

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

In the Matter of	)	
	)	
W D. D	)	OAH No. 16-1426-ADQ
_____	)	Agency No.

**DECISION AND ORDER**

**I. Introduction**

W D received Food Stamp and Alaska Temporary Assistance Program benefits. The Department of Health and Social Services, Division of Public Assistance (Division) initiated this administrative disqualification proceeding, alleging that Ms. D committed a first known Intentional Program Violation of the Food Stamp and the Alaska Temporary Assistance programs by falsely stating that a child lived in her home, when she knew that the child in fact resided in a foster home.<sup>1</sup>

This decision concludes that Ms. D committed a first Intentional Program Violation of both the Food Stamp and Temporary Assistance programs, and she received overpayments from both programs. As a result, she is temporarily disqualified from participation in both programs, as further discussed below.

**II. Facts and Proceedings**

The administrative disqualification hearing in this case began on January 10, 2017. Ms. D appeared telephonically and represented herself. Kenneth Cramer, an investigator employed by the Division's Fraud Control Unit, participated by telephone and represented the Division. The hearing was recorded.

At the outset of the hearing, Ms. D elected to waive her right to the hearing and to admit to the allegations described by the Division. She provided sworn testimony of her desire to sign the Waiver of Right to an Administrative Disqualification Hearing form, including her admission to the facts alleged by the Division.<sup>2</sup> She further indicated her understanding that she would be disqualified from the Food Stamp program for twelve months and from the Temporary Assistance program for six months, since these were her first known violations.<sup>3</sup>

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<sup>1</sup> Exhibit 3.

<sup>2</sup> The Waiver of Right to an Administrative Disqualification Hearing form is in the record at Exhibit 3, p. 13.

<sup>3</sup> Ms. D stated that she would mail in a signed copy of the Waiver form shortly after the hearing. If she had, this decision would be unnecessary. As of the date of this decision, however, the Office of Administrative Hearings has not received the signed Waiver form. Accordingly, a decision is being issued.

Due to Ms. D's admissions, the Division has established the following facts by clear and convincing evidence. On May 26, 2016, Ms. D signed and submitted an eligibility review form for the Food Stamp and Temporary Assistance programs.<sup>4</sup> On the form, Ms. D falsely declared that her infant child, B O, lived in her household. At that time, however, Ms. D was aware that the child had been placed in the custody of the Office of Children's Services and was living in a foster home.<sup>5</sup>

Based on the information Ms. D provided, the Division approved her application. From July 2016 through November 2016, Ms. D received Food Stamp and Temporary Assistance benefits that were based on the household she had inaccurately described. As a result, Ms. D received Temporary Assistance and Food Stamp benefits to which she was not entitled. The Division calculated that she received a total of \$2,674 in overpaid Temporary Assistance benefits, and \$861 in Food Stamp benefits, from July 2016 through November 2016.<sup>6</sup>

In December 2016, the Division initiated this action. It requested that Ms. D be temporarily disqualified from receiving Food Stamp and Temporary Assistance benefits. It further requested that she repay the full amount of overpaid benefits.<sup>7</sup>

### **III. Discussion**

#### **A. Food Stamp Program**

To establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence<sup>8</sup> that Ms. D intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."<sup>9</sup> To meet this standard, the Division must show that it is highly probable that Ms. D intended to misrepresent, conceal, or withhold facts.<sup>10</sup>

Due to Ms. D's admission, the Division has met its burden of proof and established that Ms. D committed an Intentional Program Violation of the Food Stamp program. This is her first known violation.

#### **B. Temporary Assistance Program**

To establish an Intentional Program Violation of the Alaska Temporary Assistance Program, the Division must prove by clear and convincing evidence that Ms. D intentionally misrepresented,

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<sup>4</sup> Exhibit 8. Congress changed 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, however.

<sup>5</sup> Exhibit 9.

<sup>6</sup> Exhibits 3, 10.

<sup>7</sup> Exhibit 1.

<sup>8</sup> 7 C.F.R. § 273.16(e)(6).

<sup>9</sup> 7 C.F.R. § 273.16(c).

<sup>10</sup> See *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003).

concealed or withheld a material fact “for the purpose of establishing or maintaining” her eligibility for Temporary Assistance benefits.<sup>11</sup> For the reason stated above, the Division has met its burden. This is Ms. D’s first known Intentional Program Violation.

#### **IV. Conclusion and Order**

##### **A. Food Stamp Program**

Ms. D has committed a first Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a twelve month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.<sup>12</sup> The Food Stamp program disqualification period shall begin on March 1, 2017.<sup>13</sup> This disqualification applies only to Ms. D, and not to any other individuals who may be included in her household.<sup>14</sup> For the duration of the disqualification period, Ms. D’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.<sup>15</sup>

The Division shall provide written notice to Ms. 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.<sup>16</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. D or any remaining household members are now required to make restitution.<sup>17</sup> If Ms. D disagrees with the Division’s calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.<sup>18</sup>

##### **B. The Alaska Temporary Assistance Program**

Ms. D has committed a first known Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of six months.<sup>19</sup> If Ms. D is currently receiving Temporary Assistance benefits, her disqualification period shall begin on March 1, 2017.<sup>20</sup> If Ms. D is not currently a Temporary Assistance recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, Temporary Assistance benefits.<sup>21</sup> This disqualification applies only to Ms. D, and not to any other individuals who may be

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<sup>11</sup> 7 AAC 45.585(d); 7 AAC 45.580(n).

<sup>12</sup> 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).

<sup>13</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>14</sup> 7 C.F.R. § 273.16(b)(11).

<sup>15</sup> 7 C.F.R. § 273.11(c)(1).

<sup>16</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>17</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>18</sup> 7 C.F.R. § 273.15.

<sup>19</sup> AS 47.27.015(e)(1); 7 AAC 45.580(d).

<sup>20</sup> 7 AAC 45.580(f).

<sup>21</sup> 7 AAC 45.580(g).

included in her household.<sup>22</sup> For the duration of the disqualification period, Ms. D's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. D must report her income and resources as they may be used in these determinations.<sup>23</sup>

The Division shall provide written notice to Ms. D and the caretaker relative, if other than Ms. D, of the Temporary Assistance benefits the household will receive during the period of disqualification.<sup>24</sup>

If over-issued Temporary Assistance benefits have not been repaid, Ms. D or any remaining household members are now required to make restitution.<sup>25</sup> If Ms. D disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.<sup>26</sup>

DATED: January 20, 2017.

By: Signed \_\_\_\_\_  
Kathryn Swiderski  
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 3<sup>rd</sup> day of February, 2017.

By: Signed \_\_\_\_\_  
Name: Kathryn A. Swiderski  
Title: Administrative Law Judge

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

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<sup>22</sup> 7 AAC 45.580(e)(1).

<sup>23</sup> 7 AAC 45.580(e)(3).

<sup>24</sup> 7 AAC 45.580(k).

<sup>25</sup> 7 AAC 45.570(b).

<sup>26</sup> 7 AAC 45.570(l).