

arrest.⁷ On August 15, 2012 – two months prior to the application in question here – Mr. S was sent a notice telling him his prior food stamp case was being closed because of this outstanding bench warrant.⁸ The notice stated, in part, “It was reported that you have a current warrant out for your arrest. You are not eligible to receive food stamps at this time.”⁹

During the months of October through December of 2012, Mr. S received Food Stamp benefits in the total amount of \$436 that, because of the outstanding bench warrant, he was not entitled to receive.¹⁰

III. Discussion

The division has alleged intentional program violations. To prove an intentional program violation under the state’s Temporary Assistance program, the division must show by clear and convincing evidence “that the individual committed, and intended to commit, an intentional program violation as defined in 7 AAC 45.580.”¹¹ This regulation defines an intentional program violation as

an action taken by an individual for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits . . . or for increasing or preventing a reduction in the amount of the benefit, that intentionally misrepresents, conceals, or withholds a material fact.^[12]

An intentional program violation under the federal Food Stamp program exists where a person has intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts.”¹³ This must also be shown by clear and convincing evidence.¹⁴ In order to meet the clear and convincing evidence burden of proof, the division must show the truth of the facts it is asserting is highly probable.¹⁵

Under the Food Stamp program, a person who is fleeing to avoid prosecution or custody for a crime, or who is violating a condition of probation or parole, is ineligible to receive benefits.¹⁶ Similarly, under the temporary assistance program, a family may not

⁷ Exhibit 14, page 1.

⁸ Exhibit 13.

⁹ Exhibit 13, page 2 (All capital letters used in original have been changed to improve readability).

¹⁰ Exhibit 15.

¹¹ 7 AAC 45.585(e).

¹² 7 AAC 45.580(n).

¹³ 7 C.F.R. § 273.16(c)(1).

¹⁴ 7 C.F.R. § 127.16(e)(6).

¹⁵ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

¹⁶ 7 C.F.R. § 273.1(b)(7)(ix).

receive benefits if an adult in that family is “fleeing to avoid prosecution, custody, or confinement after conviction, in this or another jurisdiction, for a crime that is classified as a felony or a class A misdemeanor . . .”¹⁷

As noted above, at the time of his application, Mr. S was subject to arrest pursuant to a bench warrant that was issued in connection with his prior felony conviction. This establishes that he was fleeing to avoid custody related to that felony.¹⁸ He should have answered “yes” to the question asking whether anyone in the household was fleeing from prosecution or custody for a felony.

Whether Mr. S *intentionally* answered that question incorrectly is a different question. Other administrative disqualification decisions have noted that the question is not well written and may be misunderstood by those whose status is based on a probation or parole violation.¹⁹ Not everyone will necessarily make the connection between custody for a probation violation and custody for the underlying felony for which probation was granted. In addition, not everyone will be aware that a warrant has actually been issued for his or her arrest after violating a condition of probation.

In this case, Mr. S did not testify, so it was not possible to ask him directly about his understanding of the question and his answer to that question. Instead, his intent must be inferred from the available circumstantial evidence. Mr. S had violated his probation at least twice before, and was incarcerated for a portion of his remaining felony sentence each of those times.²⁰ He was informed in August of 2012 that he was no longer eligible to receive food stamps based on an existing bench warrant.²¹ Slightly more than two months later, Mr. S completed his application, and asserted that he was not fleeing from custody. At that time, the bench warrant was still outstanding,²² and it is highly probable that Mr. S knew that he was subject to arrest, and therefore was in fact fleeing custody. There is clear and convincing evidence that Mr. S concealed or misrepresented a material fact in completing his application for benefits.

¹⁷ AS 47.27.015(a)(2).

¹⁸ *In re D.A.S.*, OAH No. 12-0734-ADQ (Commissioner Health and Social Services 2012) at 3.

¹⁹ *See In re D.A.S.*, OAH No. 12-0734, page 5; *In re N. S. V-C*, OAH No. 12-0716-ADQ (Commissioner Health and Social Services 2012) at 5.

²⁰ Exhibit 14, page 4.

²¹ Exhibit 13.

²² Exhibit 14, page 19 (showing warrant still outstanding on December 19, 2012).

IV. Conclusion and Order

Mr. S committed a first time Intentional Program Violation of the Food Stamp program. He 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.²³ The Food Stamp program disqualification period shall begin May 1, 2013.²⁴ This disqualification applies only to Mr. S, and not to any other individuals who may be included in her household.²⁵ For the duration of the disqualification period, Mr. S's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, he must report his income and resources as they may be used in these determinations.²⁶

The division shall provide written notice to Mr. S 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.²⁷

If over-issued Food Stamp benefits have not been repaid, Mr. S or any remaining household members are now required to make restitution in the amount of \$436.²⁸

Mr. S has also committed a first time Temporary Assistance Intentional Program Violation. He is therefore disqualified from participation in the Temporary Assistance program for a period of six months.²⁹ Mr. S's disqualification period shall be postponed until he applies for, and is found eligible for, Temporary Assistance benefits.³⁰ This disqualification applies only to Mr. S, and not to any other individuals who may be included in his household.³¹ For the duration of the disqualification period, Mr. S's needs will not be considered when determining

²³ 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).

²⁴ 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).

²⁵ 7 C.F.R. § 273.16(b)(11).

²⁶ 7 C.F.R. § 273.11(c)(1).

²⁷ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁹ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁰ 7 AAC 45.580(g).

³¹ 7 AAC 45.580(e)(1).

Temporary Assistance eligibility and benefit amounts for his household. However, Mr. S must report his income and resources as they may be used in these determinations.³²

Dated this 5th day of March, 2013.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 19th day of March, 2013.

By: *Signed* _____
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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

³² 7 AAC 45.580(e)(3).