

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

In the Matter of)	
)	OAH No. 16-0936-ADQ
Z X)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

Z X applied for Supplemental Nutrition Assistance Program (SNAP or Food Stamps) benefits on December 10, 2014, and twice again on May 15 and August 5, 2015, receiving benefits based on each application. On August 12, 2016, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamps program in connection with these three applications.¹

A hearing convened in this case on September 27, 2016, with Mr. X having been provided advance notice of the hearing by both certified mail and standard First Class mail.² Mr. X 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.³ DPA was represented at the hearing by William Schwenke, an investigator employed by DPA's Fraud Control Unit. Holly Hecht, a DPA Eligibility Technician, testified on behalf of DPA, in addition to M M and D C. DPA Exhibits 1-16 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. X committed a first Intentional Program Violation of the Food Stamps program by misrepresenting the size of his household. He must be barred from Food Stamps benefits for 12 months.

II. Facts

Z X filed a renewal application for Food Stamps benefits on December 10, 2014,⁴ a new application on May 15, 2015,⁵ and another application on August 5, 2015.⁶ On each application, he listed his daughter, B, as living with him.⁷ He signed the forms under penalty of perjury.

¹ Ex. 3.

² Ex. 1, p. 3; Ex. 3; Ex. 4; Ex. 6.

³ 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.

⁴ Ex. 8.

B had actually been in the full-time, court-ordered custody of M M since November of 2014.⁸ Even before that, she was not in Mr. X's custody the majority of the time.⁹

Mr. X participated in three eligibility interviews in connection with his applications. He continued to maintain that his daughter lived with him.¹⁰

DPA approved Food Stamps for Mr. X based on the inclusion of B in his household.¹¹ The Division calculated that Mr. X was issued \$2,502 in Food Stamp benefits to which he was not entitled, as a result of his household being treated as larger than it actually was.¹²

III. Discussion

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹³ In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ No evidence has been offered that Mr. X has ever been found to have committed a prior IPV, and therefore both alleged IPV's will be evaluated as a first-time violation.

Except for someone with prior IPV's in his or her record, someone who falls in the ten-year provision discussed above, or someone who has used Food Stamps in a drug or weapons transaction, 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.¹⁵

It is clear that Mr. X claimed that his daughter was living with him at a time when she was in fact living with M M. He did this once on the first application at issue, and then twice on each of the succeeding applications (first by saying that he "live[d] with" a child on the second page of his application, again by listing the child as a household member on the third page). He did it three more times in the three follow-up interviews. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional. Without any basis for an

⁵ Ex. 9.
⁶ Ex. 10.
⁷ E.g., Ex. 10, p. 3.
⁸ Ex. 14; testimony of M M and D C.
⁹ C testimony.
¹⁰ Ex. 11; Hecht testimony.
¹¹ Ex. 12; Hecht testimony.
¹² Ex. 16.
¹³ *See, e.g.*, 7 U.S.C. § 2015(b).
¹⁴ 7 C.F.R. § 273.16(e)(6).
¹⁵ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

alternative explanation, it is impossible to construe these eight misstatements of where his daughter lived as anything but a deliberate deception to gain benefits. This constitutes an IPV.

IV. Conclusion and Order

Mr. X has committed a first time Intentional Program Violation of the Food Stamp program. He is disqualified from receiving Food Stamp benefits for a twelve-month period.¹⁶ The Food Stamp disqualification period shall begin December 1, 2016.¹⁷ This disqualification applies only to Mr. X, and not to any other individuals who may be included in his household.¹⁸ For the duration of the disqualification period, Mr. X'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.¹⁹

DPA shall provide written notice to Mr. X 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.²⁰

If over-issued Food Stamp benefits have not been repaid, Mr. X or any remaining household members are now required to make restitution.²¹ If Mr. X disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²²

Dated this 7th day of October, 2016.

Signed

Christopher Kennedy
Administrative Law Judge

¹⁶ 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).

¹⁷ 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).

¹⁸ 7 C.F.R. § 273.16(b)(11).

¹⁹ 7 C.F.R. § 273.11(c)(1).

²⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

²² 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 25th day of October, 2016.

By: Signed
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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