

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

In the Matter of:	)	
	)	OAH No. 12-0917-ADQ
F K	)	FCU Case No.
_____	)	DPA Case No.

**DECISION AND ORDER**

**I. Introduction**

The issue in this case is whether F K committed an Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program<sup>1</sup>, more commonly known as the Food Stamp program, by applying for Food Stamp benefits in Alaska without disclosing that he was already receiving Food Stamps elsewhere.

Mr. K's hearing began on December 27, 2012. The hearing was recorded. Mr. K was sent advance notice of the hearing by both certified mail and standard First Class mail.<sup>2</sup> Mr. K appeared telephonically on December 27, 2012 and the hearing was continued until January 29, 2013 at his request. Mr. K did not appear for his January 29 hearing, however, and it was therefore held in his absence.<sup>3</sup>

The Division of Public Assistance (Division) was represented at hearing by William Schwenke, an investigator employed by the Division's Fraud Control Unit. Mr. Schwenke and Michael Mason, a Division Eligibility Technician, testified on behalf of the Division. Exhibits 1-13 were admitted into evidence without objection and without restriction. The record closed at the conclusion of the hearing.

**II. Facts**

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

Mr. K applied for Food Stamp benefits in Oregon on November 23, 2010, with an address located in Roseburg, Oregon. He was then receiving Food Stamp benefits from the State

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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"). Both names are still in use, and this decision uses the "Food Stamp" terminology.

<sup>2</sup> Ex. 1, p. 3; Ex. 3. Mr. K acknowledged receipt of the Division's documents at the December 27 hearing.

<sup>3</sup> Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. See 7 C.F.R. § 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.

of Alaska. His Oregon application was initially denied because he was receiving Alaska Food Stamp benefits and was then approved, effective December 1, 2010, after his Alaska case was closed effective the end of November 2010.<sup>4</sup> He was authorized, issued, and used Oregon Food Stamp benefits continuously from December 2010 through the end of October 2011.<sup>5</sup> The last time he used the Oregon benefits, while in Oregon, was in mid-May 2011.<sup>6</sup> He began using the Oregon Food Stamp benefits in Alaska beginning in June 2011.<sup>7</sup>

On May 23, 2011, while he was receiving Oregon Food Stamp benefits, Mr. K filed an application for Alaska Food Stamp benefits, giving an address in No Name, Alaska.<sup>8</sup> Question 2 of the Alaska Food Stamp application asked, “Has anyone in your household received public assistance ( . . . food stamps . . . ) in Alaska or any other state? If yes, who, when, and where?” Mr. K responded “no.”<sup>9</sup> He therefore did not disclose that he had received and was continuing to receive Food Stamps from Oregon. Mr. K signed a certification at the end of the application attesting that the information it contained was correct to the best of his knowledge.<sup>10</sup>

Mr. K attended an interview with a Division eligibility technician in No Name the same day he filed the application.<sup>11</sup> This interview, as well as written materials distributed with the application, covered the illegality of giving false or incomplete information to get benefits.<sup>12</sup> The Division record of his interview does not indicate that he disclosed at the interview that he was receiving and using Oregon Food Stamp benefits.<sup>13</sup>

The Division approved Mr. K’s Alaska Food Stamp application on May 24, 2011 and paid him a total of \$771 in Alaska Food Stamp benefits between May and October 2011.<sup>14</sup> He continued to use his Oregon Food Stamp benefits during this same period.<sup>15</sup>

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<sup>4</sup> Ex. 11, pp. 6, 10 -11.

<sup>5</sup> Ex. 11, pp. 12 – 32.

<sup>6</sup> Ex. 11, pp. 20 – 21.

<sup>7</sup> Ex. 11, pp. 21 – 31. Mr. K may have begun using his Oregon Food Stamp benefits in Alaska in May 2011, however, the Oregon Food Stamp benefit printout does not definitively show use in Alaska until June 2011. *See* Ex. 11, p. 21.

<sup>8</sup> Ex. 7, p. 7.

<sup>9</sup> Ex. 7, p. 9.

<sup>10</sup> Ex. 7, p. 15.

<sup>11</sup> Mason testimony; Ex. 9.

<sup>12</sup> Mason testimony; Ex. 7, p. 6; Ex. 9.

<sup>13</sup> Mason testimony; Ex. 9. Because such a significant disclosure would surely have been recorded, this fact is established by clear and convincing evidence.

<sup>14</sup> Ex. 13.

<sup>15</sup> Ex. 11, pp. 21 – 31.

### III. Discussion

Apart from exceptional circumstances that do not apply here, it is prohibited by federal law for a person to participate in the Food Stamp program from two different households or two different states in the same month.<sup>16</sup> It is also prohibited to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.<sup>17</sup>

In this case, DPA seeks to establish an IPV and impose a disqualification penalty. There are two kinds of IPV's that are potentially applicable to what Mr. K did, and they lead to different penalties.<sup>18</sup> To establish either of them, DPA must prove the elements of that IPV by clear and convincing evidence.<sup>19</sup>

No evidence has been offered that Mr. K has ever been found to have committed a prior IPV, and therefore both types of IPV will be evaluated on the assumption that this is a first-time violation.

#### A. *IPV Leading to Twelve-Month Disqualification*

Except for someone with prior IPV's in his or his record, someone who falls in the ten year provision discussed below, 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 false or misleading statement, or misrepresented, concealed or withheld facts" in connection with the program.<sup>20</sup>

It is undisputed that Mr. K did not list his receipt of Food Stamps from Oregon in answer to a question on his Alaska application that clearly called for that information - the question

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<sup>16</sup> See 7 C.F.R. §§ 273.3(a), 271.2. The exceptional circumstances are when a person is residing in a battered persons' shelter and was, during the same month, a member of the abuser's household. Mr. K's Oregon and Alaska applications both listed him as being a single-person household, so this exception clearly does not apply in his case.

<sup>17</sup> See, e.g., 7 U.S.C. §2015(b).

<sup>18</sup> In its initial hearing notice, the Division identified the issue as whether Mr. K had misrepresented his "place of residence in order to [receive] multiple food stamps" which is subject to a ten year IPV disqualification penalty. See 7 U.S.C. § 2015(j); 7 C.F.R. § 273.16(b)(5). However, the Division's initial hearing notice only requested that Mr. K be subject to a one year first time IPV disqualification penalty. Ex. 2, pp. 1, 4. In its prehearing documents, which were delivered to Mr. K's mailing address on December 20, 2012, and which Mr. K acknowledged receiving when he initially appeared in this case on December 27, 2012, the Division requested a ten year IPV disqualification penalty. Ex. 1, p. 7; Ex. 4; Ex. 5. Although the Division should have requested the ten year disqualification penalty in its initial hearing notice, because Mr. K received notification of the amended request more than thirty days before the January 29, 2013 evidentiary hearing, the Division has satisfied minimum notice requirements. See 7 C.F.R. § 273.16(e)(3)(i).

<sup>19</sup> 7 C.F.R. § 273.16(e)(6).

<sup>20</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

about whether he had received Food Stamps or other public assistance anywhere. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, other than his initial appearance on December 27, 2012, Mr. K failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

Intent can be deduced from circumstantial evidence.<sup>21</sup> Mr. K was actively receiving and using Oregon Food Stamp benefits immediately before the time of his Alaska application and for months thereafter. Additionally, given that he applied for Oregon Food Stamp benefits in November 2010, while receiving Alaska Food Stamp benefits, which application was initially denied due to his receipt of Alaska Food Stamp benefits, he knew that receipt of benefits from another state was relevant to his eligibility. His Oregon Food Stamp benefits cannot simply have slipped his mind under these circumstances, and one must infer that he was consciously aware that he was omitting important information as to his eligibility. The evidence is clear and convincing that Mr. K's misrepresentation was intentional. Mr. K therefore committed a first IPV.

*B. IPV Leading to Ten Year Disqualification*

Except for someone with two prior IPV's in his or his record, federal Food Stamp laws provide that a ten year disqualification must be imposed on any individual proven to have "made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Food Stamp benefits simultaneously."<sup>22</sup> The Division has sought to apply this provision to Mr. K, observing correctly that Mr. K (i) made a fraudulent representation in his Alaska application (ii) in order to receive benefits simultaneously in Alaska and Oregon.

There is, however, a third element required for this kind of IPV under the quoted federal laws: the fraudulent representation must have been "with respect to [the applicant's] identity or place of residence."<sup>23</sup> There is no evidence that Mr. K misrepresented his identity at any point.

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<sup>21</sup> 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 . . . ."

<sup>22</sup> 7 U.S.C. § 2015(j); 7 C.F.R. § 273.16(b)(5).

<sup>23</sup> 7 C.F.R. § 273.16(b)(5).

The only question, therefore, is whether Mr. K’s misrepresentation, as detailed in the previous section, was a misrepresentation with respect to his place of residence.

“Residence” for purposes of Food Stamp eligibility is a unique and somewhat complex concept. To be a resident and eligible, a person must “live in” the state.<sup>24</sup> A state cannot require the person to have lived in the state for any particular duration, nor require a fixed place of abode, nor require that the person have the intent to remain in the state.<sup>25</sup> Thus, residency for Food Stamp purposes is distinct from residency under Alaska law, which requires the intent to remain indefinitely demonstrated by, among other things, “maintaining a principal place of abode in the state for at least 30 days.”<sup>26</sup> A person who lives in the state on a transient basis can be a resident for purposes of the program.<sup>27</sup> Regardless, one cannot be a resident while remaining a resident elsewhere, for example, a person in the area “solely for vacation purposes” is not a resident for purposes of Food Stamp eligibility.<sup>28</sup> It is also inconsistent with residency to be drawing and using Food Stamps elsewhere.

This last point is demonstrated by the federal case of *Villegas v. Concannon*.<sup>29</sup> That case was about migrant farm workers who were enrolled in another state’s Food Stamp program at the beginning of a month and then moved to Oregon during the course of the month. The court overturned an Oregon practice of barring these workers from immediate participation in the Oregon program on the basis of nonresidence, simply because they had been enrolled in another state the same month and Food Stamps from that state might be in the mail to them. However, the court was careful to specify that, to be residents in Oregon for purposes of receiving Food Stamps in Oregon, the workers would have to “attest[] to nonparticipation in the prior area that month.”<sup>30</sup> Thus, it would be inconsistent with residency in the new state to actually use Food Stamps from the prior state.

Alaska’s Food Stamp application, like those of other states,<sup>31</sup> does not expect applicants to understand the nuances of residency, and it does not ask them to state or certify their state of

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<sup>24</sup> 7 C.F.R. § 273.3, “Residency.”

<sup>25</sup> *Id.*

<sup>26</sup> AS 01.10.055.

<sup>27</sup> *See, e.g., Villegas v. Concannon*, 742 F. Supp. 1083 (D. Oregon 1990) (migrant farm workers).

<sup>28</sup> 7 C.F.R. § 273.3(a).

<sup>29</sup> Cited in note 27.

<sup>30</sup> 742 F. Supp. at 1087.

<sup>31</sup> *See Ex. 11*, pp. 12 - 22.

residence.<sup>32</sup> Instead, the application asks questions from which eligibility technicians can determine residency. At least for a person who is receiving and using Food Stamps from another state *at the time of application*, a critical part of this determination is having a correct answer to Question 2, the question asking when and where the applicant has received public assistance. It follows that in answering this question falsely and concealing that he was, at that very time, receiving and using Oregon Food Stamps, an act inconsistent with residence in Alaska, Mr. K made a misrepresentation “with respect to . . . place of residence.” Since, as demonstrated in the previous section, he did this intentionally and did it for the purpose of receiving Food Stamps in two states simultaneously, he has committed an IPV that calls for a ten year suspension.

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

Mr. K has committed a first time Food Stamp program IPV involving a fraudulent statement or representation with respect to place of residence. He is therefore disqualified from receiving Food Stamp benefits for a ten year period, and is required to reimburse DPA for benefits that were overpaid as a result of the IPV.<sup>33</sup> The Food Stamp disqualification period shall begin April 1, 2013.<sup>34</sup> This disqualification applies only to Mr. K, and not to any other individuals who may be included in his household.<sup>35</sup> For the duration of the disqualification period, Mr. K’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources so that they can be used in these determinations.<sup>36</sup>

DPA shall provide written notice to Mr. K 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>37</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. K or any remaining household members are now required to make restitution.<sup>38</sup> If Mr. K disagrees with DPA’s

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<sup>32</sup> Ex. 7. It does ask for a “home address” and “mailing address,” *id.* at 7, but these are not necessarily the same as residence.

<sup>33</sup> 7 C.F.R. § 273.16(b)(5); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>34</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>35</sup> 7 C.F.R. § 273.16(b)(11).

<sup>36</sup> 7 C.F.R. § 273.11(c)(1).

<sup>37</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>38</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>39</sup>

Dated this 22<sup>nd</sup> day of February, 2013.

*Signed*  
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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 8<sup>th</sup> day of March, 2013.

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>39</sup> 7 C.F.R. § 273.15.