

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

In the Matter of)	
)	OAH No. 17-0687-ADQ
N T-E M D)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

N L. T-E M D received Food Stamp¹ benefits beginning in April of 2015.² On June 27, 2017, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program.³

A hearing took place on August 21, 2017, with Ms. T-E M D representing herself. Kenneth Cramer, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Amanda Holton testified on behalf of DPA. Exhibits 2-11 were admitted into evidence without objection and without restriction. At the ALJ’s request, on August 22, 2017 DPA filed an additional exhibit containing two documents that had been read during the hearing. The record closed on that date.

The record shows that Ms. T-E M D held back information about her job with a dental office in order to increase her Food Stamps eligibility. This decision concludes that DPA proved by clear and convincing evidence that Ms. T-E M D committed a first Intentional Program Violation of the Food Stamp program. She must be barred from Food Stamps for twelve months.

II. Facts

N T-E M D was first approved for Food Stamps in April of 2015.⁴ At that time, her rights and responsibilities were discussed with her, including the obligation to report income.⁵ She did not have any employment income at the time.

This case revolves around Ms. T-E M D’s recertification for Food Stamps in August of 2015. On August 6 of that year, she turned in an eligibility review form she had signed, under penalty of perjury, on August 4. The form, which is found in the record at Exhibit 8, was

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program (“SNAP”).

² Ex. 9, p.4.

³ Ex. 3.

⁴ Ex. 9, p. 4.

⁵ Ex. 9, p. 1; Holton testimony.

completely filled out in what appears to be her own hand. In the block for listing employment for household members, nothing was listed. Below it, the question, “Will anyone’s job, wages or hours of work change soon?” is answered with an X in the “No” box.⁶ Ms. T-E M D was not formally interviewed in connection with this recertification, but there was a telephone contact on August 6 in which income and debts were discussed but no employment was mentioned.⁷

Ms. T-E M D had in fact started work with No Name Business on July 29, 2015, a job that continued uninterrupted until March of 2016.⁸ At the time of the August 6, 2015 recertification, she had just earned \$353.60 and she was continuing to work almost full time, earning \$1359.49 for 80 hours of work during the early August pay period.⁹ Over the succeeding six months, she earned \$17,561.69, but she disclosed nothing and continued to collect Food Stamps.

Ms. T-E M D testified at hearing that, at the time of her August 6 contact with DPA, she had already given her “pay stubs” to the division. This is certainly not true, because her first paycheck was issued on August 7, 2015.¹⁰ I think Ms. T-E M D is mixing up the interview she had on August 6, 2015 with the one she had six months later, in February of 2016.

Ms. T-E M D did disclose her income in a January 28, 2016 Eligibility Review Form and in the follow-up interview that February. However, even then, she was less than completely frank, listing her pay rate as \$10 per hour when she first reported it (pay stubs later showed it to be \$17) and claiming she began work in December of 2015.¹¹

All in all, I am left with the firm conclusion that Ms. T-E M D deliberately chose not to jeopardize her Food Stamps by disclosing her No Name Business job. She was consistently deceptive about that income. There is no credible basis to believe that the failure to list it on her August 6, 2015 recertification application was an oversight.

When it was coming in, the income generally put Ms. T-E M D close to the earnings limit for Food Stamps for her household of four, although in some months she would have been entitled to benefits—just not as high as the \$790 per month she was receiving. DPA has

⁶ Ex. 8, p. 3.

⁷ Ex. 9, pp. 2-3. The record of the phone call indicates that her boyfriend spoke for her because she did not have a voice at the time, but she was part of the call. She verified this in testimony.

⁸ Ex. 10; Ex. 12, p. 21.

⁹ Ex. 10, p. 2.

¹⁰ Ex. 10, p. 2.

¹¹ Ex. 12, pp. 6, 10, 17.

calculated the resulting excessive benefits at \$4,196.00, comprised of overpayments in a total of six months.¹² This decision does not make a finding of fact regarding the exact amount of the overpayment.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹³

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.¹⁴ DPA did not show that Ms. T-E M 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 . . . concealed or withheld facts" in connection with the program.¹⁵

Clear and convincing evidence shows that, through a falsified recertification application and continuing for several months thereafter, Ms. T-E M D intentionally concealed a job with substantial and regular income. Her direct misrepresentations and failures to report represent intentional concealment or withholding of facts. It follows that she has committed a first IPV.

IV. Conclusion and Order

Ms. T-E M D has committed a first time Intentional Program Violation of the Food Stamp program. She 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.¹⁶ The Food Stamp disqualification period shall begin November 1, 2017.¹⁷ This disqualification applies only to Ms. T-E M D, and not to any other individuals

¹² Ex. 11.

¹³ See, e.g., 7 U.S.C. § 2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6).

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

¹⁶ 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).

¹⁷ 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).

who may be included in her household.¹⁸ For the duration of the disqualification period, Ms. T-E M 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 so that they can be used in these determinations.¹⁹

DPA shall provide written notice to Ms. T-E M 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.²⁰

If over-issued Food Stamp benefits have not been repaid, Ms. T-E M D or any remaining household members are now required to make restitution.²¹ If Ms. T-E M D disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²²

Dated this 22nd day of August, 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 6th day of September, 2017.

By: *Signed*

Name: Christopher Kennedy
Title: Administrative Law Judge

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

¹⁸ 7 C.F.R. § 273.16(b)(11).
¹⁹ 7 C.F.R. § 273.11(c)(1).
²⁰ 7 C.F.R. § 273.16(e)(9)(ii).
²¹ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
²² 7 C.F.R. § 273.15.