

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

In the Matter of)	OAH No. 12-0440-ADQ
)	Division No.
D M)	Fraud Control Case No.
aka D Z)	Food Stamp and Temporary Assistance
_____)	Programs

DECISION AND ORDER

I. Introduction

D M is a Food Stamp¹ recipient and a former applicant for Temporary Assistance benefits. On September 21, 2012, 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 and Temporary Assistance programs.²

Ms. M's hearing began on October 25, 2012. She was provided advance notice of the hearing.³ Ms. M appeared telephonically on October 25, and the hearing was continued until November 5, 2012 at her request. She did not appear for the November 5 hearing and it was held in her absence.⁴

Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Division, testified for the Division. The hearing was recorded.

This decision concludes that Ms. M committed a first Intentional Program Violation of the Food Stamp and Temporary Assistance programs.

¹ 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.

² Ex. 3.

³ Ex. 1, p. 3; Ex. 6.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance 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) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). 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

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

Ms. M received Food Stamp benefits continuously from September 2009 through August 2010.⁵ She applied to renew those benefits for her household on August 4, 2010.⁶ The application contained a question asking whether anyone in her household was working and what that person's wages were. Ms. M answered that question "N/A" (not applicable), indicating no one in the household had income from working.⁷ Ms. M signed the application, certifying that the information contained in the application was correct.⁸ Ms. M was interviewed on August 13, 2010 as part of the renewal application process. During that interview, she stated that her household's income consisted only of social security and adult public assistance benefits, which were received by other household members.⁹ However, Ms. M was working at the time of her renewal application; she started a job on July 4, 2010 and had already received one paycheck before she submitted her application.¹⁰ Ms. M's Food Stamp renewal application was approved,¹¹ and benefits were paid through February of 2011.¹²

Ms. M applied for Temporary Assistance benefits for her household on September 16, 2010.¹³ The application also contained a question asking whether anyone in her household was working for wages. Ms. M answered that question "N/A" (not applicable), indicating no one in the household was working.¹⁴ Ms. M signed the application, certifying that the information contained in the application was correct.¹⁵ However, Ms. M was working at the time of her application; as noted above, she had started a job on July 4, 2010, and she had already received four paychecks before she submitted her Temporary Assistance application.¹⁶ Ms. M

⁵ Ex. 17, pp. 1 - 2.

⁶ Ex. 9.

⁷ Ex. 9, p. 2.

⁸ Ex. 9, p. 4.

⁹ Ex. 11, p. 1.

¹⁰ Ex. 16, p. 4.

¹¹ Ex. 9, pp. 1, 3.

¹² Ex. 17.

¹³ Ex. 13.

¹⁴ Ex. 13, p. 3.

¹⁵ Ex. 13, p. 8.

¹⁶ Ex. 16, p. 4.

participated in an interview on September 16, 2010, the same date she applied.¹⁷ Ms. M's Temporary Assistance application was denied for reasons unrelated to her income.¹⁸

The Division initiated a fraud investigation which culminated in this case.¹⁹ The Division calculated that during the period from September 2010 through February 2011, Ms. M received \$3,213 in Food Stamp benefits that she was not entitled to receive.²⁰

III. Discussion

A. Food Stamp Program

In order to prevail, the Division must prove by clear and convincing evidence²¹ that Ms. M committed an Intentional Program Violation of the Food Stamp program: that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to her August 4, 2010 renewal application.²² It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household's income.²³

The evidence is clear that Ms. M did not list her employment income on her renewal application, despite there being an explicit question regarding it. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Ms. M failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.²⁴ Ms. M undoubtedly knew she was working and making a wage from her job because she had been working for a month and had already received one paycheck at the time of her application. Ms. M's “not applicable” response to the employment question was therefore an intentional misrepresentation. Her intentionality is confirmed by her statement during her August 13, 2010 eligibility interview that her household income consisted only of social security and public assistance payments received by other household members.

¹⁷ Ex. 14.

¹⁸ Ex. 15.

¹⁹ Ex. 2.

²⁰ Ex. 17, p. 3; Holton testimony.

²¹ 7 C.F.R. § 273.16(e)(6).

²² 7 C.F.R. § 273.16(c).

²³ 7 C.F.R. § 273.10(e)(1)(i)(A).

²⁴ 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”

The Division has therefore met its burden of proof and established that Ms. M made an intentional misrepresentation on her August 4, 2010 Food Stamp renewal application. Consequently, Ms. M has committed a first Intentional Program Violation of the Food Stamp program.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence²⁵ that Ms. M intentionally misrepresented, concealed or withheld a material fact on her September 16, 2010 application “for the purpose of establishing or maintaining a family’s eligibility for Temporary Assistance benefits.”²⁶

The evidence is clear that Ms. M did not list her employment income on her September 16, 2010 Temporary Assistance application, despite there being an explicit question regarding it. As noted above, intent can be determined by circumstantial evidence. Ms. M undoubtedly knew she was working and making a wage from her job because she had been working since July 4, 2010, for over two months, and had already received four paychecks at the time of her application. Her “not applicable” response to the employment question was therefore an intentional misrepresentation regarding her employment income.

Temporary Assistance eligibility and benefit amounts are determined, in part, based upon a household’s income.²⁷ The amount of a household’s income is therefore a material fact for the purpose of determining Temporary Assistance eligibility and benefit amounts. Ms. M’s intentional misrepresentation regarding her employment income was therefore the misrepresentation of a material fact.

The Division must then prove that the intentional misrepresentation of the material fact was for the purposes of establishing or maintaining the household’s eligibility for Temporary Assistance benefits. Ms. M was aware, having received Food Stamp benefits continuously since September 2009, that a household’s eligibility for and the amount of public assistance benefits it received are based, in part, upon the household’s income. Based upon her awareness of this eligibility requirement, Ms. M’s intentional misrepresentation that she did not have any employment income was for either the purpose of establishing her eligibility for Temporary

²⁵ 7 AAC 45.585(e).

²⁶ 7 AAC 45.580(n).

²⁷ 7 AAC 45.470(c); 7 AAC 45.525.

Assistance benefits or obtaining a higher amount of those benefits than she would otherwise be entitled.

The Division has therefore met its burden of proof and established that Ms. M intentionally misrepresented a material fact: the fact she had employment income. This intentional misrepresentation of a material fact was made for the purpose of establishing her eligibility for Temporary Assistance benefits. Ms. M has therefore committed a first Intentional Program Violation of the Temporary Assistance program.

IV. Conclusion and Order

A. Food Stamp Program

Ms. M 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.²⁸ The Food Stamp program disqualification period shall begin February 1, 2013.²⁹ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.³⁰ For the duration of the disqualification period, Ms. M'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 as they may be used in these determinations.³¹

The Division shall provide written notice to Ms. M 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.³²

If over-issued Food Stamp benefits have not been repaid, Ms. M or any remaining household members are now required to make restitution.³³ If Ms. M disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³⁴

²⁸ 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).

²⁹ 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 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).

³⁰ 7 C.F.R. § 273.16(b)(11).

³¹ 7 C.F.R. § 273.11(c)(1).

³² 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁴ 7 C.F.R. § 273.15.

B. Temporary Assistance Program

Ms. M has committed a first time Temporary Assistance Intentional Program Violation. She is therefore disqualified from participation in the Temporary Assistance program for a period of six months.³⁵ If Ms. M is currently receiving Temporary Assistance benefits, her disqualification period shall begin February 1, 2013.³⁶ If Ms. M is not currently a Temporary Assistance recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, Temporary Assistance benefits.³⁷ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.³⁸ For the duration of the disqualification period, Ms. M's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. M must report her income and resources as they may be used in these determinations.³⁹

The Division shall provide written notice to Ms. M and the caretaker relative, if other than Ms. M, of the Temporary Assistance benefits they will receive during the period of disqualification.⁴⁰

If over-issued Temporary Assistance benefits have not been repaid, Ms. M or any remaining household members are now required to make restitution.⁴¹ If Ms. M disagrees with the Division's calculation of the amount of over-issuance to be repaid, she may request a hearing on that limited issue.⁴²

Dated this 15th day of November, 2012.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

³⁵ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁶ 7 AAC 45.580(f).

³⁷ 7 AAC 45.580(g).

³⁸ 7 AAC 45.580(e)(1).

³⁹ 7 AAC 45.580(e)(3).

⁴⁰ 7 AAC 45.580(k).

⁴¹ 7 AAC 45.570(b).

⁴² 7 AAC 45.570(l).

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 29th 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.]