

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

In the Matter of)
)
 N D) OAH No. 16-0835-ADQ
) Agency No.
_____)

DECISION AND ORDER

I. Introduction

N D received benefits from the Supplemental Nutrition Assistance Program (commonly known as food stamps) for herself and her two daughters. The Department of Health and Social Services, Division of Public Assistance discovered that Ms. D’s daughters were not living with Ms. D. The division brings this administrative disqualification action against Ms. D, alleging that Ms. D committed an intentional program violation of the food stamp program.

The division has presented clear and convincing evidence that Ms. D committed a first intentional program violation. Ms. D will be disqualified from the program for 12 months and required to repay the amount of the benefits that were overpaid to her as a result of the intentional program violation.

II. Facts

Ms. D receives food stamps. She has participated in the program most of the time over the last 12 years.¹ Periodically she completes eligibility review forms for the various assistance programs that she participates in. The form asks recipients to “[l]ist all persons who live with you.” The last two eligibility review forms Ms. D completed, dated July 29, 2015 and January 14, 2016, listed three people: Ms. D, and her daughters G G and E D.² From August 2015 through May 2016, Ms. D received benefits based on a household size of three.³

However, while Ms. D was receiving food stamp benefits for her daughter E, the division received a separate application for benefits for E from E’s father. He provided custody information showing that E was in his care.⁴ This prompted further investigation by the division. The investigation revealed that on May 4, 2015, the Superior Court in No Name had entered a judgment awarding legal and physical custody of E to her father and

¹ Exhibit 8.
² Exhibit 7 at 1, 8.
³ Exhibit 11 at 2; Exhibit 8 at 1.
⁴ Testimony of Canoy.

giving Ms. D supervised visitation.⁵ The investigation also revealed that G G was living with her guardians, Z and S L.⁶

A telephonic hearing in this matter was held on August 23, 2016. Ms. D did not appear for the hearing, and was not available at either of the two telephone numbers provided to the division. A voice message was left for Ms. D with the telephone number of the Office of Administrative Hearings. The hearing went forward in Ms. D's absence. Vance Canoy, an investigator employed by the Division's Fraud Control Unit, represented and testified for the division. Division employees James Bowden and Lori Smith, both Eligibility Technician IIs, testified. R J, father of E D, and Z L, guardian of G G, also testified. The division introduced 14 exhibits, all of which were admitted into the record.

III. Discussion

The division has alleged that Ms. D committed an intentional program violation. For food stamp recipients, an intentional program violation is defined to include having intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts."⁷ In order to prevail, the division must prove its case by clear and convincing evidence, a burden which is met if the truth of the facts asserted is highly probable.⁸ A person who is found to have committed an intentional program violation is disqualified from receiving Food Stamps for 12 months for a first time violation, and must repay any benefits wrongfully received.⁹

The division asserts that Ms. D gave the division false information about who was living in her household. On both the July 2015 and January 2016 eligibility review forms, Ms. D listed her daughter E as a person living with her in her household.¹⁰ However, on May 4, 2015 the Superior Court awarded E's father, R J, legal and physical custody of E.¹¹ Mr. J testified that he did not live with Ms. D, and that E had been living with him. He testified that Ms. D had exercised her right to visitation under the custody order only once, at Christmas in 2015. Before that, according to Mr. J, the last time Ms. D had seen E was

⁵ Exhibit 12 at 6, 28.

⁶ Testimony of Canoy.

⁷ 7 C.F.R. 273.16(c)(1).

⁸ *Purcella v. Olive Kathryn Purcella Trust*, 325 P.3d 98, 992 n. 9 (Alaska 2014) (citing *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003)).

⁹ 7 C.F.R. 273.16(b)(1) and (b)(12).

¹⁰ Exhibit 7 at 1.

¹¹ Exhibit 12 at 28 - 29.

January 20, 2015.¹² Mr. J specifically testified that E was not living with Ms. D at any time during July 2015. Mr. J's testimony was credible and consistent with the custody order. There is no evidence in the record that conflicts with his testimony. The division has demonstrated by clear and convincing evidence that from the beginning of August 2015 through June 2016, E lived with Mr. J, not Ms. D.

On the January 2016 eligibility review form, Ms. D listed her daughter G as living with her in her household.¹³ However, on November 13, 2015, Ms. D had given Z and S L a temporary guardianship of G.¹⁴ Ms. L testified that Ms. D had asked them to take care of G temporarily. According to Ms. L, although Ms. D had occasionally visited with G at the L's home through mid-February 2016, Ms. D did not live with the L's. G has lived with the L's since November 2015.¹⁵ In April 2016, the superior court formally appointed Z and S L as guardians for G G.¹⁶ The division has demonstrated by clear and convincing evidence that from mid-November 2015 through June 2016, G lived with the L's, not Ms. D.

The division has shown that E was not living with Ms. D in July 2015, and that neither E nor G were living with Ms. D in January 2016. However, for an intentional program violation, the division is required to prove not only that Ms. D falsely claimed that her daughters were living with her, but also that she did so intentionally. Ms. D did not testify. However, Ms. D's state of mind can be inferred from circumstantial evidence.¹⁷

Ms. D must have been aware that her daughters were not living with her in January 2016, when she completed the eligibility review form stating that they were living with her. The form's request to "[l]ist all persons who live with you" leaves little room for interpretation.¹⁸ If there was any question in Ms. D's mind about who should be included as a household member, it should have been cleared up at the interview, when she was again asked who was living in the household. However, during an interview with Eligibility Technician Lori Smith on February 8, 2016, when Ms. Smith specifically asked who was

¹² Testimony of J.

¹³ Exhibit 7 at 1, 8.

¹⁴ Exhibit 13 at 1.

¹⁵ Testimony of L.

¹⁶ Exhibit 13 at 2 - 7.

¹⁷ In the criminal case of *Sivertsen v. State*, 981 P.2d 564, 567 (Alaska 1999), the Alaska Supreme Court stated that "[i]n the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct"

¹⁸ Exhibit 7 at 1 (emphasis omitted).

living with Ms. D, Ms. D's answers were consistent with her application form.¹⁹ Ms. D did not tell Ms. Smith that her daughters were not actually living with her at that time.²⁰

Ms. D first participated in the food stamp program in 2004, before her daughters were born.²¹ She has received benefits from the program most of the time since then.²² Because of this, it is reasonable to infer that she knew that household size affects the value of food stamp benefits one receives, and knew the importance of truthfully reporting household composition. The last page of the division's application for benefits form requires applicants to sign a "statement of truth," certifying that all of the information provided in the application is true and correct to the best of the applicant's knowledge. Furthermore, the applicant is required to affirm that the applicant understands the statement of rights and responsibilities included with the application. Those specifically include the responsibility to notify the division if someone moves into or out of the applicant's home.²³ Ms. D signed this certification.²⁴ The consistency of Ms. D's responses and her familiarity with the program make it highly likely that when she falsely reported that her daughters were living with her, she did so intentionally.

Taken together, this evidence constitutes clear and convincing evidence that Ms. D intentionally gave false information when she reported that E was living in her household in July 2015, and that E and G were living in her household in January 2016. This is sufficient to support the division's conclusion that Ms. D has committed an intentional program violation. Consequently, Ms. D must be disqualified from the food stamp program for 12 months.²⁵ Furthermore, she is responsible for repaying the amount of benefits overpaid to her as a result of the intentional program violation.²⁶

IV. Conclusion and Order

Ms. D has committed a first time intentional program violation of the food stamp program. She is disqualified from receiving food stamp benefits for a 12-month period, and is required to repay the Division \$2,848 for benefits that were overpaid to her as a result of her

¹⁹ Exhibit 9 at 4.

²⁰ Testimony of Smith. Ms. Smith also testified that when she interviews an applicant, she always asks who is living in the applicant's household at the time of the interview.

²¹ Exhibit 8 at 5; Exhibit 7 at 1.

²² Exhibit 8.

²³ Exhibit 7 at 5, 12

²⁴ Exhibit 7 at 5, 12.

²⁵ 7 C.F.R. § 273.16(e)(8); 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i).

²⁶ 7 CFR 273.16(b)(12).

intentional program violation. The food stamp disqualification period shall begin on October 1, 2016.

Dated: August 25, 2016.

Signed _____
Kathryn L. Kurtz
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 9th day of September, 2016.

By: Signed _____
Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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