

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

In the Matter of:	)	
	)	OAH No. 12-0307-ADQ
V D	)	FCU Case No.
_____	)	DPA Case No.

**DECISION and ORDER**

**I. Introduction**

The issue in this case is whether V D committed an Intentional Program Violation (IPV) of the Food Stamp program<sup>1</sup> by intentionally misrepresenting that his children were living with him on his application for benefits.

Mr. D's hearing was held on September 27 and October 8, 2012. Mr. D appeared telephonically for the September 27, 2012 hearing, which was continued until October 8, 2012 at his request. He did not appear for the October 8, 2012 hearing and it was held in his absence.<sup>2</sup>

Dean Rogers, an investigator employed by the Division of Public Assistance's (Division) Fraud Control Unit, represented and testified for the Division. Amanda Holton, a Division Eligibility Technician, testified on behalf of the Division. The hearing was recorded.

This decision concludes that the Division proved by clear and convincing evidence that Mr. D committed an IPV of the Food Stamp program.

**II. Facts**

Mr. D applied for Food Stamp benefits on October 20, 2008. As part of his application, he stated he was living in Anchorage, Alaska with his three minor daughters.<sup>3</sup> He participated in an in-person intake interview on October 21, 2008, wherein he stated that his household consisted of his three daughters and himself.<sup>4</sup> However, his daughters were not living with him. They were living in the State of Florida with their maternal uncle, with whom they had lived continuously since June of 2006.<sup>5</sup>

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<sup>1</sup> 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"). This decision follows the common practice of referring to SNAP as the Food Stamp program.

<sup>2</sup> The Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4).

<sup>3</sup> Ex. 7, pp. 1 – 2.

<sup>4</sup> Ex. 8, pp. 1 – 2.

<sup>5</sup> Ex. 11 (Affidavit of E W); Ex. 14 (Hillsborough County, Florida public school records).

Mr. D's Food Stamp application was approved for a four-person household (Mr. D and his three daughters).<sup>6</sup> He then received Food Stamp benefits for the months of October through December 2008, for a four-person household, in the total amount of \$1,673.<sup>7</sup>

### III. Discussion

In order to prevail, the Division must prove, by clear and convincing evidence,<sup>8</sup> that Mr. D committed an Intentional Program Violation of the Food Stamp program: that he intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts"<sup>9</sup> with regard to his Food Stamp benefits. It must be noted that Food Stamp eligibility and benefit amounts are determined based, in part, on the number of persons residing in the Food Stamp household.<sup>10</sup>

It is undisputed that Mr. D listed his three daughters as living with him on his October 20, 2008 application. It is also undisputed that those daughters had been living with their uncle in Florida since June 2006. Mr. D was therefore fully aware that his daughters were not living with him when he completed the application. Consequently, Mr. D intentionally misrepresented that his daughters were living with him on his application, when they were not.

The Division has therefore met its burden of proof and established that Mr. D made an intentional misrepresentation on his October 20, 2008 Food Stamp application. As a result, Mr. D committed a first Intentional Program Violation of the Food Stamp program.

### IV. Conclusion and Order

Mr. D has committed a first time Food Stamp program Intentional Program Violation. He 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>11</sup> The Food Stamp disqualification period shall begin December 1, 2012.<sup>12</sup> This disqualification applies only to Mr. D, and not to any other individuals who may be included in his household.<sup>13</sup> For the duration of the disqualification period, Mr. D's needs will

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<sup>6</sup> Ex. 8, p. 3.

<sup>7</sup> Ex. 13.

<sup>8</sup> 7 C.F.R. § 273.16(e)(6).

<sup>9</sup> 7 C.F.R. § 273.16(c).

<sup>10</sup> 7 C.F.R. § 273.10(e)(2)(i) and (ii)(A).

<sup>11</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>12</sup> 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>13</sup> 7 C.F.R. § 273.16(b)(11).

not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in these determinations.<sup>14</sup>

The Division shall provide written notice to Mr. 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>15</sup>

If over issued Food Stamp benefits have not been repaid, Mr. D or any remaining household members are now required to make restitution.<sup>16</sup> If Mr. D disagrees with the Division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>17</sup>

Dated this 23rd day of October, 2012.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
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 6<sup>th</sup> day of November, 2012.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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

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<sup>14</sup> 7 C.F.R. § 273.11(c)(1).  
<sup>15</sup> 7 C.F.R. § 273.16(e)(9)(ii).  
<sup>16</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).  
<sup>17</sup> 7 C.F.R. § 273.15.