

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

In the Matter of:)
)
 S Q) OAH No. 16-0659-ADQ
) DPA Case No.
) FCU Case No.
 _____)

DECISION AND ORDER

I. Introduction

S Q is a former recipient of Food Stamp program benefits.¹ On June 6, 2016, the State of Alaska Division of Public Assistance (Division) initiated this Administrative Disqualification case against Mr. Q, 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 two benefit application forms.² This decision concludes, based on the evidence presented, that Mr. Q did in fact commit an Intentional Program Violation of the Food Stamp program by intentionally failing to report a felony drug conviction. Mr. Q is therefore disqualified from participation in the Food Stamp program for a period of twelve months.

II. Facts

On May 11, 2012, a judgment of conviction was entered against Mr. Q for three counts of possession of a controlled substance, and three counts of manufacture or delivery of a controlled substance.³ The convictions under counts two, four, and six were for Fourth Degree Misconduct Involving a Controlled Substance under A.S. § 11.71.040(a)(3)(A).⁴ The convictions under counts one, three, and five were for Second Degree Misconduct Involving a Controlled Substance under A.S. § 11.71.020(a)(1).⁵ These were felony convictions under Alaska law.⁶ The convictions were based on conduct which occurred on September 3 and September 9, 2008.⁷

¹ Exhibit 9. 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 Exhibit 3 at page 2.

³ Exhibit 10.

⁴ Exhibit 10 at page 1. Alaska Statute (A.S.) § 11.71.040(a)(3)(A), 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 . . . (A) 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 Exhibit 10 at page 1. Alaska Statute (A.S.) § 11.71.020(a), titled "Misconduct Involving a Controlled Substance in the Second Degree," provides in relevant part:

Mr. Q received Food Stamp benefits sporadically from April 1999 through June 2016.⁸ On September 25, 2015, Mr. Q completed and signed an application for Food Stamps and other forms of public assistance; he submitted this application to the Division, via fax, on October 12, 2015.⁹ In response to Question 119, asking whether anyone in his household had been convicted of a drug-related felony, Mr. Q answered “no.”¹⁰ On the last page of the application, Mr. Q signed a statement certifying, under penalty of perjury, that the information in his application was true and correct to the best of his knowledge.¹¹

On October 14, 2015, Mr. Q participated in an eligibility interview with a Division eligibility technician (ET).¹² The ET's notes specifically indicate that, during the interview, the ET asked Mr. Q whether he had any felony drug convictions, and that Mr. Q answered "no." The ET's notes also state that she advised Mr. Q of his rights and responsibilities as a recipient of Food Stamp benefits, and that Mr. Q said that he understood his rights and responsibilities and had no questions about them. The Division subsequently approved Mr. Q's Food Stamp application and issued Food Stamp benefits to him for October, November, and December 2015.¹³

On March 10, 2016, Mr. Q completed, signed, and submitted a renewal application for Food Stamp benefits.¹⁴ In response to Question 119, asking whether anyone in his household had been convicted of a drug-related felony, Mr. Q again answered “no.”¹⁵ On the last page of the application, Mr. Q signed a statement certifying, under penalty of perjury, that the information in his application was true and correct to the best of his knowledge.¹⁶

On March 16, 2016, Mr. Q participated in an eligibility interview with a Division ET.¹⁷ There is no indication in the ET's notes that Mr. Q informed the ET that he had felony drug convictions. The ET's notes state that she advised Mr. Q of his rights and responsibilities as a

(a) Except as authorized in [inapplicable], a person commits the crime of misconduct involving a controlled substance in the second degree if the person (1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver.

(d) Misconduct involving a controlled substance in the second degree is a class A felony.

⁶ See A.S. § 11.71.020(d) and A.S. § 11.71.040(d).

⁷ Exhibit 10 at page 1.

⁸ Exhibit 9 at page 1.

⁹ Exhibit 7 at pages 1 - 9.

¹⁰ Exhibit 7 at page 7.

¹¹ Exhibit 7 at page 9.

¹² All factual findings in this paragraph are based on Exhibit 8, page 1 unless otherwise stated.

¹³ Exhibit 8 page 1; Exhibit 9 page 1.

¹⁴ Exhibit 7 at pages 10 - 21.

¹⁵ Exhibit 7 at page 19.

¹⁶ Exhibit 7 at page 21.

¹⁷ All factual findings in this paragraph are based on Exhibit 8, pages 2 - 4 unless otherwise stated.

recipient of Food Stamp benefits, and that Mr. Q said that he understood his rights and responsibilities and had no questions about them. The Division subsequently approved Mr. Q's Food Stamp renewal application and issued Food Stamp benefits to him for March 2016 through June 2016.¹⁸

On May 26, 2016, the Division learned of Mr. Q's felony drug convictions and initiated a fraud investigation.¹⁹ On June 6, 2016, the Division mailed notice to Mr. Q of its filing of this case and of his hearing date.²⁰ On June 10, 2016, the Office of Administrative Hearings independently mailed a notice to Mr. Q informing him of the pendency of these proceedings and the date of his hearing.²¹

Mr. Q's hearing was held on July 8, 2016. Mr. Q did not attend and could not be reached by telephone.²² 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 testified by phone for 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. Q committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove that Mr. Q “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting his September 25, 2015 or his March 10, 2016 applications for Food Stamp benefits, and that these misrepresentations / concealments were intentional.²³ The proof must be made by clear and convincing evidence.²⁴

¹⁸ Exhibit 8 page 4; Exhibit 9 page 1.

¹⁹ Exhibit 2.

²⁰ Exhibit 3 at page 2.

²¹ The Division mailed notice of the proceedings to Mr. Q, at his last-known address, via both First Class Mail and Certified Mail (Exhibit 1 page 3 para. 6). The Office of Administrative Hearings (OAH) mailed notice to Mr. Q, via First Class Mail, at the address provided to OAH by the Division on the case referral form. The copy of the Division notice sent by certified mail was delivered and signed for on June 7, 2016 (Exhibit 4). A package containing the Division's proposed hearing exhibits was also sent to Mr. Q by Certified mail, and was delivered and signed for on June 28, 2016 (Exhibit 6). Accordingly, the preponderance of the evidence indicates that Mr. Q received actual notice of his hearing. In any event, the Division complied with the Food Stamp Program notice requirements of 7 C.F.R. § 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.”

²² The administrative law judge (ALJ) placed a telephone call to Mr. Q at the telephone number that Mr. Q had provided to the Division, which was the only phone number available for Mr. Q. The ALJ's call reached Mr. Q's voice mail, and the ALJ left a message for Mr. Q requesting that he contact OAH to participate in his hearing. As of the date of this decision, OAH has received no communication from Mr. Q.

²³ 7 C.F.R. § 273.16(c).

²⁴ 7 C.F.R. § 273.16(e)(6).

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.²⁵

C. Mr. Q Committed an Intentional Program Violation

Mr. Q did not report his felony drug convictions on his September 25, 2015 or March 10, 2016 Food Stamp application forms.²⁶ This constitutes misrepresentation by omission or the concealment or withholding of facts. The next issue is whether Mr. Q'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.²⁷ In this case, Mr. Q did not participate in his hearing, so his state of mind can only be inferred from circumstantial evidence.

Mr. Q's failure to disclose his felony drug conviction could theoretically have been negligent rather than intentional. However, the applications signed by Mr. Q contained certificates requiring him to confirm, under penalty of perjury, that the applications were completed truthfully and accurately.²⁸ In addition, Mr. Q certified that he had read, and understood, the statement of his legal rights and responsibilities attached to the applications.²⁹ That 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. It is thus reasonable to infer that Mr. Q understood the importance of truthfully and accurately completing his applications. In the absence of an alternative explanation, these facts constitute clear and convincing evidence that Mr. Q's failure to report his felony drug conviction was intentional.

In summary, the Division demonstrated by clear and convincing evidence that Mr. Q committed an Intentional Program Violation under the applicable Food Stamp program statutes and regulations. This is Mr. Q's first Intentional Program Violation of the Food Stamp program.³⁰

IV. Conclusion and Order

²⁵ 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....

²⁶ Exhibit 7 at pages 7, 19.

²⁷ *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

²⁸ Exhibit 7 at pages 9, 21.

²⁹ Exhibit 7 at pages 9, 21.

³⁰ Exhibit 1 at pages 1, 7.

Mr. Q 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.³¹ The Food Stamp program disqualification period shall begin on September 1, 2016.³² This disqualification applies only to Mr. Q and not to any other individuals who may be included in his household.³³ For the duration of the disqualification period, Mr. Q's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. Q must report his income and resources as they may be used in these determinations.³⁴ The Division shall provide written notice to Mr. Q 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.³⁵ If over-issued Food Stamp benefits have not been repaid, Mr. Q or any remaining household members are now required to make restitution.³⁶ If Mr. Q disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.³⁷

Dated this 11th day of July, 2016.

Signed _____
Jay Durych
Administrative Law Judge

³¹ 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).

³² 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(13); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

³³ 7 C.F.R. § 273.16(b)(11).

³⁴ 7 C.F.R. § 273.11(c)(1).

³⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁷ 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 26th day of July, 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.]