

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

In the Matter of)	OAH No. 12-0880-ADQ
)	Division No.
H H)	Fraud Control Case No.
_____)	Food Stamp Program

DECISION AND ORDER

I. Introduction

H H is a Food Stamp¹ recipient. On November 15, 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.²

Ms. H’s hearing began on December 17, 2012. She was provided advance notice of the hearing.³ Ms. H did not appear for the December 17 hearing and it was held in her absence.⁴

Vance Canoy, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division. Lori Smith and Margaret Shykes, both of whom are eligibility technicians employed by the Division, testified for the Division.

This decision concludes that Ms. H 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. H applied and was approved for Food Stamp benefits in December 2011.⁵ That application contained a question asking whether anyone in her household was employed and earning wages. She answered that question by checking the box marked “no.”⁶ Ms. H applied

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 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). 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.

⁵ Ex. 7, pp. 7 - 16; Ex. 9, pp. 5 - 8.

⁶ Ex. 7, p. 9.

to renew her household's Food Stamp benefits on May 11, 2012.⁷ The application contained a question asking whether anyone in her household was working and what that person's wages were. Ms. H left the answer to that question blank, indicating no one in the household had income from working.⁸ Ms. H signed both applications, certifying that the information contained in the applications was correct.⁹

The Division checked a Department of Labor interface while processing Ms. H's renewal application, and determined her household member K S was working and had been working since the last quarter of 2011. He worked for the same employer from the 4th quarter of 2011 through the second quarter of 2012. He earned \$10,491.98 during the 4th quarter of 2011 (October 1, 2011 – December 31, 2011), \$15,469 in gross wages during the first quarter of 2012 (January 1, 2012 – March 31, 2012) and \$28,607 in gross wages during the second quarter of 2012 (April 1 – June 30, 2012), all from the same employer.¹⁰

The Division initiated a fraud investigation which culminated in this case.¹¹ The Division calculated that during the period from December 2011 through May 2012, Ms. H received \$2,472 in Food Stamp benefits that she was not entitled to receive.¹²

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹³ that Ms. H 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 December 2011 and May 2012 applications.¹⁴ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household's income.¹⁵

The evidence is clear that Ms. H did not list Mr. S's employment income on either of her Food Stamp renewal applications, despite there being an explicit question regarding it. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only

⁷ Ex. 7, pp. 1 - 6.

⁸ Ex. 7, p. 2.

⁹ Ex. 7, pp. 4, 14.

¹⁰ Ex. 11, p. 3. The Division relied on the Department of Labor quarterly reports because it was not able to obtain payroll records from Mr. S's employer, and because Ms. H did not respond to an information request. (Shykes testimony).

¹¹ Ex. 2.

¹² Ex. 12.

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. § 273.16(c).

¹⁵ 7 C.F.R. § 273.10(e)(1)(i)(A).

direct evidence of a person's intent is testimony from that person on that subject. However, Ms. H 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.¹⁶ Mr. S was a member of Ms. H's household and it is highly unlikely that she was not aware that he was employed at the time of either of her applications. Her failure to notify the Division of Mr. S's employment in response to the question posed on the applications was therefore an intentional misrepresentation.

The Division has therefore met its burden of proof and established that Ms. H made an intentional misrepresentation on both her December 2011 and May 2012 Food Stamp applications. Consequently, Ms. H has committed a first Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

Ms. H 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.¹⁷ The Food Stamp program disqualification period shall begin March 1, 2013.¹⁸ This disqualification applies only to Ms. H, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. H'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. H 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

¹⁶ 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"

¹⁷ 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).

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. H or any remaining household members are now required to make restitution.²² If Ms. H 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 28th day of December 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 11th day of January, 2013.

By: Signed

Name: Lawrence A. Pederson
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.