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

In the Matter of:	)	
	)	OAH No. 12-0280-ADQ
N Y. T	)	FCU Case No.
	)	DPA Case No.

REVISED DECISION AND ORDER

I. Introduction

The issue in this case is whether N Y. T committed an Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program[1] (SNAP), more commonly known as the food stamp program, by applying for benefits in Alaska without disclosing that she was already receiving food stamps elsewhere.

Ms. T's hearing was held on September 11, 2012. The hearing was recorded. Ms. T was sent advance notice of the hearing by both certified mail and standard First Class mail at her last known address.[2] Ms. T did not appear for her hearing, however, and it was therefore held in her absence.[3]

DPA was represented at hearing by William Schwenke, an investigator employed by the division's Fraud Control Unit. Mr. Schwenke and Marlana Waldrip, a DPA Eligibility Technician, testified on behalf of DPA. Exhibits 1-13 were admitted into evidence without objection and without restriction. The record closed at the conclusion of the hearing.

Shortly after the hearing, the administrative law judge issued a proposed decision concluding that DPA proved by clear and convincing evidence that Ms. T committed an IPV, and that she must be barred from SNAP for twelve months, but rejecting DPA's request for a ten-year disqualification from SNAP. In response to the proposed decision, DPA submitted a

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1 In 2008 Congress amended the Food Stamp Act, at which time Congress changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). Both names are still in use, and the federal regulations applied in this decision use the "food stamp" terminology.

2 Ex. 1, p. 3; Ex. 3.

3 Once proper notice has been given, the SNAP 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 regulation sets out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

Proposal for Action[4] presenting new legal arguments in favor of the longer disqualification. Deputy Commissioner Ree Sailors, who is the final decisionmaker in this matter, returned the case to the administrative law judge to consider the new arguments. After notice to both parties, an oral argument was held on the new legal issues on October 23, 2012, with only DPA participating. This is the final decision following consideration of the new arguments.

II. Facts

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

Ms. T applied for food stamps in the state of Washington on June 28, 2010, listing an address in Shelton, Washington.[5] She applied again in that state on December 29, 2010, listing an address in Spokane.[6] These applications were approved, and she received Washington food stamp benefits from late June 2010 until late June 2011.[7] She used the Washington benefits until July 7, 2011.[8] For part of this time (February through April, 2011), she was using the Washington benefits in Alaska.[9] On July 20, 2011, Ms. T told the Washington Department of Social and Health Services that she had moved to Crescent City, California, and her Washington benefits were terminated.[10]

On February 16, 2011 (several months before termination of the Washington benefits), Alaska's DPA received an application for food stamps from Ms. T, dated January 31, 2011 and giving an address in No Name, Alaska.[11] Clear and convincing evidence does not establish where Ms. T was actually living on January 31, the date she completed this application, but it seems more likely than not that she was physically in Alaska by that time. She used Washington food stamps in Alaska a week later (February 8),[12] and two weeks later she attended an in-person interview in Alaska, which conclusively establishes her physical presence.[13]

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4 *See* AS 44.64.060(e).
5 Ex. 11, p. 18.
6 Ex. 11, pp. 12-17.
7 Ex. 11, pp. 10-11.
8 Ex. 11, p. 3.
9 Ex. 11, pp. 4-6.
10 Ex. 11, pp. 7, 9.
11 Ex. 7, p. 7.
12 Ex. 11, p. 6.
13 Ex. 9; Waldrip testimony.

Question 2 of the Alaska food stamp application that Ms. T completed on January 31, 2011 asked, "Has anyone in your household received public assistance (. . . food stamps . . .) in Alaska or any other state? If yes, who, when, and where?" Ms. T responded "yes", and wrote, "New York City 6 months ago".[14] She did not disclose that she had received and was continuing to receive food stamps from Washington. Ms. T signed a certification at the end of the application attesting that the information it contained was correct to the best of her knowledge.[15]

Ms. T attended an interview with a DPA eligibility technician in No Name on February 16, 2011. This interview, as well as written materials distributed with the application, covered the illegality of giving false or incomplete information to get benefits.[16] Although this is not established by clear and convincing evidence, it appears that at the interview she related that she had been living in Florida from the spring of 2010 until January 26, 2011, omitting any mention of her residence in Washington.[17] She also amended the information she had given regarding food stamp benefits in New York, indicating that she had last received them more than four years ago, rather than six months ago.[18] She did not disclose at the interview that she was receiving and using food stamps from Washington.[19] During the two weeks prior to the interview (twice on February 8, once on February 9, and once more on February 11), she had used her Washington food stamps at No Name stores.[20]

DPA approved Ms. T's Alaska application on February 16, 2011 and paid her $1,066 in Alaska food stamp benefits between February and June, 2011.[21] Ms. T used the Alaska benefits in Alaska and elsewhere between February 17 and June 27, 2011.[22] During the same period, she continued to use her Washington benefits.[23]

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14 Ex. 7, p. 9.
15 Ex. 7, p. 15.
16 Waldrip testimony; Ex. 7, p. 6.
17 Ex. 9.
18 *Id.*
19 Waldrip testimony; Ex. 9. Because such a significant disclosure would surely have been recorded, this fact is established by clear and convincing evidence.
20 Ex. 11, p. 6.
21 Ex. 13.
22 Ex. 12.
23 Ex. 11, pp. 1-6.

In July of 2011 Ms. T applied for food stamp benefits in Crescent City, California.[24] An address in Crescent City is the last known address for her.[25] Proper notice of her Alaska disqualification hearing was mailed to that address on August 8, 2012.[26]

III. Discussion

Apart from exceptional circumstances that do not apply here, it is prohibited by federal law for a person to participate in the food stamp program from two different households or two different states in the same month.[27] It is also prohibited to obtain food stamp benefits by making false or misleading statements or by concealing or withholding facts.[28]

In this case, DPA seeks to establish an IPV and impose a disqualification penalty. There are two kinds of IPVs that are potentially applicable to what Ms. T did, and they lead to different penalties. To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.[29]

No evidence has been offered that Ms. T has ever been found to have committed a prior IPV, and therefore both types of IPV will be evaluated on the assumption that this is a first-time violation.

A. IPV Leading to Twelve-Month Disqualification

Except for someone with prior IPVs in his or her record, someone who falls in the ten-year provision discussed below, or someone who has used food stamps in a drug or weapons transaction, federal food stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have "intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts" in connection with the program.[30]

It is undisputed that Ms. T omitted to list her receipt of food stamps from Washington in answer to a question on her Alaska application that clearly called for that information—the question about whether she had received food stamps or other public assistance anywhere. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

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[24] Schwenke testimony; *see also* Ex. 6.

[25] Schwenke testimony.

[26] Ex. 2; Schwenke testimony.

[27] *See* 7 C.F.R. §§ 273.3(a), 271.2. The exceptional circumstances are when a person is residing in a battered persons' shelter and was, during the same month, a member of the abuser's household. Ms. T's Washington and Alaska applications both listed her in single-person households, so this exception clearly does not apply in her case.

[28] *See, e.g.*, 7 U.S.C. §2015(b).

[29] 7 C.F.R. § 273.16(e)(6).

[30] 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Ms. T failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record.

Intent can be deduced from circumstantial evidence.[31] Based on the fact that Ms. T was actively receiving and using Washington benefits around the time of her application and in the period right before her Alaska eligibility interview, the fact that she wrote down (perhaps falsely) that she had received New York benefits "6 months ago" while leaving out the Washington benefits she was actually receiving, and the likelihood (less clearly established) that she seems to have given her interviewer a false state of prior residence—Florida—rather than reveal where she had actually been, the overall weight of the evidence creates a clear and convincing picture of a person who knew exactly what she was doing. The Washington benefits cannot simply have slipped her mind under these circumstances, and one must infer that she was consciously aware that she was omitting important information as to her eligibility. The evidence is clear and convincing that Ms. T's misrepresentation was intentional.

Ms. T therefore committed a first IPV.

B. IPV Leading to Ten-Year Disqualification

Except for someone with two prior IPVs in his or her record, federal food stamp laws provide that a ten-year disqualification must be imposed on any individual proven to have "made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously."[32] DPA has sought to apply this provision to Ms. T, observing correctly that Ms. T certainly (i) made a fraudulent representation in her Alaska application (ii) in order to receive benefits simultaneously in Alaska and Washington.

There is, however, a third element required for this kind of IPV under the quoted federal laws: the fraudulent representation must have been "with respect to [the applicant's] identity or place of residence." There is no evidence that Ms. T misrepresented her identity at any point. The only question, therefore, is whether Ms. T's misrepresentation, as detailed in the previous section, was a misrepresentation with respect to her place of residence.

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[31] 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 . . . ."

[32] 7 U.S.C. § 2015(j); 7 C.F.R. § 273.16(b)(5).

"Residence" for purposes of food stamp eligibility is a unique and somewhat complex concept. To be a resident and eligible, a person must "live in" the state.[33] A state cannot require the person to have lived in the state for any particular duration, nor require a fixed place of abode, nor require that the person have the intent to remain in the state.[34] Thus, residency for food stamps purposes is distinct from residency under Alaska law, which requires the intent to remain indefinitely demonstrated by, among other things, "maintaining a principal place of abode in the state for at least 30 days."[35] A person who lives in the state on a transient basis can be a resident for purposes of the program.[36] Nonetheless, one cannot be a resident while remaining a resident elsewhere, so that, for example, a person in the area "solely for vacation purposes" is not a resident for purposes of food stamp eligibility.[37] It is also inconsistent with residency to be drawing and using food stamps elsewhere.

This last point is demonstrated by the federal case of *Villegas v. Concannon*.[38] That case was about migrant farm workers who were enrolled in another state's food stamp program at the beginning of a month and then moved to Oregon during the course of the month. The court overturned an Oregon practice of barring these workers from immediate participation in the Oregon program on the basis of nonresidence, simply because they had been enrolled in another state the same month and food stamps from that state might be in the mail to them. However, the court was careful to specify that, to be residents in Oregon for purposes of receiving food stamps in Oregon, the workers would have to "attest[] to nonparticipation in the prior area that month."[39] Thus, it would be inconsistent with residency in the new state to actually use food stamps from the prior state.

Alaska's food stamp application, like those of other states,[40] does not expect applicants to understand the nuances of residency, and it does not ask them to state or certify their state of residence.[41] Instead, the application asks questions from which eligibility technicians can determine residency. At least for a person who is receiving and using food stamps from another

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33 7 C.F.R. § 273.3, "Residency."
34 *Id*.
35 AS 01.10.055.
36 *See, e.g., Villegas v. Concannon*, 742 F. Supp. 1083 (D. Oregon 1990) (migrant farm workers).
37 7 C.F.R. § 273.3(a).
38 *Supra* note 35.
39 742 F. Supp. at 1087.
40 *See* Ex. 11 at 12-22.
41 Ex. 7. It does ask for a "home address" and "mailing address," *id.* at 7, but these are not necessarily the same as residence.

state *at the time of application*, a critical part of this determination is having a correct answer to Question 2, the question asking when and where the applicant has received public assistance. It follows that in answering this question falsely and concealing that she was, at that very time, receiving and using Washington food stamps—an act inconsistent with residence in Alaska—Ms. T made a misrepresentation "with respect to . . . place of residence." Since, as demonstrated in the previous section, she did this intentionally and did it for the purpose of receiving food stamps in two states simultaneously, she has committed an IPV that calls for a ten-year suspension.

IV. Conclusion and Order

Ms. T has committed a first time SNAP Intentional Program Violation involving a fraudulent statement or representation with respect to place of residence. She is therefore disqualified from receiving SNAP benefits for a ten year period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.[42] The SNAP disqualification period shall begin December 1, 2012.[43] This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.[44] For the duration of the disqualification period, Ms. T's needs will not be considered when determining SNAP eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations.[45]

DPA shall provide written notice to Ms. T 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.[46]

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42 7 C.F.R. § 273.16(b)(5); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

43 *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).

44 7 C.F.R. § 273.16(b)(11).

45 7 C.F.R. § 273.11(c)(1).

46 7 C.F.R. § 273.16(e)(9)(ii).

If over-issued SNAP benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.[47] If Ms. T disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.[48]

Dated this 5th day of November, 2012.

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 5th day of November, 2012.

By: *Signed*
Ree Sailors, Deputy Commissioner
Department of Health and Social Services

[47] 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
[48] 7 C.F.R. § 273.15.