

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

In the Matter of: )  
 )  
 J F. U ) OAH No. 13-0381-ADQ  
 ) DPA Case No.  
 ) Fraud Control Case No.  
 )  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

J U is a former recipient of Food Stamp program<sup>1</sup> benefits. On March 22, 2013 the Division of Public Assistance (Division) initiated this Administrative Disqualification case against Ms. U, alleging that she committed a first time Intentional Program Violation (IPV) of the Food Stamp program by intentionally failing to disclose a felony drug conviction. This decision concludes, based on the evidence presented, that Ms. U did commit a first IPV. Accordingly, Ms. U is disqualified from participation in the Food Stamp program for twelve months.

**II. Facts**

On January 23, 2012 a judgment of conviction was entered against Ms. U for the crime of Fourth Degree Misconduct Involving a Controlled Substance, a felony.<sup>2</sup> The conviction was based on conduct which occurred on May 2, 2011.<sup>3</sup>

Ms. U's household has received Food Stamp benefits regularly since July 2009.<sup>4</sup> On July 19, 2012, Ms. U completed, signed, and submitted an eligibility review form for Food Stamp benefits.<sup>5</sup> In response to the question "Has anyone [in your household] been convicted of a drug-related felony for an offense that occurred on or after August 22, 1996?" Ms. U answered "no."<sup>6</sup> On the last page of the renewal application Ms. U signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of her knowledge.<sup>7</sup>

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<sup>1</sup> Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP). However, the program is still most commonly referred to as the "Food Stamp program," and this decision will therefore also refer to the program as the "Food Stamp program."

<sup>2</sup> Ex. 9 p. 1; AS 11.71.040(a)(2).

<sup>3</sup> Ex. 9 p. 1.

<sup>4</sup> Ex. 8 pp. 1 - 4.

<sup>5</sup> Ex. 6, pp. 5 - 8.

<sup>6</sup> Ex. 6 p. 5.

<sup>7</sup> Ex. 6 p. 8.

The Division approved Ms. U's renewal application and continued issuing Food Stamp benefits to her household.<sup>8</sup>

On January 4, 2013, Ms. U completed and signed another eligibility review form for Food Stamp program benefits, which was submitted to the Division on February 1, 2013.<sup>9</sup> Ms. U again indicated that no one in her household had been convicted of a drug-related felony,<sup>10</sup> and that the information contained in the renewal application was correct to the best of her knowledge.<sup>11</sup> On February 19, 2013, Ms. U participated in an eligibility interview regarding her renewal application; there is no record that she disclosed her felony drug conviction to the Division during this interview.<sup>12</sup> The Division again approved Ms. U's renewal application and continued issuing Food Stamp benefits to her household.<sup>13</sup>

The Division subsequently became aware of Ms. U's felony drug conviction and initiated a fraud investigation which culminated in the Division's filing of this case.<sup>14</sup> The Division notified Ms. U of its filing of this case, and of her hearing date, on March 22, 2013.<sup>15</sup>

Ms. U's hearing began on April 26, 2013. The hearing was postponed at Ms. U's request and resumed on May 8, 2013. Ms. U participated by phone, represented herself, and testified on her own behalf. Dean Rogers, an investigator employed by the Division's Fraud Control Unit, attended the hearing and represented the Division. Eligibility technician Amanda Holton attended the hearing and testified on behalf of the Division. The record closed at the end of the hearing.

### **III. Discussion**

#### ***A. Intentional Program Violations Under the Food Stamp Program***

In order to establish that Ms. U committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove by clear and convincing evidence<sup>16</sup> that Ms. U “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting her July 19, 2012 and/or January 4, 2013 eligibility review forms, and that these misrepresentations / concealments were intentional.<sup>17</sup>

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<sup>8</sup> Ex. 8 pp. 1 - 4.

<sup>9</sup> Ex. 6 pp. 9 - 12.

<sup>10</sup> Ex. 6 p. 9.

<sup>11</sup> Ex. 6 p. 12.

<sup>12</sup> Ex. 7 pp. 3 - 6.

<sup>13</sup> Ex. 8 p. 1.

<sup>14</sup> Ex. 2 pp. 11 - 20.

<sup>15</sup> Ex. 2 pp. 1 - 20.

<sup>16</sup> 7 C.F.R. § 273.16(e)(6).

<sup>17</sup> 7 C.F.R. § 273.16(c).

**B. Disqualification of Persons Convicted of Drug-Related Felonies**

Persons who have been convicted of felonies involving controlled substances are disqualified from participation in the Food Stamp program.<sup>18</sup> Although states have the discretion to exempt recipients from the drug felony disqualification rule,<sup>19</sup> Alaska has not done so.<sup>20</sup>

**C. Ms. U Committed an Intentional Program Violation**

Initially, it is clear that Ms. U did not report her felony drug conviction on either of the eligibility review forms at issue, nor during her February 19, 2013 eligibility interview.<sup>21</sup> This constitutes misrepresentation by omission or the concealment and/or withholding of facts.

The next issue is whether Ms. U's misrepresentation was intentional. A person's state of mind (for example, whether the person acted intentionally or merely recklessly or negligently) must generally be inferred from circumstantial evidence.<sup>22</sup>

Ms. U testified vaguely that, based on what she was told by the attorney who handled her criminal case, she did not think her drug conviction was a "real" felony so as to affect her eligibility for public benefits.<sup>23</sup> However, Ms. U acknowledged on cross examination that her conviction involved her participation in the shipment of illegal drugs. She also acknowledged that her attorney explained the criminal charging documents to her, and that the judge explained the charges to her at her change of plea hearing. In addition, Ms. U had significant prior experience with the Food Stamp program, and the language on the renewal form inquiring about drug convictions is clearly written. Based on these facts the inference is clear that Ms. U knew that she had been convicted of a felony related to drugs, and understood the importance of truthfully and accurately completing applications for public assistance, at the time she submitted the renewal forms in question. Together, these factors constitute clear and convincing evidence that Ms. U's failure to report her felony drug conviction was intentional.

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<sup>18</sup> 21 U.S.C. § 862a (a)(1) provides in relevant part that “[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of title IV of the Social Security Act [42 U.S.C.A. § 601 *et seq.*].” This includes the Food Stamp program.

<sup>19</sup> See 21 U.S.C. § 862a(d)(1) and 7 CFR § 273.11(m).

<sup>20</sup> See AS 47.25.975 – 990; 7 AAC § 46.010 *et seq.*

<sup>21</sup> Ms. U did not dispute her failure to disclose this information at hearing. Rather, she argued that she did not know the conviction at issue was a true conviction because imposition of her sentence was suspended.

<sup>22</sup> *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

<sup>23</sup> J U hearing testimony.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. U committed an Intentional Program Violation as defined by applicable Food Stamp program statutes and regulations. This is Ms. U's first IPV of the Food Stamp program.<sup>24</sup>

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

Ms. U has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp program benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.<sup>25</sup> The Food Stamp program disqualification period shall begin on September 1, 2013.<sup>26</sup> This disqualification applies only to Ms. U and not to any other individuals who may be included in her household.<sup>27</sup> For the duration of the disqualification period, Ms. U's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for her household. However, Ms. U must report her income and resources as they may be used in these determinations.<sup>28</sup> The Division shall provide written notice to Ms. U 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>29</sup> If over-issued Food Stamp program benefits have not been repaid, Ms. U or any remaining household members are now required to make restitution.<sup>30</sup> If Ms. U disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.<sup>31</sup>

Dated this 28th day of June, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>24</sup> Ex. 1 p. 7.

<sup>25</sup> 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).

<sup>26</sup> 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>27</sup> 7 C.F.R. § 273.16(b)(11).

<sup>28</sup> 7 C.F.R. § 273.11(c)(1).

<sup>29</sup> 7 C.F.R. § 273.16(e)(9)(ii).

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

<sup>31</sup> 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 9<sup>th</sup> day of July, 2013.

By: Signed  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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