

II. Facts

S D lives in City A, Alaska. In August of 2012, at a time when he was already receiving Food Stamps, Mr. D filed an Eligibility Review Form with DPA, listing himself and his son L as the two members of his household in City A.³ He told the Eligibility Technician that L was attending No Name High School.⁴ In fact, however, L had been admitted to the No Name Treatment Center in City B in early July of 2012 (with an estimated stay of at least six months), and he was to remain there continuously until May 14, 2014.⁵ Mr. D continued to recertify for Food Stamps for the next year and a half, listing L as living with him on forms he filed in January, July, and December 2013.⁶ He continued to tell eligibility technicians that his son was a high school student living with him.⁷

Mr. D had signed these forms under penalty of perjury. In addition, he had attended eligibility interviews during which the composition of his household was discussed.⁸ These interviews, as well as written materials distributed with the eligibility review forms, covered the illegality of giving false or incomplete information to get benefits.⁹

The DPA investigator conducted a recorded interview of Mr. D prior to filing this case.¹⁰ Mr. D disputes none of this history, but says he sent DPA two letters telling them L was at No Name Treatment Center. DPA has no record of receiving any such letters.¹¹

DPA paid Food Stamp benefits to Mr. D from September 2012 through July 2014 based on a household size that included L, and he redeemed all but one dollar of those benefits.¹² L was not in the household with his father during that period *except* possibly during May, June, and July, 2014.¹³ DPA has calculated the excessive benefits as \$430.¹⁴ However, the DPA loss summary is calculated on the assumption that L was not in the household for any of the months between September 2012 and July 2014, whereas L may actually have been present in the last

³ Ex. 8.

⁴ Ex. 12, p. 1.

⁵ Ex. 15.

⁶ Ex. 9-11.

⁷ Ex. 12.

⁸ Williams testimony; Ex. 8.

⁹ Williams testimony; Ex. 7.

¹⁰ The recording is Ex. 14.

¹¹ Schwenke and Williams testimony.

¹² Ex. 17; Williams testimony.

¹³ DPA did not prove that L was not in the household during those three months. He was discharged from No Name Treatment Center on May 14, 2014. His mother stated in an interview that L lived with Mr. D for “a couple” of months upon discharge from No Name Treatment Center. Ex. 14 (interview with J D).

¹⁴ Ex. 17.

three of those months. If those months are excluded, the excessive benefits would be \$377 in total.¹⁵

A DPA eligibility technician contacted Mr. D about the discrepancy in house composition in July of 2014.¹⁶ When asked why he used his son's Food Stamps, he reportedly said "I'm a drug felon, what do you expect?"¹⁷ A fraud investigation, and this proceeding, ensued.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁸

In this case, DPA seeks to establish an IPV. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁹ DPA concedes that it is not aware that Mr. D has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated as a first-time violation.

Except for someone with prior IPV's in his or her record or who has other circumstances, not applicable here, that can lead to enhanced penalties, 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.²⁰

It is clear that Mr. D claimed, in four separate applications and multiple interviews, that his son was living with him at a time when L was in fact in long-term residential treatment in another city. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Mr. D knew that he needed to disclose his son's absence; he even claims to have written two letters to make that disclosure. But even if this claim is taken at face value, Mr. D continued to write L down as a household member on his recertifications, over and over. Each time he did so, he was restating the misrepresentation that the letters were supposed to have corrected. It is impossible to construe this as anything but intentional behavior.

¹⁵ See *id.*

¹⁶ Ex. 2.

¹⁷ *Id.* Unlike the later interview with Mr. D, the 2014 interview apparently was not recorded.

¹⁸ See, e.g., 7 U.S.C. § 2015(b).

¹⁹ 7 C.F.R. § 273.16(e)(6).

²⁰ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

The Division has therefore met its burden of proof and established that Mr. D intentionally misrepresented a material fact: the fact that his son was not living with him. He has therefore committed a first IPV of the Food Stamp program.

It is important to recall that DPA's exact calculation regarding the amount of overpaid benefits was not proven in this case, as mentioned above in the text accompanying footnotes 13-15. Because L may have been in the household after May 14, 2014 for at least a month or two, the Division should reevaluate that fact and, if appropriate, recalculate the restitution amount.

IV. Conclusion and Order

Mr. D has committed a first time Intentional Program Violations of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.²¹ The Food Stamp disqualification period shall begin March 1, 2017.²² This disqualification applies only to Mr. D, and not to any other individuals who may be included in his household.²³ For the duration of the disqualification period, Mr. D'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.²⁴

DPA shall provide written notice to Mr. D 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

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²¹ 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).

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 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).

²⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

Dated this 30th day of December, 2016.

Signed _____
Christopher Kennedy
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 13th day of January, 2017.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

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

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.