Facility Y until October 16, 2014; during the six weeks she worked for Facility Y, Ms. E received three paychecks totaling \$1,844.61.¹² Thus, Ms. E was employed by, and receiving paychecks from, Facility Y at the time she participated in her eligibility interview on September 22, 2014.

Ms. E's August 26, 2014 Food Stamp application was approved by the Division on September 23, 2014.¹³ Ms. E's household subsequently received and redeemed Food Stamp benefits each month through July 2015.¹⁴ During the months of September 2014 - October 2014, Ms. E's household received \$781.00 more in Food Stamp benefits than it would have received had Ms. E correctly reported her true employment and income during this period.¹⁵

The Division became aware of Ms. E's unreported employment and income on February 21, 2015, while processing her household's Food Stamp recertification (renewal) application.¹⁶ The Division then initiated a fraud investigation which culminated in this case.¹⁷

The Division notified Ms. E of its filing of this case, and of her hearing date, on December 30, 2015.¹⁸ On January 6, 2016, the Office of Administrative Hearings (OAH) mailed Ms. E a separate notice confirming that her hearing had been scheduled for February 9, 2016.

Ms. E's hearing began as scheduled on February 9, 2016. Ms. E did not attend the hearing and could not be reached by phone. Accordingly, the hearing proceeded in Ms. E's absence as

⁸ Ex. 9 pp. 1 - 2.

⁹ Ex. 7 is a copy of the "Rights and Responsibilities" section of the Division's benefit application form.

¹⁰ Ex. 9 p. 1.

¹¹ Ex. 11 p. 2.

¹² Ex. 11 pp. 2 - 3.

¹³ Ex. 10 p. 1.

¹⁴ Ex. 12 p. 1.

¹⁵ Ex. 13.

¹⁶ Ex. 2 p. 1.

¹⁷ Ex. 1.

¹⁸ Exs. 3, 4, 5.

required by 7 C.F.R. Section 273.16(e)(4). William Schwenke, an investigator employed by the Division's Fraud Control Unit, participated in the hearing by phone and represented the Division. DPA eligibility technician Laurie Walters 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. E committed an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁹ that Ms. E “made a false or misleading statement, or misrepresented, concealed, or withheld facts” during her September 22, 2014 eligibility interview, and that this misrepresentation / concealment / withholding was intentional.²⁰ Initially, there is no evidence that Ms. E reported her employment with, or income from, Facility Y on September 22, 2014, when she participated in her telephonic eligibility interview with a DPA eligibility technician. Given the depth of the ET's case notes on other issues, it is virtually certain that, had Ms. E mentioned her new employment at Facility Y to the ET, the ET would have recorded it. Likewise, there is no evidence in the record that Ms. E reported her employment and income from Facility Y to the Division at any other time. This constitutes misrepresentation by omission, concealment, and/or withholding.

The next issue is whether Ms. E's misrepresentation was intentional. Ms. E did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence. Her misrepresentation could theoretically have been merely negligent. However, Ms. E received a paycheck from Facility Y just three days prior to her eligibility interview.²¹ This fact makes it unlikely that her failure to report her employment with, and income from, Facility Y, was accidental. Overall, the evidence is clear and convincing that Ms. E's failure to report her employment and income from Facility Y was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. E committed an Intentional Program Violation as defined by Food Stamp program regulations. This is Ms. E's first known Intentional Program Violation of the Food Stamp program.²²

IV. Conclusion and Order

Ms. E 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-

¹⁹ 7 C.F.R. § 273.16(e)(6).

²⁰ 7 C.F.R. § 273.16(c).

²¹ Ex. 11 p. 3.

²² Ex. 1 p. 6.

month period, and is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.²³ The Food Stamp disqualification period shall begin April 1, 2016.²⁴ This disqualification applies only to Ms. E and not to any other individuals who may be included in her household.²⁵ For the duration of the disqualification period, Ms. E's needs will not be considered when determining eligibility and benefit amounts for her household. However, Ms. E must report her income and resources as they may be used in these determinations.²⁶ The Division shall provide written notice to Ms. E 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.²⁷ If over-issued Food Stamp benefits have not been repaid, Ms. E or any remaining household members are now required to make restitution.²⁸ If Ms. E 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.²⁹

Dated this 11th day of February, 2016.

Signed _____
Jay Durych
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 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.]

²³ 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).

²⁴ 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 (9th Cir. 1995).

²⁵ 7 C.F.R. § 273.16(b)(11).

²⁶ 7 C.F.R. § 273.11(c)(1).

²⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁹ 7 C.F.R. § 273.15.