

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

In the Matter of)	OAH No. 18-1110-ADQ
)	Division No. 05461028
K K. T)	Fraud Control Case No. 18-11-43049
)	Food Stamp Program
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DECISION AND ORDER

I. Introduction

K K. T received Food Stamp¹ benefits. On October 26, 2018, the Department of Health and Social Services, Division of Public Assistance (“Division”) initiated this Administrative Disqualification case against her, alleging she had committed an Intentional Program Violation of the Food Stamp program by declaring that her minor son, B. T., was in the household when he was not.²

Ms. T’s hearing was held on December 19, 2018. Ms. T represented herself and testified on her own behalf. Wynn Jennings, an investigator employed by the Division’s Fraud Control Unit, represented and testified on behalf of the Division. B J, who is employed by the Division, also testified. All persons involved participated telephonically. The hearing was recorded.

This decision concludes that Ms. T committed an Intentional Program Violation of the Food Stamp program.

II. Facts

The following facts were established by clear and convincing evidence.

K T was a Food Stamp recipient who applied to renew her Food Stamp benefits on January 17, 2018. On that application, Ms. T, in response to the question asking her to “[I]ist all persons who lives with you,” stated that her household consisted of herself and three other persons. One of those persons was her minor son, B. T.³ Ms. T then participated in an interview on February 15, 2018 with a Division eligibility technician. During that interview, she told the

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). The program is still commonly referred to as the Food Stamp program.

² Ex. 3.

³ Ex. 8, p. 1.

eligibility technician that B. T. was part of her household.⁴ B. T. was not part of the household, having been removed from Ms. T's physical custody by the Office of Children's Services on October 26, 2017. As of May 2018, he had not been returned to Ms. T's physical custody.⁵

Ms. T admitted that B. T. was not living with her at either the time of the application or the interview. She was having supervised visitation with him at the time, and thought he was going to be returned to the home.⁶

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence⁷ that Ms. T intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."⁸ To meet this standard, the division must show that it is *highly probable* that Ms. T intended to misrepresent, conceal, or withhold facts.⁹ It must be noted that Food Stamp eligibility and benefits are determined based upon a household's composition, assets, and income.¹⁰

A review of the facts demonstrates that Ms. T represented that B. T. was living with her on her January 17, 2018 application and the subsequent February 15, 2018 interview. However, he was not living with her. She therefore misrepresented his presence as a member of her household.

It must therefore be determined whether Ms. T's misrepresentations regarding B. T.'s presence in the household were intentional acts. Ms. T argued that she thought B. T. was going to be returned to her. However, it is clear that B. T. was not living with her at the time she said he was, and that her only contacts with him were supervised, *i.e.*, he was not temporarily staying with her for visitation. Accordingly, Ms. T intentionally misrepresented B. T.'s presence in her household.

The Division has therefore met its burden of proof and established that Ms. T committed an Intentional Program Violation of the Food Stamp program. This is her first Intentional Program Violation of that program.

⁴ Ex. 8, p. 6.

⁵ Ex. 9.

⁶ Ms. T's testimony.

⁷ 7 C.F.R. § 273.16(e)(6).

⁸ 7 C.F.R. § 273.16(c).

⁹ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

¹⁰ 7 C.F.R. § 273.10(e)(1)(i)(A).

IV. Conclusion and Order

Ms. T has committed a first time Intentional Program Violation of the Food Stamp program. 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 as a result of the Intentional Program Violation.¹¹ The Food Stamp program disqualification period shall begin March 1, 2019.¹² This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.¹³ 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.¹⁴

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.¹⁵

If there were over-issued Food Stamp benefits, which have not been repaid, Ms. T or any remaining household members are now required to make restitution.¹⁶ If Ms. T disagrees with the Division’s calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.¹⁷

Dated this 27th day of December, 2018.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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

¹¹ 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).
¹² 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 7 C.F.R. § 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).
¹³ 7 C.F.R. § 273.16(b)(11).
¹⁴ 7 C.F.R. § 273.11(c)(1).
¹⁵ 7 C.F.R. § 273.16(e)(9)(ii).
¹⁶ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
¹⁷ 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 10th day of January, 2019.

By: *Signed*
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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