

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

In the Matter of:	)	
	)	OAH No. 13-0388-ADQ
M T, SR.	)	FCU Case No.
_____	)	DPA Case No.

**DECISION and ORDER**

**I. Introduction**

The issue in this case is whether M T, Sr. committed an Intentional Program Violation (IPV) of the Food Stamp program<sup>1</sup> by intentionally misrepresenting that his son was living with him on his August 19, 2011 application for benefits.

Mr. T's hearing was held on April 23, 2013. Mr. T was provided advance notice of the hearing by mail.<sup>2</sup> Mr. T did not appear for the hearing and it was held in his absence.<sup>3</sup>

William Schwenke, an investigator employed by the Division of Public Assistance's (Division) Fraud Control Unit, represented and testified for the Division. Amy Nelson, a Division Eligibility Technician, testified for the Division. M K and D F also testified for the Division. The hearing was recorded.

This decision concludes that the Division proved by clear and convincing evidence that Mr. T committed an IPV of the Food Stamp program.

**II. Facts**

Mr. T applied for Food Stamp benefits on August 19, 2011. His application stated he was living in No Name, Alaska, with his minor son.<sup>4</sup> Mr. T's son was actually living fulltime in No Name with his mother, as he had been since 2008. While the son had been in No Name for a week during the first half of July 2012 to attend a local camp, and had visited his father then, he returned to his mother's home in No Name on or about July 16, 2011.<sup>5</sup>

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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"). This decision follows the common practice of referring to SNAP as the Food Stamp program.

<sup>2</sup> Mr. T was sent advance notice of his hearing by both certified mail and first class mail. The advance notice of the hearing sent by certified mail was returned to the Division as unclaimed. However, the advance notice which was sent by first class mail was not returned to the Division. Ex.1, p. 3; Exs. 2 – 3; William Schwenke testimony.

<sup>3</sup> The Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4).

<sup>4</sup> Ex. 7, pp. 1 – 2.

<sup>5</sup> M K testimony; D F testimony.

Mr. T's Food Stamp application was approved for a two person household (Mr. T and his son).<sup>6</sup> He then received Food Stamp benefits for the months of September through November 2011, for a two person household, in the total amount of \$1,677.<sup>7</sup>

The Division calculated that during September through November 2011, Mr. T received \$765 in Food Stamp benefits that he was not entitled to receive.<sup>8</sup>

### **III. Discussion**

In order to prevail, the Division must prove, by clear and convincing evidence,<sup>9</sup> that Mr. T committed an Intentional Program Violation of the Food Stamp program: that he intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts"<sup>10</sup> with regard to his Food Stamp benefits. Food Stamp eligibility and benefit amounts are determined based, in part, on the number of persons residing in the Food Stamp household.<sup>11</sup>

It is undisputed that Mr. T's application stated his son was living with him. It is also undisputed that his son was not then living with him. Instead, he was living with his mother in a different town – No Name. Mr. T, therefore, was fully aware that his son was not living with him when he completed the application. Consequently, Mr. T intentionally misrepresented that his son was living with him on his application, when he was not.

The Division, therefore, has met its burden of proof and established that Mr. T made an intentional misrepresentation on his August 19, 2011 Food Stamp application. This was an Intentional Program Violation. The penalty for committing a first time Intentional Program Violation is disqualification from the Food Stamp program for twelve months and a requirement to reimburse the program for benefits that were improperly received.<sup>12</sup> Penalties for subsequent Intentional Program Violations include increasingly longer periods of disqualification, including lifetime disqualifications.<sup>13</sup>

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

<sup>7</sup> Ex. 13.

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

<sup>9</sup> 7 C.F.R. § 273.16(e)(6).

<sup>10</sup> 7 C.F.R. § 273.16(c).

<sup>11</sup> 7 C.F.R. § 273.10(e)(2)(i) and (ii)(A).

<sup>12</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>13</sup> 7 CFR 273.16(b)(1).

#### IV. Conclusion and Order

Mr. T committed a first time Food Stamp program Intentional Program Violation. He is 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.<sup>14</sup> The Food Stamp disqualification period shall begin August 1, 2013.<sup>15</sup> This disqualification applies only to Mr. T, and not to any other individuals who may be included in his household.<sup>16</sup> For the duration of the disqualification period, Mr. T's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. Regardless, he must report his income and resources as they may be used in these determinations.<sup>17</sup>

The Division shall provide written notice to Mr. T and any remaining household members of the benefits they will receive during the disqualification period, or that they must reapply because the certification period has expired.<sup>18</sup>

If over issued Food Stamp benefits have not been repaid, Mr. T or any remaining household members are now required to make restitution.<sup>19</sup> If Mr. T disagrees with the Division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>20</sup>

Dated this 20<sup>th</sup> day of May, 2013.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>14</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>15</sup> 7 USC 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>16</sup> 7 C.F.R. § 273.16(b)(11).

<sup>17</sup> 7 C.F.R. § 273.11(c)(1).

<sup>18</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>19</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>20</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 4<sup>th</sup> day of June, 2013.

By: Signed \_\_\_\_\_  
Name: Lawrence A. Pederson \_\_\_\_\_  
Title/Agency: Admin. Law Judge, DOA/OAH

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