

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

In the Matter of:)
)
 B B. L) OAH No. 16-0222-ADQ
) DPA Case No.
) FCU Case No.

DECISION AND ORDER

I. Introduction

B B. L is a former recipient of Food Stamp program benefits.¹ On March 11, 2016, the State of Alaska Division of Public Assistance (Division) initiated this Administrative Disqualification case against Mr. L, 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.² This decision concludes, based on the evidence presented, that Mr. L did in fact commit an Intentional Program Violation of the Food Stamp program by intentionally failing to report a felony drug conviction. Mr. L is therefore disqualified from participation in the Food Stamp program for a period of twelve months.

II. Facts

On September 8, 2014, a judgment of conviction was entered against Mr. L for the crime of Fourth Degree Misconduct Involving a Controlled Substance.³ This was a felony offense under Alaska law.⁴ The conviction was based on conduct which occurred on January 4, 2012.⁵

Mr. L received Food Stamp benefits sporadically from December 2010 until March 2016.⁶ On January 26, 2016, Mr. L completed, signed, and submitted an application for Food Stamps and other forms of public assistance.⁷ In response to a question asking whether anyone in his household had been convicted of a drug-related felony, Mr. L answered “no.”⁸ On the last

¹ Ex. 7. 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 generally referred to as the "Food Stamp program," and this decision will therefore also refer to the program as the "Food Stamp program."

² Ex. 3 at 2.

³ Ex. 8 at 1.

⁴ Mr. L 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.

⁵ Ex. 8 at 1.

⁶ Ex. 7 p. 1.

⁷ Ex. 5.

⁸ Ex. 5 p. 10.

page of the application, Mr. L signed a statement certifying, under penalty of perjury, that the information in his application was true and correct to the best of his knowledge.⁹

On January 30, 2016, Mr. L participated in an eligibility interview with a Division eligibility technician.¹⁰ The technician's notes specifically state that, during the interview, the ET advised Mr. L of his rights and responsibilities as a recipient of Food Stamp benefits. There is no indication in the notes that Mr. L mentioned his felony drug conviction to the technician during the eligibility interview. The Division subsequently approved Mr. L's Food Stamp application and issued Food Stamp benefits to him for February and March 2016 totaling \$256.00.¹¹

On February 22, 2016, the Division learned about Mr. L's felony drug conviction and initiated a fraud investigation.¹² On March 11, 2016 the Division mailed notice to Mr. L of its filing of this case and of his hearing date.¹³ On March 15, 2016, the Office of Administrative Hearings independently mailed a notice to Mr. L informing him of the pendency of these proceedings and the date of his hearing.¹⁴

Mr. L's hearing was held on April 15, 2016. Mr. L did not attend and could not be reached by telephone.¹⁵ 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, represented the Division. Eligibility technician Amanda Holton testified for the Division. The record closed at the end of the hearing.

⁹ Ex. 5 p. 12.

¹⁰ All factual findings in this paragraph are based on Ex. 6 unless otherwise stated.

¹¹ Ex. 7 p. 1; Ex. 9 p. 1.

¹² Ex. 1 p. 3 para. 6; Ex. 3; Ex. 4.

¹³ Ex. 3 p. 2.

¹⁴ The Division mailed notice of the proceedings to Mr. L, at his last-known address, via both First Class Mail and Certified Mail (Ex. 1 p. 3 para. 6). The Office of Administrative Hearings (OAH) mailed notice to Mr. L, via First Class Mail, at the address provided to OAH by the Division on the case referral form. Both copies of the Division's notices, as well as OAH's notice, were returned by the U.S. Postal Service as undeliverable. At hearing, the Division's representative stated that he had checked state databases for a more recent address for Mr. L, but that the address to which the notices were sent is the most current address available. Accordingly, Mr. L did not receive actual notice of his hearing. However, the Division complied with the Food Stamp Program notice requirements of 7 CFR 273.16(e)(3)(i), which requires only that the Division "provide written notice to the individual . . . at least 30 days in advance of the . . . disqualification hearing," and which specifically provides that "if the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held." Accordingly, legally sufficient notice was provided to Mr. L.

¹⁵ The administrative law judge placed telephone calls to Mr. L at each of the two telephone numbers provided to OAH. The call to the first number reached a recorded message from the phone company stating that the number was no longer in service. The second call was answered by an individual who stated that he was not Mr. L, and that the number called was his number and not Mr. L's. The Division's hearing representative later confirmed that these were the only two phone numbers for Mr. L known to the Division.

III. Discussion

A. Intentional Program Violations Under the Food Stamp Program

In order to prove that Mr. L committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove that Mr. L “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting his January 26, 2016 application for Food Stamp benefits, and that these misrepresentations / concealments were intentional.¹⁶ The proof must be made by clear and convincing evidence.¹⁷

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.¹⁸

C. Mr. L Committed an Intentional Program Violation

Mr. L did not report his felony drug conviction on his January 26, 2016 Food Stamp application form.¹⁹ This constitutes misrepresentation by omission or the concealment or withholding of facts. The next issue is whether Mr. L'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.²⁰ In this case, Mr. L did not participate in his hearing, so his state of mind can only be inferred from circumstantial evidence.

Mr. L's failure to disclose his felony drug conviction could theoretically have been negligent rather than intentional. However, the application signed by Mr. L contained a certificate requiring him to confirm, under penalty of perjury, that the application was completed truthfully and accurately.²¹ In addition, Mr. L certified that he had read, and understood, the statement of his legal rights and responsibilities attached to the application.²² That document reiterated that it is illegal to make false statements on a Food Stamp application, and that an

¹⁶ 7 C.F.R. § 273.16(c).

¹⁷ 7 C.F.R. § 273.16(e)(6).

¹⁸ 21 U.S.C. § 862a (a)(1) states 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.],” which includes the Food Stamp program. Likewise, Food Stamp regulation 7 C.F.R. § 273.11(m) states 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”

¹⁹ Ex. 7.

²⁰ *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

²¹ Ex. 5 p. 12.

²² Ex. 5 pp. 13 - 16.

individual can be disqualified from participating in the program for doing so. It is thus reasonable to infer that Mr. L understood the importance of truthfully and accurately completing his application. In the absence of an alternative explanation, these facts constitute clear and convincing evidence that Mr. L's failure to report his felony drug conviction was intentional.

In summary, the Division demonstrated by clear and convincing evidence that Mr. L committed an Intentional Program Violation under the applicable Food Stamp program statutes and regulations. This is Mr. L's first Intentional Program Violation of the Food Stamp program.²³

IV. Conclusion and Order

Mr. L is disqualified from receiving Food Stamp program benefits for a 12 month period, and is required to reimburse the Division for benefits overpaid to him as a result of his Intentional Program Violation.²⁴ The Food Stamp program disqualification period shall begin on June 1, 2016.²⁵ This disqualification applies only to Mr. L and not to any other individuals who may be included in his household.²⁶ For the duration of the disqualification period, Mr. L's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. L must report his income and resources as they may be used in these determinations.²⁷ The Division shall provide written notice to Mr. 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.²⁸ If over-issued Food Stamp benefits have not been repaid, Mr. L or any remaining household members are now required to make restitution.²⁹ If Mr. L disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.³⁰

Dated this 20th day of April, 2016.

Signed _____

Jay Durych

Administrative Law Judge

²³ Ex. 1 pp. 1, 7.

²⁴ 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).

²⁵ 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 (9th Cir. 1995).

²⁶ 7 C.F.R. § 273.16(b)(11).

²⁷ 7 C.F.R. § 273.11(c)(1).

²⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁰ 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 3rd day of May, 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.]