

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

In the Matter of	)	
	)	
L G. K	)	OAH No. 16-1321-ADQ
_____	)	Agency No.

**DECISION**

**I. Introduction**

L G. K applied for food stamps for a household of five, when he knew that his three children were not living in his household. By doing this, Mr. K intentionally violated the rules for the food stamp program. Therefore, he is administratively disqualified from participation in the food stamp program for one year.

**II. Facts**

L K and D O have three children, ages 9, 10, and 12. On January 24, 2016, the children left L’s and D’s home and went to live with their grandparents, who lived close by.<sup>1</sup> The children told their grandparents that they left their parents’ home because of domestic violence and drug use by their father and mother.<sup>2</sup>

At the time the children left, the parents had been evicted and had no legal right to remain in the home. The parents left the home shortly thereafter, and have been homeless ever since.<sup>3</sup> On sporadic occasions since January, the parents have brought over some limited food—some cereal, or juice, but never enough food to feed three children three meals per day, and never averaging more than twice per month.<sup>4</sup>

The children have lived with their grandparents ever since January 24, 2016.<sup>5</sup>

On February 15, 2016, Mr. K applied for a recertification of his food stamp benefits for himself and his family, including the three children who were actually living with their grandparents.<sup>6</sup> The Division of Public Assistance conducted a telephonic interview with Mr. K

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<sup>1</sup> K.F testimony.  
<sup>2</sup> *Id.*  
<sup>3</sup> *Id.*  
<sup>4</sup> *Id.*  
<sup>5</sup> *Id.*  
<sup>6</sup> Division Exhibit 8.

advising him of his responsibilities with regard to having a truthful and accurate application.<sup>7</sup> Mr. K was awarded food stamp benefits for a household of five.<sup>8</sup>

On April 23, 2016, the children's grandparents applied for food stamps on behalf of the children.<sup>9</sup> This application alerted the Division that the children were not residing in Mr. K's household. The Division determined that Mr. K was only entitled to food stamp benefits based on a household size of two. It calculated that the amount overpaid to Mr. K was \$1,612.00.<sup>10</sup> The Division concluded that Mr. K may have intentionally violated the program rules for food stamps, and scheduled a hearing to determine whether he should be administratively disqualified from participation in the food stamp program.<sup>11</sup> Mr. K was sent notice of the hearing by both the Division and the Office of Administrative Hearings.<sup>12</sup> A hearing was held on December 14, 2016, at 2:00 p.m.

At the hearing, the telephone number provided by Mr. K was called. It was not a working number. Other telephone numbers found in the record, including a number for Ms. O, were also called. All of the numbers were either not working or not a number for either Mr. K or Ms. O. The hearing was held on the record in Mr. K's absence.

### **III. Discussion**

In order to establish an Intentional Program Violation of the food stamp program, the Division must prove by clear and convincing evidence that Mr. K intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts" in his application for food stamps.<sup>13</sup> Here, Mr. K received food stamps for which he was not entitled because the children were not in his household. If he intentionally submitted a false statement, then he may be disqualified from participation in the program for one year.

Although a person's intent is difficult to demonstrate with certainty, particularly when the person is not present to testify, under the law, "it is permissible to infer that an accused intends the natural and probable consequences of his or her knowing actions."<sup>14</sup> The natural and probable consequence of Mr. K's misrepresentation is that he would obtain food stamps under false pretenses, which he did. Here, when Mr. K filled out his application, he represented that his

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<sup>7</sup> N testimony.

<sup>8</sup> *Id.*; Division Exhibit 9 at 2.

<sup>9</sup> N testimony; Division Exhibit 2.

<sup>10</sup> Division Exhibit 13 at 2.

<sup>11</sup> Division Exhibit 3.

<sup>12</sup> Division Exhibit 3 at 5; 5; 6.

<sup>13</sup> 7 C.F.R. §§ 273.16(c), 273.16(e)(6).

<sup>14</sup> *In re Disciplinary Matter of Friedman*, 23 P.3d 620, 626 (Alaska 2001) (quoting *In re Triem*, 929 P.2d 634, 648 (Alaska 1996)).

children were living in his household. Yet, he knew that was not true—he had no home, and the children were living at that time with their grandparents. Even if he had intended to have the children live with him again on some basis in the future, he knew that he was homeless and reunification would not occur immediately. No evidence indicates that Mr. K could have reasonably concluded that the children were living with him or that he was entitled to the benefits he received. He has not put forward any theory or evidence consistent with an innocent mistake or error. I conclude that he clearly intended to obtain food stamps under false pretenses, which means that he committed an intentional program violation. Therefore, the Division has met its burden of proof.

#### **IV. Conclusion and order**

1. L G. K committed a first-time intentional program violation of the food stamps program.
2. Mr. K is administratively disqualified from participation in food stamps program for 12 months beginning February 1, 2017.
3. Mr. K is ordered to repay to the Division of Public Assistance the amount of overpaid food stamp benefits, which the Division has calculated at \$1,612.00.

DATED this 15th of December, 2016.

By: Signed  
Stephen C. Slotnick  
Administrative Law Judge

### **Adoption**

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 4th day of January, 2016.

By: Signed  
Name: Stephen C. Slotnick  
Title: Administrative Law Judge/DOA

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