

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

In the Matter of	)	OAH No. 17-0313-ADQ
	)	Division No.
U A. G	)	Fraud Control Case No.
_____	)	Food Stamp Program

**DECISION AND ORDER**

**I. Introduction**

U G is a former Food Stamp recipient.<sup>1</sup> On March 31, 2017, the Department of Health and Social Services, Division of Public Assistance (Division), initiated this Administrative Disqualification case against her, alleging she had committed a first-time Intentional Program Violation of the Food Stamp program.<sup>2</sup>

Ms. G’s hearing began on May 4, 2017. Ms. G was not available for the hearing and it was rescheduled to May 11, 2017. Ms. G was sent notice of the rescheduled hearing, but she did not appear for it. The hearing proceeded in her absence, as authorized by 7 C.F.R. § 273.16(e)(4).

William Schwenke, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division. Nada Scott, an Eligibility Technician with the Division, and E Q, a Public Guardian with the Office of Public Advocacy, also testified for the Division.

This decision concludes that Ms. G committed a first Intentional Program Violation of the Food Stamp program.

**II. Facts**

The following facts were established by clear and convincing evidence except where otherwise noted.

Ms. G is a Food Stamp recipient who has been receiving Food Stamp benefits continuously since June of 2014.<sup>3</sup> She applied to renew her Food Stamp benefits on August 20,

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<sup>1</sup> 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.

<sup>2</sup> Ex. 3.

<sup>3</sup> Ex. 13.

2015.<sup>4</sup> At the time she applied to renew her Food Stamp benefits, Ms. G's mother was living with her. The Office of Public Advocacy (OPA) is the court-appointed guardian for Ms. G's mother.<sup>5</sup> Beginning in July of 2015, OPA paid Ms. G \$400 per month in rent to house Ms. G's mother. These monthly rent payments from OPA continued through January of 2016.<sup>6</sup>

Ms. G's Food Stamp benefit renewal application, which she completed on August 20, 2015, asked her to list all sources of income for all persons in her household.<sup>7</sup> Ms. G only listed a Temporary Assistance benefit payment; she did not list the \$400 per month she received for her mother's rent.<sup>8</sup> Ms. G then participated in an eligibility interview on September 2, 2015, where she again did not mention receiving \$400 per month for her mother's rent.<sup>9</sup> Ms. G also completed an additional Food Stamp benefit renewal application on September 14, 2015, which again failed to mention the \$400 monthly rent payment she received from OPA.<sup>10</sup> Ms. G was advised both in writing, and orally during her eligibility interview on September 2, 2015, that she was required to truthfully complete the application.<sup>11</sup> Ms. G's Food Stamp renewal application was approved on September 21, 2015.<sup>12</sup>

The Division received a fraud complaint which culminated in this case.<sup>13</sup> The Division calculated that Ms. G had received \$205 in Food Stamp benefits that she was not entitled to receive during the period from September 2015 through January 2016.<sup>14</sup>

### **III. Discussion**

To prevail, the Division must prove by clear and convincing evidence<sup>15</sup> that Ms. G committed an Intentional Program Violation of the Food Stamp program: *i.e.*, that she intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld

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4 Ex. 8.  
5 Ex. 12, pp. 4-12.  
6 Ms. Q's testimony; Ex. 12, pp.1-3.  
7 Ex. 8, pp. 1 & 5.  
8 Ex. 8, p. 3.  
9 Ex. 10; Ms. Scott's testimony.  
10 Ex. 9, p. 3.  
11 Ex. 7; Ms. Scott's testimony.  
12 Ex. 11.  
13 Ex. 2.  
14 Ex. 14.  
15 7 C.F.R. § 273.16(e)(6).

facts” by failing to notify the Division of her entire household income.<sup>16</sup> It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.<sup>17</sup>

The evidence is clear that Ms. G was notified both in writing and orally that she needed to truthfully complete the application. The evidence is also clear that she did not list the \$400 in income she received for her mother’s care on her August 20, 2015 renewal application, she did not disclose it during her eligibility interview on September 2, 2015, and she did not disclose it on her subsequent September 14, 2015 renewal application. The question then is whether these were intentional misrepresentations. Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. However, Ms. G did not appear for her hearing. As a result, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.<sup>18</sup> Ms. G had been receiving Food Stamp benefits since at least June of 2014. Thus, she would have been aware that her household income was used to determine the Food Stamp benefits amount. She would have also been aware that she needed to truthfully complete her applications. As a result, the Division has met its burden of proof and demonstrated, by clear and convincing evidence, that Ms. G intentionally did not report that she was receiving \$400 per month from OPA as rental income. Consequently, Ms. G has committed a first Intentional Program Violation of the Food Stamp program.

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

Ms. G has committed a first-time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.<sup>19</sup> The Food Stamp program disqualification period shall begin August 1, 2017.<sup>20</sup> This disqualification applies only to Ms. G, and not to any other individuals who may be included in her household.<sup>21</sup> For the duration of the disqualification period, Ms. G’s

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<sup>16</sup> 7 C.F.R. § 273.16(c).

<sup>17</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

<sup>18</sup> In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct . . . .”

<sup>19</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>20</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). 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).

<sup>21</sup> 7 C.F.R. § 273.16(b)(11).

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>22</sup>

The Division shall provide written notice to Ms. G 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>23</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. G or any remaining household members are now required to make restitution.<sup>24</sup> If Ms. G 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>25</sup>

Dated this 24th day of May, 2017.

*Signed* \_\_\_\_\_  
Kathleen A. Frederick  
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 8<sup>th</sup> day of June, 2017.

By: *Signed* \_\_\_\_\_  
Name: Kathleen A. Frederick  
Title: Administrative Law Judge/OAH

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

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<sup>22</sup> 7 C.F.R. § 273.11(c)(1).  
<sup>23</sup> 7 C.F.R. § 273.16(e)(9)(ii).  
<sup>24</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).  
<sup>25</sup> 7 C.F.R. § 273.15.