

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

In the Matter of:)	
)	
D B. Q)	OAH No. 13-0587-ADQ
(f/k/a D B. P))	DPA Case No.
_____)	Fraud Control Case No.

DECISION AND ORDER

I. Introduction

D Q is a former recipient of Food Stamp program¹ benefits. On April 16, 2013 the Division of Public Assistance (Division) initiated this Administrative Disqualification case against Ms. Q, alleging that she committed a first time Intentional Program Violation (IPV) of the Food Stamp program. Specifically, the Division alleged that Ms. Q intentionally failed to disclose her husband's employment and earnings, and/or that she intentionally failed to report to the Division when her household's gross income exceeded the Food Stamp program's applicable gross income limit. This decision concludes that Ms. Q did commit a first time Food Stamp program IPV by intentionally failing to disclose her husband's employment and earnings.² Ms. Q is therefore disqualified from participation in the Food Stamp program for twelve months.

II. Facts

Ms. Q's household consists of herself, her husband, and their four minor children.³ Her household has received Food Stamp benefits regularly since June 2010.⁴ Ms. Q has been employed by the United States Army since June 2010 or before.⁵ Ms. Q's husband was employed by (and earning wages from) a legal copying service from May 16 through November 28, 2010, and from July 10 through December 11, 2011.⁶ Records from the Alaska Division of Motor Vehicles indicate that Mr. and Ms. Q have resided in the same household since July 2008.⁷

¹ 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.

² Because the Division has established an IPV based on Ms. Q's intentional failure to disclose her husband's employment and earnings, it is not necessary to address the issue of whether she also intentionally failed to report that her household's gross income exceeded the Food Stamp program's applicable gross income limit.

³ Ex. 10 p. 1.

⁴ Ex. 13.

⁵ Ex. 8 p. 3.

⁶ Ex. 16 p. 3.

⁷ Ex. 15.

On June 18, 2010, Ms. Q completed, signed, and submitted an application for Food Stamp program benefits.⁸ She did not list her husband as residing in her household.⁹ She indicated that she was employed by the U.S. Army and was receiving a salary or wages, but she did not list her husband as earning or contributing any income to her household.¹⁰ On the last page of the application, Ms. Q signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of her knowledge.¹¹ A form titled “Your Rights and Responsibilities” (form Gen 51) was also given to Ms. Q as part of her application for Food Stamp benefits.¹² This form specifically warns applicants against providing false information during the Food Stamp application process.

On the same date, Ms. Q participated in an eligibility interview with a Division employee; there is no indication in the Division's record of that interview that Ms. Q revealed that her husband was residing in her household, was employed, or was earning wages.¹³ The Division approved Ms. Q's application for Food Stamp benefits on June 21, 2010 and began paying benefits.¹⁴ The Division based its approval, and the benefit amount, solely on Ms. Q's military income of \$1,818.01 per month.¹⁵

On November 4, 2010, Ms. Q completed and signed an eligibility review form for Food Stamp benefits, which she submitted to the Division on November 10, 2010.¹⁶ This time she listed her husband as residing in her household.¹⁷ However, Ms. Q did not indicate that her husband was employed or earning any income.¹⁸ She again certified that the information contained in the renewal application was correct to the best of her knowledge.¹⁹ On December 13, 2010, the Division approved Ms. Q's renewal application and continued issuing Food Stamp benefits.²⁰

On June 3, 2011, Ms. Q completed, signed, and submitted another eligibility review form for Food Stamp program benefits.²¹ She listed her husband as residing in her household.²² Again,

⁸ Ex. 8 pp. 1 - 8.

⁹ Ex. 8 p. 2.

¹⁰ Ex. 8 p. 3.

¹¹ Ex. 8 p. 8.

¹² Ex. 7, Amanda Holton hearing testimony.

¹³ Ex. 12 p. 1.

¹⁴ Ex. 11 p. 1; Ex. 13 pp. 1 - 2.

¹⁵ Ex. 11 p. 1.

¹⁶ Ex. 9 pp. 1 - 6.

¹⁷ Ex. 9 p. 1.

¹⁸ Ex. 9 pp. 2 - 3.

¹⁹ Ex. 9 p. 4.

²⁰ Ex. 11 p. 2; Ex. 13 pp. 1 - 2.

²¹ Ex. 10 pp. 1 - 4.

²² Ex. 10 p. 1.

however, Ms. Q did not indicate that her husband was employed or earning any income.²³ She again certified that the information contained in the renewal application was correct to the best of her knowledge.²⁴ On June 8, 2011, Ms. Q participated in an eligibility interview with a Division employee; there is no indication in the Division's record of that interview that Ms. Q revealed that her husband was residing in her household, was employed, or was earning wages.²⁵ On June 9, 2011, the Division approved Ms. Q's renewal application and continued issuing Food Stamp benefits to her household.²⁶

The Division became aware of Ms. Q's misrepresentations on December 13, 2011 and initiated a fraud investigation which culminated in the Division's filing of this case.²⁷ The Division notified Ms. Q of its filing of this case, and of her hearing date, on April 19, 2013.²⁸ Ms. Q's hearing was held on May 21, 2013. Ms. Q was not present and could not be reached by phone. The hearing proceeded in Ms. Q's absence as required by 7 CFR 273.16(e)(4) and 7 AAC 45.585(c). Linette Lacy, 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 prove that Ms. Q committed an Food Stamp program IPV, the Division must prove by clear and convincing evidence²⁹ that Ms. Q “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting her Food Stamp application and/or eligibility review forms, and/or during her eligibility interviews, and that these misrepresentations / concealments were intentional.³⁰

B. Duty to Report Changes in Employment and/or Income

The amount of Food Stamp benefits a household receives is based in large part on the household's countable income.³¹ Recipients of Food Stamp benefits have an obligation to report “a change in [a] source of income, including starting or stopping a job or changing jobs, if the change

²³ Ex. 10 pp. 2 - 3.

²⁴ Ex. 10 p. 4.

²⁵ Ex. 12 p. 2.

²⁶ Ex. 11 p. 3.

²⁷ Exs. 1 and 2.

²⁸ Ex. 4.

²⁹ 7 CFR § 273.16(e)(6).

³⁰ 7 CFR § 273.16(c).

³¹ 7 CFR § 273.10(e)(1)(i)(A).

in employment is accompanied by a change in income.”³² When an applicant completes an application for assistance, the applicant is obligated to furnish the eligibility technician with truthful information regarding such eligibility factors as family economic need, total household income, the number of persons in the assistance unit, and the living arrangements of the applicant and any children.³³ The same is true for recipients completing eligibility review / renewal forms.³⁴

C. Ms. Q Committed an Intentional Program Violation

As noted in Section II, above, although Mr. and Ms. Q have resided in the same household since 2008 and Ms. Q's husband was employed and earning wages from May 16 through November 28, 2010, when Ms. Q submitted her June 18, 2010 application for Food Stamp benefits she did not list her husband as residing in her household and did not disclose his earnings. This constitutes a misrepresentation by omission or concealment / withholding of facts.³⁵

The next issue is whether Ms. Q's misrepresentation was intentional. A person's state of mind (for example, whether the person acted intentionally) must generally be inferred from circumstantial evidence.³⁶ In this case, the questions on the June 18, 2010 application form inquiring as to household composition, employment, and earned income are clearly written. So are the warnings about completing the application truthfully and accurately. Further, Mr. Q had already been working for over one month at the time Ms. Q completed the June 18, 2010 application. Based on these facts it is extremely unlikely that Ms. Q's failure to disclose her husband's employment and earnings was unintentional. Together, these factors constitute clear and convincing evidence that Ms. Q's failure to report her husband's employment and earnings was intentional. Accordingly, the Division has demonstrated by clear and convincing evidence that Ms. Q committed an Intentional Program Violation as defined by applicable Food Stamp program statutes and regulations. This is Ms. Q's first known IPV of the Food Stamp program.³⁷

³² 7 CFR § 273.12(a)(1)(i)(B); 7 CFR § 273.12(a)(1)(i)(C)(1-2).

³³ *State v. Moore*, 286 N.W.2d 274 (N.D. 1979); *Velasquez v. Perales*, 543 N.Y.S.2d 137 (App. Div. 1989); *Frank v. Ohio Dept. of Human Services*, 673 N.E.2d 653 (Ohio 1996); *Forester v. Ohio Dept. of Human Services*, 702 N.E.2d 959 (Ohio 1997).

³⁴ *Id.*

³⁵ Because this decision concludes that Ms. Q committed an IPV based on her submission of the June 18, 2010 application, it is not necessary to determine whether Ms. Q also committed an IPV based on her submission of renewal applications on November 10, 2010 and June 3, 2011, and/or during her eligibility interviews of June 18, 2010 and/or June 8, 2011.

³⁶ *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

³⁷ Ex. 1 pp. 1, 10.

IV. Conclusion and Order

Ms. Q has committed a first time Food Stamp program IPV. She 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 to her as a result of her Intentional Program Violation.³⁸ The Food Stamp program disqualification period shall begin on September 1, 2013.³⁹ This disqualification applies only to Ms. Q and not to any other individuals who may be included in her household.⁴⁰ For the duration of the disqualification period, Ms. Q's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for her household. However, Ms. Q must report her income and resources as they may be used in these determinations.⁴¹ The Division shall provide written notice to Ms. Q 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.⁴² If over-issued Food Stamp Program benefits have not been repaid, Ms. Q or any remaining household members are now required to make restitution.⁴³ If Ms. Q disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.⁴⁴

Dated this 10th day of July, 2013.

Signed

Jay Durych
Administrative Law Judge

³⁸ 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).

³⁹ 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 (9th Cir. 1995).

⁴⁰ 7 C.F.R. § 273.16(b)(11).

⁴¹ 7 C.F.R. § 273.11(c)(1).

⁴² 7 C.F.R. § 273.16(e)(9)(ii).

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

⁴⁴ 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 19th 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.]