

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

In the Matter of)	OAH No. 12-0485-ADQ
)	Agency No.
J J. T)	Fraud Control Case No.
_____)	Food Stamp Program

DECISION AND ORDER

I. Introduction

J J. T is a former Food Stamp¹ recipient. On October 2, 2012, 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 time Intentional Program Violation of the Food Stamp program.²

Ms. T's hearing was held on November 6, 2012. Ms. T was provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. T did not appear for the hearing and was not available at her telephone number of record, and the hearing went forward in her absence.⁴

DPA was represented at hearing by Dean Rogers, an investigator employed by DPA's Fraud Control Unit. Mr. Rogers and Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. Exhibits 1 and 3-11 were admitted into evidence without objection and without restriction (Exhibit 2 was not offered). The record closed at the conclusion of the hearing.

This decision concludes that Ms. T 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.

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. 3; Ex. 4.

⁴ 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.

Ms. T applied for Food Stamp benefits on July 20, 2012.⁵ As part of the application, Ms. T signed a statement certifying that the information contained in the application was correct.⁶ The application contained a question asking “Is any adult in your household fleeing from prosecution, custody, confinement for a felony or Class A misdemeanor from any state?” Ms. T answered “no” to that question.⁷

In fact, however, a year before her application Ms. T had been convicted of Second Degree Theft, a felony.⁸ The imposition of her sentence was suspended. As a condition of the suspension, she was put on probation for two years, during which she had to first serve 30 days of shock incarceration and then report monthly to her probation officer.⁹ She did report to her probation officer at first, but on December 6, 2011, five months after her conviction, she failed to appear and thereafter did not contact her probation officer.¹⁰ A bench warrant was issued for her arrest on January 13, 2012, which remained outstanding through at least August 29, 2012.¹¹ In the absence of contrary evidence, these circumstances represent clear and convincing evidence that she must have known that she was in violation of her probation and was a fugitive from sentencing for her felony after she stopped complying with probation in December, 2011.

Ms. T’s Food Stamp application was approved and she received Food Stamp benefits for July and August 2012 in the total amount of \$331 as a result.¹² Her benefits were then terminated as a result of the fraud investigation leading to this case.¹³

III. Discussion

Except for someone with prior IPV’s in his or her record, someone who falls within a provision for enhanced penalties that does not apply here, 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

⁵ Ex. 7.
⁶ Ex. 7, p. 8.
⁷ Ex. 7, p. 2.
⁸ Ex. 10.
⁹ Ex. 10, pp. 2-3, 9-10.
¹⁰ Ex. 10, p. 10.
¹¹ Ex. 1, p. 5; Ex. 10, p. 1; hearing testimony of Rogers.
¹² Ex. 9; Ex. 11; hearing testimony of Holton.
¹³ Hearing testimony of Rogers.

false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁴ DPA must prove the elements of the IPV by clear and convincing evidence.¹⁵

A person who is “fleeing to avoid . . . custody for a [felony] crime” or who is “violating a condition of probation . . . under . . . State law” is ineligible for participation in the Food Stamp program.¹⁶ As noted above, clear and convincing evidence shows that Ms. T was, and must have known that she was, in both of these categories at the time she applied for Food Stamps. However, she denied that she was fleeing from “custody . . . for a felony” when she completed her application. This was a false or misleading statement. In the absence of any evidence that she misunderstood the question, the contrast between this answer and the true state of affairs is sufficient to constitute clear and convincing evidence that she intended to make a deceptive answer. Ms. T has therefore committed a first Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

Ms. T 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 required to reimburse DPA for benefits that were overpaid as a result of the IPV.¹⁷ The Food Stamp disqualification period shall begin January 1, 2013.¹⁸ This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. T’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.²⁰

The division 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.²¹

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

¹⁵ 7 C.F.R. § 273.16(e)(6).

¹⁶ 7 C.F.R. § 273.11(n).

¹⁷ 7 C.F.R. § 273.16(b)(1); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

¹⁸ 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).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

If over-issued Food Stamp benefits have not been repaid, Ms. T or any remaining household members are now required to make restitution.²² If Ms. T disagrees with the division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.²³

Dated this 6th 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 20th day of November, 2012.

By: Signed

Name: Christopher M. Kennedy
Title: Administrative Law Judge

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

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

²³ 7 C.F.R. § 273.15.