

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

In the Matter of)	OAH No. 16-1163-ADQ
)	Division No.
N U)	Fraud Control Case No.
)	Food Stamp and Temporary Assistance
_____)	Programs

DECISION AND ORDER

I. Introduction

N U received Food Stamp¹ and Temporary Assistance benefits. On October 5, 2016, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against him, alleging he had committed an Intentional Program Violation of the Food Stamp and the Alaska Temporary Assistance programs by stating that he had three children in his household, when he only had one child in his household.²

Mr. U’s hearing began on November 8, 2016. Mr. U appeared telephonically. That hearing was rescheduled until November 28, 2016 at Mr. U’s request. Mr. U did not appear for that hearing. It was held without his participation.³ Kenneth Cramer, an investigator employed by the Division’s Fraud Control Unit, represented and testified on behalf of the Division. The hearing was recorded.

This decision concludes that Mr. U committed a second Intentional Program Violation of both the Food Stamp and Temporary Assistance programs.

II. Facts

The following facts were established by clear and convincing evidence.

Mr. U lives in Anchorage, Alaska. He has three children. One of those children, L, was living with Mr. U in 2015. The other two children were not living with Mr. U in 2015. Indeed,

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). The program is still commonly referred to as the Food Stamp program.

² Ex. 3.

³ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). 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.

they were not even in the United States in 2015, having left in 2012 and having not returned until August of 2016.⁴ However, Mr. U applied for Food Stamp and Temporary Assistance benefits on October 8, 2015, declaring, under penalty of perjury, that all three children were living with him.⁵ Mr. U participated in a telephonic interview on October 13, 2015, where he told a Division Eligibility Technician that all three children were living with him. His application was approved and he began receiving both Food Stamp and Temporary Assistance benefits for a four-person household, which consisted of him and the three children.⁶

In November 2015, the children's mother contacted the Division and informed it that two of the three children were living outside of the United States.⁷ Division personnel interviewed Mr. U on January 26, 2016. During that interview, he admitted that two of his children were living outside the United States, explaining that he listed them on the October 2015 application because he was anticipating that they were returning to his home in December 2015. Mr. U also stated that he informed Nine Star⁸ that the two children were not in his home when he cancelled his Temporary Assistance benefits in December.⁹ However, a review of the Division records shows that Mr. U submitted a written request to close his Temporary Assistance case on November 23, 2015 because he was receiving unemployment benefits. The Division has no record of Mr. U notifying either it or Nine Star that two of his claimed children were not in the home.¹⁰

Based upon the evidence presented, the Division has proven, by clear and convincing evidence, that Mr. U intentionally notified the Division, both on his October 8, 2015 application and during his October 13, 2015 telephonic interview, that he had three children in his household, when he only had one child in his household.

Mr. U received both Food Stamp and Temporary Assistance benefits in the past. He received Food Stamp benefits in 2012 and 2013. He received Temporary Assistance benefits in

⁴ Ex. 10.

⁵ Ex. 8.

⁶ Ex. 9, pp. 1 – 7; Ex. 13.

⁷ Ex. 2; Inv. Cramer's testimony.

⁸ Nine Star is a contractor for the Division.

⁹ Ex. 12; Inv. Cramer's testimony.

¹⁰ Ex. 12, p. 2; Inv. Cramer's testimony.

2010, 2011, 2012, and 2013.¹¹ He also has one prior Intentional Program Violation with regard to both the Food Stamp and Temporary Assistance programs from 2005.¹²

The Division calculated that Mr. U received a total of \$408 in Temporary Assistance benefits during October and November 2015, which he was not entitled to receive. The Division calculated that Mr. U received a total of \$1,439 in Food Stamp benefits during October 2015 through February 2016, which he was not entitled to receive.¹³

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁴ that Mr. U intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁵ To meet this standard, the division must show that it is *highly probable* that Mr. U intended to misrepresent, conceal, or withhold facts.¹⁶ Food Stamp eligibility and benefits are determined based upon a household’s composition, assets, and income.¹⁷

As found above, Mr. U intentionally misrepresented that he had three children in his home, when he only had one child in his home. The Division has therefore met its burden of proof and established that Mr. U committed an Intentional Program Violation of the Food Stamp program. This is his second violation

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence¹⁸ that Mr. U intentionally misrepresented, concealed or withheld a material fact “for the purpose of establishing or maintaining a family’s eligibility for [Temporary Assistance] benefits.”¹⁹ Temporary Assistance

¹¹ Ex. 9, pp. 6 – 7.

¹² Ex. 14.

¹³ Holton testimony; Ex. 21.

¹⁴ 7 C.F.R. § 273.16(e)(6).

¹⁵ 7 C.F.R. § 273.16(c).

¹⁶ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

¹⁷ 7 C.F.R. § 273.10(e)(1)(i)(A).

¹⁸ 7 AAC 45.585(d).

¹⁹ 7 AAC 45.580(n).

eligibility and benefit amounts are normally based upon the total number of people in the household, their assets, and their combined income.²⁰

As found above, Mr. U intentionally misrepresented that he had three children in his home, when he only had one child in his home. This was a material fact because the number of people in the home is relevant to determining both Temporary Assistance eligibility and benefit levels. Mr. U therefore intentionally misrepresented a material fact by stating there were three children in the home.

The Division must then prove that the intentional misrepresentation of the material fact was for the purpose of establishing or maintaining the household's eligibility for Temporary Assistance benefits. Mr. U would have been aware that eligibility and benefit levels were dependent upon household size because he received Temporary Assistance benefits in the past. Mr. U has therefore committed an Intentional Program Violation of the Temporary Assistance program. This is his second violation.

IV. Conclusion and Order

A. Food Stamp Program

Mr. U has committed a second Intentional Program Violation of the Food Stamp program. He is disqualified from receiving Food Stamp benefits for a 24 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.²¹ The Food Stamp program disqualification period shall begin February 1, 2017.²² This disqualification applies only to Mr. U, and not to any other individuals who may be included in his household.²³ For the duration of the disqualification period, Mr. U'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 as they may be used in these determinations.²⁴

²⁰ 7 AAC 45.280, 7 AAC 45.520, 7 AAC 45.525.

²¹ 7 C.F.R. § 273.16(b)(1)(ii); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

²² 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 7 C.F.R. § 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).

²³ 7 C.F.R. § 273.16(b)(11).

²⁴ 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to Mr. U 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.²⁵

If over-issued Food Stamp benefits have not been repaid, Mr. U or any remaining household members are now required to make restitution.²⁶ If Mr. U disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²⁷

B. The Alaska Temporary Assistance Program

Mr. U has committed a second Temporary Assistance Intentional Program Violation. He is disqualified from participation in the Temporary Assistance program for a period of twelve months.²⁸ If Mr. U is currently receiving Temporary Assistance benefits, his disqualification period shall begin February 1, 2017.²⁹ If Mr. U is not currently a Temporary Assistance recipient, his disqualification period shall be postponed until he applies for, and is found eligible for, Temporary Assistance benefits.³⁰ This disqualification applies only to Mr. U, and not to any other individuals who may be included in his household.³¹ For the duration of the disqualification period, Mr. U's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for his household. However, Mr. U must report his income and resources as they may be used in these determinations.³²

The Division shall provide written notice to Mr. U and the caretaker relative, if other than Mr. U, of the Temporary Assistance benefits they will receive during the period of disqualification.³³

If over-issued Temporary Assistance benefits have not been repaid, Mr. U or any remaining household members are now required to make restitution.³⁴ If Mr. U disagrees with

²⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁷ 7 C.F.R. § 273.15.

²⁸ AS 47.27.015(e)(2); 7 AAC 45.580(d).

²⁹ 7 AAC 45.580(f).

³⁰ 7 AAC 45.580(g).

³¹ 7 AAC 45.580(e)(1).

³² 7 AAC 45.580(e)(3).

³³ 7 AAC 45.580(k).

³⁴ 7 AAC 45.570(b).

the Division's calculation of the amount of over-issuance to be repaid, he may request a separate hearing on that limited issue.³⁵

Dated this 9th day of December, 2016.

Signed _____

Lawrence A. Pederson
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 23rd day of December, 2016.

By: *Signed* _____

Name: Christopher Kennedy
Title: Deputy Chief Administrative Law Judge

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

³⁵ 7 AAC 45.570(l).