

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

In the Matter of)	
)	OAH No. 16-0058-ADQ
U D)	DPA/FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

U D applied for and received Food Stamp¹ benefits in Alaska in July of 2011. The Department of Health and Social Services, Division of Public Assistance (DPA) later found that he had failed to disclose that he was receiving benefits in Oregon at the same time, and on January 26, 2016 it initiated an Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

The hearing convened on March 1, 2016, with Mr. D having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Mr. D did not attend his hearing and could not be reached at the telephone number he had provided to the program, nor at any other known number for him. The hearing went forward in his absence.⁴

Vance Canoy, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Mr. Canoy testified on behalf of DPA. Exhibits 1-12 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. D committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months.

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 3.

³ Ex. 1, p. 3; Ex. 3; Ex. 4; Ex. 6. Mr. D signed for the certified mail.

⁴ Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

II. Facts

Mr. D has received Food Stamps off and on in Alaska since early 2007.⁵ In April of 2011, during a hiatus in his Alaska Food Stamps history, he went to Oregon and applied for Food Stamps there.⁶ His application was approved, and from April until September of 2011 Mr. D received and used Oregon Food Stamp benefits.⁷

Meanwhile, on July 13, 2011 Mr. D applied for Food Stamps in Alaska.⁸ The application asked if he had received Food Stamps in Alaska or any other state, and he responded “no.”⁹ In an eligibility interview that was extensively reported in the agency case notes, his Oregon trip was discussed but he likewise did not disclose drawing Food Stamps from that state.¹⁰

Mr. D’s Alaska application was approved, and he began receiving Food Stamps in Alaska in July 2011, continuing without interruption until June 2012.¹¹ There was an overlap of three months between his Alaska and Oregon benefits. DPA has calculated that he received a total of \$514 in benefits during those three months that he could not have received had the Alaska DPA known about the Oregon benefits.

DPA learned of Mr. D’s receipt of double benefits through its own investigation in December of 2012, and the matter was referred for a fraud investigation.¹² Eventually, this proceeding ensued.

III. Discussion

Apart from exceptional circumstances that do not apply here, it is prohibited by federal law for a person to participate in the Food Stamp program from two different households or in two different states in the same month.¹³ It is also prohibited to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁴ In this case, DPA seeks to show such a violation to be an Intentional Program Violation, or IPV. To establish

⁵ Ex. 8.

⁶ Ex. 10, p. 11.

⁷ Ex. 9, p. 12, Ex. 10, p. 7.

⁸ Ex. 7.

⁹ *Id.*, p. 3.

¹⁰ Ex. 9, p. 3.

¹¹ Ex. 8, p. 1.

¹² Ex. 9, p. 12.

¹³ See 7 C.F.R. §§ 273.3(a), 271.2. The exceptional circumstances are when a person is residing in a battered persons’ shelter and was, during the same month, a member of the abuser’s household. Mr. D’s applications in the record show that this was not applicable in his case.

¹⁴ See, e.g., 7 U.S.C. §2015(b).

an IPV, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁵ No evidence has been offered that Mr. D has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that it is a first-time violation.

Except for someone with prior IPV's in his or her record or in certain other narrow circumstances that apparently do not apply here,¹⁶ federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁷

It is clear that Mr. D applied for Food Stamps in Alaska at a time when he was still receiving and using Food Stamp benefits from Oregon, falsely mentioning nothing about this situation on his application, even in response to a direct question. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Mr. D failed to appear for or testify at his hearing, but his intent can be deduced from circumstantial evidence. Mr. D was actually receiving and using Oregon benefits to make purchases at the same time he was applying for, and began receiving, duplicate benefits in Alaska. This cannot have been a mere oversight, since he would have been holding and using two EBT cards at the same time. His failure to disclose his Oregon Food Stamps was clearly intentional, and he has therefore committed a first IPV.

IV. Conclusion and Order

Mr. D has committed a first time Intentional Program Violations of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.¹⁸ The Food Stamp disqualification period shall begin May 1,

¹⁵ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

¹⁶ DPA has not sought to bring this case under the ten-year disqualification that applies to individuals proven to have “made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously.” *See* 7 U.S.C. § 2015(j); 7 C.F.R. § 273.16(b)(5). The evidence in this case might have supported such a penalty (*cf. In re N.Y.T.*, OAH No. 12-0280-ADQ (Comm’r of Health & Soc. Serv. 2012)

(<http://aws.state.ak.us/officeofadminhearings/Documents/ADQ/ADQ120280.pdf>), but since it was not mentioned in the notice to Mr. D, nor argued at the hearing, it cannot be applied now.

¹⁷ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

¹⁸ 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).

2016.¹⁹ This disqualification applies only to Mr. D, and not to any other individuals who may be included in his household.²⁰ For the duration of the disqualification period, Mr. D'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 so that they can be used in these determinations.²¹

DPA shall provide written notice to Mr. D 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.²²

If over-issued Food Stamp benefits have not been repaid, Mr. D or any remaining household members are now required to make restitution.²³ If Mr. D disagrees with DPA's calculation of the amount of over-issuance to be repaid, he may request a separate hearing on that limited issue.²⁴

Dated this 3rd day of March, 2016.

Signed

Christopher Kennedy
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 17th day of March, 2016.

By: *Signed*

Name: Christopher Kennedy
Title: Deputy Chief ALJ

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

¹⁹ 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 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).

²⁰ 7 C.F.R. § 273.16(b)(11).

²¹ 7 C.F.R. § 273.11(c)(1).

²² 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁴ 7 C.F.R. § 273.15.