

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

In the Matter of)	
)	OAH No. 17-0050-ADQ
K N)	DPA/FCU No. ¹
_____)	Agency No.

DECISION and ORDER

I. Introduction

K N received Food Stamp² benefits intermittently between 2013 and January of 2017. On January 20, 2017, 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 Stamp program.³

A hearing took place on February 22, 2017, with Mr. N having been sent advance notice of the hearing by both certified mail and standard First Class mail to his address of record.⁴ Mr. N did not attend the hearing and could not be reached at the telephone number he had provided to the program.⁵ The hearing went forward in his absence.⁶ Wynn Jennings, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Exhibits 1 - 12 were admitted into evidence without objection and without restriction.

The record shows that Mr. N engaged in systematic and deliberate fraud. This decision concludes that DPA proved by clear and convincing evidence that Mr. N committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months.

¹ Correct manifest error of DPA/FCU No.

² Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program (“SNAP”).

³ Ex. 3.

⁴ The certified mail, which was correctly addressed to his No Name Drive address, was “unclaimed.” Ex. 4. The First Class mail was not returned. Testimony of Wynn Jennings. A Priority mailing sent two weeks later was returned with “attempted—not known” on the return sticker, suggesting that Mr. N had left No Name Drive by that time.

⁵ The number was not receiving calls.

⁶ Once proper notice has been given, the Food Stamp 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.

II. Facts

K E. N is an able-bodied adult without dependents, now 27 years old.⁷ Under his present name or his prior name, Z E. N, Mr. N applied or recertified for Food Stamp on five occasions during the time span at issue: April 23, 2014, April 8, 2015, March 10, 2016, and April 11, 2016, and July 6, 2016.⁸ In these applications and recertifications and the associated interviews, he denied any employment. He repeatedly acknowledged orally and in writing his obligation to report any change in employment status. Although this occurred routinely in connection with each application and interview, a particularly explicit discussion of this responsibility is found at Ex. 10, p. 17, recording an interview held on May 20, 2016.

Mr. N held seasonal employment with No Name, Inc. from May 14, 2014 until September 26, 2016, earning \$88,633.71 from that employer during the period.⁹ At the time of the May 20, 2016 interview, he had just earned \$5,686.25 over the preceding month from No Name, and yet he disclosed neither the job nor the income.¹⁰ At the time of the July 6, 2016 recertification, he had just earned \$6581.67 in June and was continuing to work in July.¹¹ A few weeks after both his 2014 and 2015 applications, he began earning more than \$4000 per month, but he disclosed nothing and continued to collect Food Stamps.

Mr. N never disclosed his employment with No Name. It was discovered in late 2016 though an anonymous tip from a concerned citizen.¹² When it was coming in, the income generally put Mr. N well over the gross earnings limit for Food Stamps for his household of one. DPA has calculated the resulting excessive benefits at \$2,231.00, comprised of large overpayments in a total of ten months.¹³

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁴

⁷ E.g., Ex. 10, p. 17; Holton testimony.

⁸ Ex. 8 - 10.

⁹ Ex. 11, p. 1.

¹⁰ Ex. 11, pp. 10-11. Instead, he seems to have talked disingenuously about closing his unemployment benefits in order to “save it for later.”

¹¹ Ex. 11, pp. 11-12.

¹² Ex. 2.

¹³ Ex. 12.

¹⁴ *See, e.g.*, 7 U.S.C. § 2015(b).

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.¹⁵ DPA did not show that Mr. N 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 . . . concealed or withheld facts" in connection with the program.¹⁶

Over a two-year period, Mr. N systematically concealed income he was receiving by means of false answers, or failed to report when his well-paid job resumed just weeks after he had applied for benefits. His direct misrepresentations and failures to report represent intentional concealment or withholding of facts. It follows that he has committed a first IPV.

IV. Conclusion and Order

Mr. N has committed a first time Intentional Program Violation 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.¹⁷ The Food Stamp disqualification period shall begin April 1, 2017.¹⁸ This disqualification applies only to Mr. N, and not to any other individuals who may be included in his household.¹⁹ For the duration of the disqualification period, Mr. N'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.²⁰

DPA shall provide written notice to Mr. N 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.²¹

¹⁵ 7 C.F.R. § 273.16(e)(6).

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

¹⁷ 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).

¹⁸ 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).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

If over-issued Food Stamp benefits have not been repaid, Mr. N or any remaining household members are now required to make restitution.²² If Mr. N disagrees with DPA's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.²³

Dated this 22nd day of February, 2017.

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 10th day of March, 2017.

By: *Signed* _____

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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

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

²³ 7 C.F.R. § 273.15.