

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

In the Matter of)	
)	OAH No. 13-0183-ADQ
N M. H)	DPA/FCU No
_____)	Agency No.

DECISION AND ORDER

I. Introduction

N H was receiving Food Stamp benefits, and in May of 2012 she completed an Eligibility Review Form for continued benefits. Subsequent to that time, she and her fiancée both began to earn income, and their total household income exceeded the eligibility limit. Ms. H did not report that income, as she was required to do. The Division of Public Assistance (division) sought to have Ms. H disqualified from the program based on this alleged intentional program violation.

A hearing was held on March 20, 2013. Ms. H participated by telephone. Ms. H had not received the division's exhibits, so the hearing date was rescheduled to give the division time to send a second set of exhibits. The rescheduled hearing date was set for April 22, 2013. At that time, Ms. H could not be reached at the telephone number available for her, and she did not appear in person. Ms. H was sent a notice giving her 10 days in which to contact the Office of Administrative Hearings to provide an explanation for why she was not available for the hearing.¹ Ms. H did not respond to that notice.

In Ms. H's absence, and pursuant to 7 AAC 45.585(b), the division presented its evidence. The division has proven an intentional program violation by clear and convincing evidence.

II. Facts

Ms. H signed an Eligibility Review Form on May 28, 2012.² At that time, her household included herself, her fiancée B J, and two children.³ As part of the review process, a division Eligibility Technician reviewed the Rights and Responsibilities

¹ 7 AAC 45.585(c).
² Exhibit 7, page 4.
³ Exhibit 7, page 1.

statement with Ms. H.⁴ This statement is part of the review form packet, and states that a Food Stamp recipient must report when the household's income exceeds the household's income limit, and informs recipients of the penalties for not reporting.⁵ When her application was approved, Ms. H was again notified of the reporting requirement:

You must tell us when the monthly income of all persons receiving food stamp benefits in your case totals more than \$3,027.00. You need to report this change within 10 days of when you know of the change. To determine your household's income, use the amount of income received before deductions.^[6]

Ms. H obtained employment with No Name Development Corporation on July 25, 2012.⁷ Between that date, and the end of the third quarter of 2012, she earned \$8,486.51.⁸ This is more than \$3,027 per month, and it is highly probable that she exceeded the \$3,027 amount in August.⁹

Mr. J obtained employment with No Name Partnership on June 4, 2012.¹⁰ He earned \$3,825 in June,¹¹ which is more than the reportable amount. Mr. J began receiving unemployment benefits again on November 17, 2012.¹²

The H household received \$5,999 in Food Stamp benefits in July through November, 2012.¹³ Had Ms. H reported the household's income, they would not have been eligible to receive any Food Stamp benefits.

III. Discussion

The division has alleged that Ms. H committed an intentional program violation. In order to prevail, the division must prove this violation by clear and convincing evidence.¹⁴ For Food Stamp recipients, an intentional program violation is defined to include having intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts[.]"¹⁵ A person who is found to have committed an intentional program

⁴ Testimony of Amanda Holten, Exhibit 8, page 1.

⁵ Exhibit 7, page 5.

⁶ Exhibit 9, pages 1 – 2.

⁷ Exhibit 11, page 2.

⁸ Exhibit 11, page 3.

⁹ She began receiving unemployment benefits on November 24, 2012. Exhibit 11, page 4.

¹⁰ Exhibit 11, page 12.

¹¹ Exhibit 11, page 13.

¹² Exhibit 11, page 15.

¹³ Testimony of Amanda Holten; Exhibit 12.

¹⁴ 7 C.F.R. § 273.16(e)(6).

¹⁵ 7 C.F.R. 273.16(c)(1).

violation is disqualified from receiving food stamps for 12 months for a first time violation,¹⁶ and must repay any benefits wrongfully received.¹⁷

In this case, the evidence shows that Ms. H withheld facts because she did not report the household's income. The more difficult question is whether the division has proven by clear and convincing evidence that she intentionally withheld that information. To meet this standard, the division must show that it is *highly probable* that Ms. H intended not to report the household's income.¹⁸ Ms. H's state of mind can be inferred from circumstantial evidence.¹⁹ Ms. H was specifically told of the requirement to report the household's income when it exceeded \$3,027 in a month, and was told of the penalties applicable to a failure to report. Mr. J obtained employment one week after Ms. H submitted her application. In the absence of any evidence from Ms. H explaining why she did not report the household's income, it is reasonable to infer that she was aware of the income and intentionally decided not to report it.²⁰ The division has proven this intent by clear and convincing evidence.

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 required to reimburse the division for benefits that were overpaid as a result of the intentional program violation.²¹ The Food Stamp disqualification period shall begin July 1, 2013.²² This disqualification applies only to Ms. H, and not to any other individuals who may be included in her household.²³ 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.²⁴

¹⁶ 7 C.F.R. 273.16(b)(1).

¹⁷ 7 C.F.R. 273.16(b)(12).

¹⁸ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

¹⁹ *In re M. S. B.*, OAH No. 13-0128-ADQ (Commissioner of Health and Social Services 2013), page 3.

²⁰ *See In re K. E. G.*, OAH No. 13-0078-ADQ (Commissioner of Health and Social Services 2013), page 3.

²¹ 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).

²² *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).

²³ 7 C.F.R. § 273.16(b)(11).

²⁴ 7 C.F.R. § 273.11(c)(1).

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.²⁵

If over-issued Food Stamp benefits have not been repaid, Ms. H or any remaining household members are now required to make restitution.²⁶ If Ms. H disagrees with the division's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²⁷

Dated this 15th day of May, 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 5th day of June, 2013.

By: *Signed*

Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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

²⁵ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁷ 7 C.F.R. § 273.15.