

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

In the Matter of: )  
 )  
 H P ) OAH No. 16-0660-ADQ  
 ) DPA Case No.  
 ) FCU Case No.  
 \_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

H P is a former recipient of Food Stamp program benefits.<sup>1</sup> On June 10, 2016, the State of Alaska Division of Public Assistance (Division) initiated this Administrative Disqualification case against Mr. P, 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 different benefit application forms.<sup>2</sup> This decision concludes, based on the evidence presented, that Mr. P did in fact commit an Intentional Program Violation of the Food Stamp program by intentionally failing to report a felony drug conviction. Mr. P is therefore disqualified from participation in the Food Stamp program for a period of twelve months.

**II. Facts**

On July 18, 2003, a judgment of conviction was entered against Mr. P for one count of Misconduct Involving a Controlled Substance in the Third Degree under A.S. § 11.71.030(a)(1).<sup>3</sup> This was a felony conviction under Alaska law.<sup>4</sup> The conviction was based on criminal conduct which occurred between March 19, 2003 and April 4, 2003.<sup>5</sup>

On January 28, 2015 Mr. P completed and signed an application for Food Stamp benefits and submitted it to the Division.<sup>6</sup> In response to Question 119, asking whether anyone in his

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<sup>1</sup> Exhibits 10, 12. 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 it will therefore be referred to as such in this decision.

<sup>2</sup> Exhibit 3 at page 2.

<sup>3</sup> Exhibit 11 at page 1. Alaska Statute (A.S.) § 11.71.030 provides in relevant part:  
(a) Except as authorized in [inapplicable], a person commits the crime of misconduct involving a controlled substance in the third degree if the person . . . (1) under circumstances not proscribed under AS 11.71.020(a)(2)--(6), manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver.  
(d) Misconduct involving a controlled substance in the third degree is a Class B felony.

<sup>4</sup> See A.S. § 11.71.030(d).

<sup>5</sup> Exhibit 11 at page 1.

<sup>6</sup> Exhibit 7 at pages 1 - 12.

household had been convicted of a drug-related felony, Mr. P answered “no.”<sup>7</sup> On the last page of the application, Mr. P signed a statement certifying, under penalty of perjury, that the information in his application was true and correct to the best of his knowledge.<sup>8</sup>

On January 29, 2015 Mr. P participated in an eligibility interview with a Division eligibility technician (ET).<sup>9</sup> The ET's notes specifically indicate that, during the interview, the ET advised Mr. P of his rights and responsibilities as a recipient of Food Stamp benefits, and that Mr. P said that he understood his rights and responsibilities and had no questions about them.<sup>10</sup> Mr. P's application was subsequently approved, and he received Food Stamp benefits from January 30, 2015 through February 2, 2016.<sup>11</sup>

On January 28, 2016 Mr. P completed, signed, and submitted a renewal application for Food Stamp benefits.<sup>12</sup> In response to a question at page 2 of the form, asking whether anyone in his household had been convicted of a drug-related felony, Mr. P again answered “no.”<sup>13</sup> On the last page of the renewal application, Mr. P signed a statement certifying, under penalty of perjury, that the information in his application was true and correct to the best of his knowledge.<sup>14</sup>

On March 7, 2016 the Division learned of Mr. P's felony drug conviction and initiated a fraud investigation.<sup>15</sup> On June 10, 2016 the Division mailed notice to Mr. P of its filing of this case and of his hearing date.<sup>16</sup> On June 10, 2016, the Office of Administrative Hearings (OAH) independently mailed a notice to Mr. P informing him of the pendency of these proceedings and the date of his hearing (July 15, 2016).<sup>17</sup> On July 14, 2016 Mr. P contacted the Division and OAH and requested that the July 15th hearing be postponed. The Division did not object, and so the hearing was rescheduled to August 19, 2016.

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<sup>7</sup> Exhibit 7 at page 10.

<sup>8</sup> Exhibit 7 at page 17.

<sup>9</sup> Exhibit 9 at page 1.

<sup>10</sup> Exhibit 9 at page 1.

<sup>11</sup> Exhibit 10 at page 1.

<sup>12</sup> Exhibit 7 at pages 13 - 17.

<sup>13</sup> Exhibit 7 at page 14.

<sup>14</sup> Exhibit 7 at page 17.

<sup>15</sup> Exhibit 2.

<sup>16</sup> Exhibit 3 at page 2.

<sup>17</sup> The Division mailed notice of the proceedings to Mr. P, 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. P, via First Class Mail, at the address provided to OAH by the Division on the case referral form. The copy of the Division's notice sent by certified mail was delivered and signed for on June 11, 2016 (Exhibit 4). A package containing the Division's proposed hearing exhibits was also sent to Mr. P by Certified Mail, and was delivered and signed for on July 12, 2016 (Exhibit 6). Accordingly, the preponderance of the evidence indicates that Mr. P 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.”

Mr. P's hearing began as scheduled on August 19, 2016. Mr. P did not attend and could not be reached by telephone.<sup>18</sup> 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. P committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove that Mr. P “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting his January 28, 2015 or January 28, 2016 applications for Food Stamp benefits, and that these misrepresentations/concealments were intentional.<sup>19</sup> The proof must be made by clear and convincing evidence.<sup>20</sup>

#### **B. Mr. P Committed an Intentional Program Violation**

Mr. P did not report his July 18, 2003 felony drug conviction on his January 28, 2015 or January 28, 2016 Food Stamp application forms.<sup>21</sup> This constitutes misrepresentation by omission or the concealment or withholding of facts. The next issue is whether Mr. P'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.<sup>22</sup> In this case, Mr. P did not participate in his hearing, so his state of mind can only be inferred from circumstantial evidence.

Mr. P's failure to disclose his felony drug conviction could theoretically have been negligent rather than intentional. However, the applications signed by Mr. P contained certificates requiring him to confirm, under penalty of perjury, that the applications were completed truthfully and accurately.<sup>23</sup> In addition, Mr. P certified that he had read, and understood, the statement of his legal rights and responsibilities attached to the applications.<sup>24</sup> That document reiterated that it is illegal to make false statements on a Food Stamp application, and that an individual can be disqualified from

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<sup>18</sup> The administrative law judge (ALJ) placed a telephone call to Mr. P at the telephone number that Mr. P had provided to the Division, which was the only phone number available for Mr. P. The ALJ's call reached a telephone company message which stated that Mr. P's phone number was no longer in service.

<sup>19</sup> 7 C.F.R. § 273.16(c).

<sup>20</sup> 7 C.F.R. § 273.16(e)(6).

<sup>21</sup> Exhibit 7.

<sup>22</sup> *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

<sup>23</sup> Exhibit 7.

<sup>24</sup> Exhibit 7.

participating in the program for doing so. It is thus reasonable to infer that Mr. P 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. P's failure to report his felony drug conviction was intentional.

In summary, the Division demonstrated by clear and convincing evidence that Mr. P committed an Intentional Program Violation under the applicable Food Stamp program statutes and regulations. This is Mr. P's first Intentional Program Violation of the Food Stamp program.<sup>25</sup>

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

Mr. P 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.<sup>26</sup> The Food Stamp program disqualification period shall begin on November 1, 2016.<sup>27</sup> This disqualification applies only to Mr. P and not to any other individuals who may be included in his household.<sup>28</sup> For the duration of the disqualification period, Mr. P's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. P must report his income and resources as they may be used in these determinations.<sup>29</sup> The Division shall provide written notice to Mr. P 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>30</sup> If over-issued Food Stamp benefits have not been repaid, Mr. P or any remaining household members are now required to make restitution.<sup>31</sup> If Mr. P disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.<sup>32</sup>

Dated this 29th day of August, 2016.

*Signed*

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Jay Durych

Administrative Law Judge

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<sup>25</sup> Exhibit 1 at pages 1, 7.

<sup>26</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>27</sup> 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(13); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>28</sup> 7 C.F.R. § 273.16(b)(11).

<sup>29</sup> 7 C.F.R. § 273.11(c)(1).

<sup>30</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>31</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>32</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 9<sup>th</sup> day of September, 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.]