

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

|                  |   |                        |
|------------------|---|------------------------|
| In the Matter of | ) | OAH No. 12-0851-ADQ    |
|                  | ) | Division No.           |
| N B              | ) | Fraud Control Case No. |
| _____            | ) | Food Stamp Program     |

**DECISION AND ORDER**

**I. Introduction**

N B is a former Food Stamp<sup>1</sup> recipient. On November 9, 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 program.<sup>2</sup>

Ms. B's hearing was held on January 4, 2013. She was provided advance notice of the hearing.<sup>3</sup> Ms. B represented herself and testified on her own behalf. Angel Romero, 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.

This decision concludes that Ms. B 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.

Ms. B applied for Food Stamp benefits on February 13, 2012.<sup>4</sup> That application contained a question asking whether anyone in her household was employed and earning wages. Her answer to that question was that she was working at the No Name Hotel.<sup>5</sup> Ms. B signed the application, certifying that the information contained in the application was correct.<sup>6</sup> However,

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<sup>1</sup> 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.

<sup>2</sup> Ex. 3.

<sup>3</sup> Ex. 1, p. 3; Ex. 4.

<sup>4</sup> Ex. 7.

<sup>5</sup> Ex. 7, p. 2.

<sup>6</sup> Ex. 7, p. 4.

at the time of her application, Ms. B was working for both the No Name Hotel and for No Name Services (No Name). She had been working for No Name since November 2011 and worked 65.04 hours during the pay period that included February 13, 2012, the date of her application.<sup>7</sup>

Ms. B testified that she thought she had notified the Division about her job with No Name.

The Division initiated a fraud investigation which culminated in this case.<sup>8</sup> The Division calculated that during March and April 2012, Ms. B received \$596 in Food Stamp benefits that she was not entitled to receive.<sup>9</sup>

### **III. Discussion**

In order to prevail, the Division must prove by clear and convincing evidence<sup>10</sup> that Ms. B 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 February 13, 2012 application.<sup>11</sup> It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.<sup>12</sup>

The evidence is clear that Ms. B did not list her employment with No Name on her Food Stamp application, despite there being an explicit question regarding it. The question then arises as to whether this was an intentional misrepresentation. Ms. B’s testimony did not directly address the omission of her job with No Name from the application; instead she testified she thought she had notified the Division of the job.

Given the fact that Ms. B did not list her employment with No Name on her application, coupled with her testimony that did not address that omission, the overall weight of the evidence creates a clear and convincing picture of a person who knew exactly what she was doing. Her employment with No Name 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. B’s misrepresentation was intentional.

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<sup>7</sup> Ex. 11, pp. 2, 9.

<sup>8</sup> Ex. 2.

<sup>9</sup> Ex. 12.

<sup>10</sup> 7 C.F.R. § 273.16(e)(6).

<sup>11</sup> 7 C.F.R. § 273.16(c).

<sup>12</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

The Division has therefore met its burden of proof and established that Ms. B made an intentional misrepresentation on her February 13, 2012 Food Stamp application. Consequently, Ms. B has committed a first Intentional Program Violation of the Food Stamp program.

#### **IV. Conclusion and Order**

Ms. B 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.<sup>13</sup> The Food Stamp program disqualification period shall begin April 1, 2013.<sup>14</sup> This disqualification applies only to Ms. B, and not to any other individuals who may be included in her household.<sup>15</sup> For the duration of the disqualification period, Ms. B'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.<sup>16</sup>

The Division shall provide written notice to Ms. B 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>17</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.<sup>18</sup> If Ms. B disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.<sup>19</sup>

Dated this 28th day of January, 2013.

Signed  
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Lawrence A. Pederson  
Administrative Law Judge

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<sup>13</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>14</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>15</sup> 7 C.F.R. § 273.16(b)(11).

<sup>16</sup> 7 C.F.R. § 273.11(c)(1).

<sup>17</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>18</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>19</sup> 7 C.F.R. § 273.15.

## 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 12<sup>th</sup> day of February, 2013.

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

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