

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

In the Matter of)	
)	OAH No. 13-0078-ADQ
K E. G)	DPA/FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

K E. G is a former Food Stamp¹ recipient. On January 22, 2013, 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 Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing convened in this case on February 27, 2013, with Ms. G having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. G did not attend the hearing and could not be reached at any of the telephone numbers she has provided to the program.⁴ The hearing went forward in her absence.⁵

DPA was represented at the 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 1-12 were admitted into evidence without objection and without restriction.

This decision concludes that Ms. G committed a first Intentional Program Violation of the Food Stamp program.

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. She did not claim the certified mail. Ex. 12. The mailings went to the address she had provided, except that her application had an error in the zip code (which was noted shortly after she submitted it, *cf.* Ex. 8), and the hearing notices were sent using the correct zip code for her address in No Name. Rogers testimony.

⁴ At one of the numbers her sister answered the phone but declined to provide a number that would reach Ms. G. The administrative law judge left a message with the sister for Ms. G to call the Office of Administrative Hearings as soon as possible.

⁵ 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.

II. Facts

Ms. G began receiving Food Stamp benefits in December of 2011.⁶ On July 5, 2012, she applied for recertification.⁷ As part of the application, Ms. G signed a statement certifying that the information contained in the application was correct.⁸ 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. G answered “no” to that question.⁹

In fact, however, early in 2006 Ms. G had been convicted of Second Degree Theft, a felony.¹⁰ She was sentenced to 36 months of imprisonment with 31 months suspended, with five years of probation to commence upon release from incarceration.¹¹ Her sentence, if successfully completed in all respects, would thus have expired after 65 months, at some time in 2011.

Ms. G did not complete her sentence successfully. In 2007 she was jailed briefly for a probation violation.¹² A second probation violation that year may not have resulted in confinement.¹³ On May 18, 2011, she was found to have committed a third probation violation and was jailed for 45 days, with her probation extended by a year.¹⁴ On July 6, 2011, she was found to have committed a fourth probation violation, resulting in 90 days of additional confinement.¹⁵ On October 19, 2011, the Superior Court found her in violation of probation a fifth time. It required her to serve another 9 months of her original sentence, and afterward to “return to probation” to complete the additional year that had been imposed earlier in 2011.¹⁶ Ms. G was released from custody and returned to probation on December 26, 2011.¹⁷

On February 21, 2012, Ms. G tested positive for a controlled substance at the probation office, and was ordered in person to report back to the probation office the following day.¹⁸ She did not do so, and a bench warrant was issued for her arrest on February 29, 2012,¹⁹ which

⁶ Ex. 9; Holton testimony.

⁷ Ex. 7.

⁸ Ex. 7, p. 8.

⁹ Ex. 7, p. 2.

¹⁰ Ex. 10.

¹¹ Ex. 10, pp. 15, 18.

¹² Ex. 10, p. 14.

¹³ Ex. 10, p. 13.

¹⁴ Ex. 10, p. 12.

¹⁵ Ex. 10, p. 11.

¹⁶ Ex. 10, p. 10.

¹⁷ Ex. 10, p. 8.

¹⁸ Ex. 10, p. 5.

¹⁹ Ex. 10, p. 1.

remained outstanding through at least November 8, 2012.²⁰ 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, as someone with experience of the consequences of probation violations, that she was a fugitive from further incarceration for her felony after she stopped complying with probation in February 2012.

Ms. G's July 2012 Food Stamp application was approved and she received Food Stamp benefits for August through November 2012. The extra benefits to her household beyond what it would have been entitled to without her participation totaled \$796.²¹ Her benefits apparently were then terminated as a result of the fraud investigation leading to this case.

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 false or misleading statement, or misrepresented, concealed or withheld facts" in connection with the program.²² DPA must prove the elements of the IPV by clear and convincing evidence.²³

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.²⁴ As noted above, clear and convincing evidence shows that Ms. G 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. G has therefore committed a first Intentional Program Violation of the Food Stamp program.

²⁰ Ex. 1, p. 5; Ex. 10, p. 1; testimony of Rogers.

²¹ Ex. 11; testimony of Holton.

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

²³ 7 C.F.R. § 273.16(e)(6).

²⁴ 7 C.F.R. § 273.11(n).

IV. Conclusion and Order

Ms. G 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.²⁵ The Food Stamp disqualification period shall begin K 1, 2013.²⁶ This disqualification applies only to Ms. G, and not to any other individuals who may be included in her household.²⁷ For the duration of the disqualification period, Ms. G'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.²⁸

The division shall provide written notice to Ms. G 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.²⁹

If over-issued Food Stamp benefits have not been repaid, Ms. G or any remaining household members are now required to make restitution.³⁰ If Ms. G disagrees with the division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.³¹

Dated this 28th day of February, 2013.

Signed _____
Christopher Kennedy
Administrative Law Judge

²⁵ 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).

²⁶ 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). The start date is the one requested by DPA to allow time for post-hearing proceedings and notice.

²⁷ 7 C.F.R. § 273.16(b)(11).

²⁸ 7 C.F.R. § 273.11(c)(1).

²⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

³¹ 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 14th day of March, 2013.

By: Signed
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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