

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

In the Matter of)	
)	OAH No. 18-0557-ADQ
M N)	DPA/FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

M N applied for Food Stamp¹ benefits in Alaska in March of 2017. The Department of Health and Social Services, Division of Public Assistance (DPA) found that she had failed to disclose that she was receiving benefits in the state of Washington at the same time. It denied her application, and on May 24, 2018, it initiated an Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

The hearing convened on June 28, 2018, with Ms. N having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. N did not attend her hearing and could not be reached at the telephone numbers she had provided to the program, nor at any other known number for her. The hearing went forward in her absence.⁴

Angel Romero, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Two witnesses testified on behalf of DPA. Exhibits 2-11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. N committed a first IPV of the Food Stamp program. She must be barred from Food Stamps for twelve months.

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 3.

³ Ex. 1, p. 3; Ex. 3; Ex. 4; Ex. 6. Ms. N does not seem to have collected the certified mail, but she did communicate with the Fraud Control Unit about the case, which indicates that she received notice of it.

⁴ Once proper notice has been given, the Food Stamps 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 regulations set 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. N applied for Food Stamps in Washington State on February 13, 2017 and received benefits continuously from that program from March 5, 2017 until December 20, 2017.⁵ Nonetheless, on March 16, 2017, she applied for Food Stamps in Alaska.⁶ On her paper application and in a face-to-face interview conducted one week later, she denied that she was receiving benefits in any other state.⁷

Meanwhile, Ms. N was using her Washington Food Stamps benefit card at stores in Alaska such as Fred Meyer, Holiday, and Walmart. Of particular note to her state of mind when she applied for Alaska benefits, she did this on the date she applied (twice), the next day (once), March 18 and 20 (once each), and on the day she had her live interview (three times).⁸

The eligibility technician who conducted Ms. N's Alaska interview checked with Washington State to see if benefits were being paid there, and learned that they were.⁹ The Alaska application was not approved.¹⁰

The matter was referred for a fraud investigation.¹¹ Eventually, this proceeding ensued.

III. Discussion

Apart from exceptional circumstances that do not apply here, it is prohibited by federal law for a person to participate in the Food Stamp program from two different households or in two different states in the same month.¹² It is also prohibited to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹³ In this case, DPA seeks to show such a violation to be an IPV. To establish an IPV, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ No evidence has been offered that Ms. N has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that it is a first-time violation.

⁵ Ex. 10, 11; testimony of Christina Terry (Washington DSHS).

⁶ Ex. 8.

⁷ *Id.* at p. 10; Ex. 9; testimony of Claire Dube (Alaska DPA employee who interviewed her).

⁸ Ex. 11.

⁹ Dube testimony.

¹⁰ *Id.*; Ex. 9.

¹¹ Ex. 2.

¹² *See* 7 C.F.R. §§ 273.3(a), 271.2. The exceptional circumstances are when a person is residing in a battered persons' shelter and was, during the same month, a member of the abuser's household. Ms. N's application in the record shows that this was not applicable in his case.

¹³ *See, e.g.*, 7 U.S.C. §2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

Except for someone with prior IPV's in his or her record or in certain other narrow circumstances that there is no basis to apply here, 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.¹⁵

It is clear that Ms. N applied for Food Stamps in Alaska at a time when she was still receiving and using Food Stamp benefits from Washington, falsely denying this situation on her application in her interview, even in response to direct questions. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. N failed to appear for or testify at his hearing, but her intent can be deduced from circumstantial evidence. Ms. N was actually receiving and using Washington benefits to make purchases at the same time she was applying for duplicate benefits in Alaska. This cannot have been a mere oversight. Her failure to disclose her Washington Food Stamps was clearly intentional, and she has therefore committed a first IPV.

IV. Conclusion and Order

Ms. N has committed a first time Intentional Program Violations of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period.¹⁶ The Food Stamp disqualification period shall begin September 1, 2018.¹⁷ This disqualification applies only to Ms. N, and not to any other individuals who may be included in her household.¹⁸ For the duration of the disqualification period, Ms. N'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 so that they can be used in these determinations.¹⁹

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

¹⁶ 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).

¹⁷ 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 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).

¹⁸ 7 C.F.R. § 273.16(b)(11).

¹⁹ 7 C.F.R. § 273.11(c)(1).

DPA shall provide written notice to Ms. N 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.²⁰

Dated this 29th day of June, 2018.

Signed _____
Christopher Kennedy
Administrative Law Judge

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 13th day of July, 2018.

By: *Signed* _____
Name: Christopher Kennedy
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

²⁰ 7 C.F.R. § 273.16(e)(9)(ii).