

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

In the Matter of)	
)	
D T)	OAH No. 18-0951-ADQ
_____)	Agency No. 05360664

DECISION AND ORDER

I. Introduction

D T received Food Stamp Program benefits. The Department of Health and Social Services, Division of Public Assistance (Division) initiated this administrative disqualification proceeding, alleging that Ms. T committed an Intentional Program Violation of the Food Stamp program by falsely stating that two children lived in her home, when she knew that they in fact resided elsewhere.¹

This decision concludes that Ms. T committed a first-known Intentional Program Violation of the Food Stamp program, and she received overpaid benefits. As a result, she is temporarily disqualified from participation in the program and she must pay restitution for the overpaid amounts, as further discussed below.

II. Facts and Proceedings

The Division established the following facts by clear and convincing evidence:

On March 7, 2017, Ms. T signed and submitted an eligibility review form for Food Stamps.² At that time, Ms. T was living in City A. On the form, she declared that she lived in a household of four, including herself, her son E, and her two daughters, L T and B J.³

With the eligibility review form, Ms. T was provided a four-page document entitled “Your Rights and Responsibilities.” It detailed reporting requirements, fraud penalty warnings, and general program information.⁴ When she signed her eligibility review application, she certified that she had read and understood the “Rights and Responsibilities” information. She also certified that the information she provided on the application was “true and correct” to the best of her knowledge.⁵

Ms. T participated in an eligibility interview with one of the Division’s Eligibility Technicians on March 7, 2017.⁶ During the interview, Ms. T confirmed that she understood the information and

¹ Exhibit 3.

² Exhibit 6. Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (SNAP). The program is still commonly known as the Food Stamp program, however.

³ Exhibit 6, p. 1. Ms. T signed the application and mistakenly dated it March 7, 2016. Exhibit 6, p. 5. Based on all the other facts in the record, this was simply an error. The actual date was March 7, 2017.

⁴ Exhibit 5.

⁵ Exhibit 6, p. 5.

⁶ Exhibit 7.

warnings provided in the “Rights and Responsibilities” document, and she had no questions.⁷ She then confirmed that her household of four included L and B.

At the time she submitted her recertification application and throughout the time period at issue in this case, March 2017 through October 2017, Ms. T was aware that neither L nor B lived in her home. Instead, both girls lived with their fathers. L had lived in the Town B area with her father, C T, since July 2015.⁸ Since July 2015, L had never returned to City A to visit her mother. Ms. T had occasionally visited L at her father’s home. On at least one occasion, L spent an overnight or two at one of her mother’s friend’s homes while Ms. T was visiting. However, L clearly did not live in Ms. T’s household between March 2017 and October 2017.

When Ms. T submitted her recertification application, she also knew that the City A superior court had very recently issued a Decree of Divorce and Findings of Fact and Conclusions of Law in her divorce proceedings with C T.⁹ The trial occurred only a month previously, on February 1, 2017. Ms. T appeared and participated.¹⁰ The court awarded primary physical and sole legal custody of L to Mr. T, with visitation to occur in the Town B area and solely at Mr. T’s discretion.¹¹

On March 7, 2017, Ms. T also knew that her daughter B was living in City A with B’s father, D J and his wife, J. B had been there full-time since March 2016.¹² Since that time, B never spent an overnight at her mother’s home.¹³ At most, she spent two or three overnights at her grandmother M D’s house while Ms. T also was visiting.¹⁴

Further, Ms. T likely was aware that the City A superior court had issued a Decree of Custody and Judgment in November 2016, granting sole legal and primary physical custody of B to Mr. J.¹⁵ The court ordered that any visitation with Ms. T would be at Mr. J’s discretion. However, Mr. J would not allow visitation at Ms. T’s home because of Ms. T’s active drug use.¹⁶

The Division approved Ms. T’s application and issued Food Stamp benefits based on the household of four that she had described.¹⁷ For March 2017 through October 2017, Ms. T received

⁷ Exhibit 7.

⁸ Exhibit 9 (T interviews with C T and M D, Ms. T’s mother).

⁹ Exhibit 10.

¹⁰ Exhibit 10, p. 2.

¹¹ Exhibit 10, p. 3.

¹² Exhibit 9 (T interview with D J and J J).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Exhibit 11.

¹⁶ Exhibit 9 (T interview with D J).

¹⁷ Exhibit 8. Ms. T received Food Stamps based on a household of four for March through May 2017, and a household of three for June through October 2017. Exhibit 13. Benefits issued from March through October 2017 included L and B as household members.

Food Stamp benefits totaling \$5,309.¹⁸ Because L and B did not live in her home, the Division calculated that her benefits should have been \$3,382. It determined that Ms. T received overpaid Food Stamp benefits totaling \$1,927.¹⁹

In September 2018, the Division initiated this action. It requested that Ms. T be temporarily disqualified from receiving Food Stamp benefits. It further requested that she repay the full amount of overpaid benefits.²⁰

The administrative disqualification hearing took place on October 25, 2018. X T, an investigator employed by the Division's Fraud Control Unit, participated by telephone and represented the Division. Ms. T did not appear, and her telephone number of record is no longer in service. The hearing went forward in her absence.²¹ The hearing was recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

III. Discussion

A. Adequacy of Notice

The Division sent advance notice of the hearing to Ms. T at her address of record on September 20, 2018. The notice was sent by certified mail and by first-class mail, and it complied with federal regulations regarding notice of a Food Stamp administrative disqualification hearing.²² Both notices were returned as undeliverable, marked “addressee unknown.”²³ The Division’s investigator made other efforts to contact Ms. T, but she has not responded and her whereabouts are unknown.²⁴

B. Ms. T committed an Intentional Program Violation

To establish an Intentional Program Violation of the Food Stamp program, the Division must prove the elements of the violation by clear and convincing evidence.²⁵ No evidence has been offered showing that Ms. T has ever been found to have committed a prior Intentional Program Violation. Therefore, this alleged violation is evaluated on the assumption that it is a first-time violation.

¹⁸ Exhibits 12, 13.

¹⁹ Exhibit 13.

²⁰ Exhibit 1.

²¹ If a person “cannot be located or fails to appear . . . without good cause,” Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed the Intentional Program Violation. 7 CFR § 273.16(e)(4). The same regulation sets out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

²² Exhibits 3, 4. 7 C.F.R. § 273.16(e)(3).

²³ Exhibit 4; Exhibit 1, p. 3.

²⁴ Exhibit 1, p. 3.

²⁵ 7 C.F.R. § 273.16(e)(6).

To prove an Intentional Program Violation, the Division must show that Ms. T intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”²⁶ It can do this by showing that that it is highly probable that Ms. T intended to misrepresent, conceal, or withhold facts.²⁷

Food Stamp eligibility and benefit determinations depend heavily on household composition.²⁸ False statements about household composition are therefore considered to have been made for the purpose of acquiring benefits.²⁹ The facts of this case overwhelmingly show that Ms. T intentionally made false statements when she claimed that L and B lived in her household. Ms. T clearly knew that neither daughter lived in her home. She consciously misrepresented this information and withheld accurate information. By doing so, she received Food Stamp benefits for March 2017 through October 2017 to which she was not entitled.

Ms. T’s intent to mislead the Division can be deduced from the evidence in the record. Under no circumstances could she reasonably have forgotten where her daughters lived, or that court orders awarded sole legal and physical custody of them to their fathers. Further, Ms. T could not have made an inadvertent mistake when she identified her daughters as household members on her recertification application and then confirmed that information during the eligibility interview. The Division has met its burden to show that Ms. T committed an Intentional Program Violation.

IV. Conclusion and Order

Ms. T has committed a first-known Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a twelve month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.³⁰ The Food Stamp program disqualification period shall begin on December 1, 2018.³¹ This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.³² For the duration of the disqualification period, Ms. T’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.³³

²⁶ 7 C.F.R. § 273.16(c).

²⁷ See *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003) .

²⁸ 7 C.F.R. § 273.1; 7 C.F.R. § 273.8; 7 C.F.R. § 273.9.

²⁹ 7 C.F.R. § 273.16(c).

³⁰ 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).

³¹ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

³² 7 C.F.R. § 273.16(b)(11).

³³ 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to Ms. T 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.³⁴

If over-issued Food Stamp benefits have not been repaid, Ms. T is now required to make restitution.³⁵ If Ms. T 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.³⁶

DATED: October 29, 2018.

<i>Signed</i> _____	By:
<u>Kathryn A. Swiderski</u> _____	Name:
<u>Administrative Law Judge</u> _____	Title:

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

³⁴ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁶ 7 C.F.R. § 273.15.