

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

In the Matter of	)	
	)	OAH No. <a href="#">18-1262-ADQ</a>
L M	)	FCU No. <a href="#">18-6-44364</a>
_____	)	DPA No. 05238128

**DECISION and ORDER**

**I. Introduction**

L G. M applied for Food Stamp<sup>1</sup> benefits in January of 2018.<sup>2</sup> On December 10, 2018, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a second Intentional Program Violation (IPV) of the Food Stamp program.<sup>3</sup>

A hearing took place on January 11, 2019, with Ms. M having been sent advance notice of the hearing by mail to her address of record and been given direct notice by in-person hand delivery.<sup>4</sup> Ms. M was reached at the telephone number she had provided to the Food Stamp program, but she decided on the record not to participate at the hearing. The hearing went forward in her absence.<sup>5</sup> Sharon Carter, an investigator employed by DPA’s Fraud Control Unit, represented DPA at the hearing. She and Eligibility Technician B J testified on behalf of DPA.

The record shows that Ms. M deliberately held back information about her two jobs with Employer B and Collabera in order to increase her Food Stamps eligibility for the period between January and August of 2018. This decision concludes that DPA proved by clear and convincing evidence that Ms. M committed an IPV of the Food Stamp program, her second such violation. She must be barred from Food Stamps for twenty-four months.

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<sup>1</sup> Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program (“SNAP”).

<sup>2</sup> Ex. 8, p. 1.

<sup>3</sup> Ex. 3, p. 2.

<sup>4</sup> Ex. 6, p. 1; Ex. 4, p. 1

<sup>5</sup> Once proper notice has been given, the Food Stamp 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

L M, who had been receiving Food Stamps since mid-2017, applied for recertification to the program on January 5, 2018.<sup>6</sup> On the fourth page of the application she was asked to list “Income in your household.” She drew a slash through all the blocks for listing jobs and wrote “N/A”. She signed the application under penalty of perjury.<sup>7</sup> In an interview with an eligibility technician, she said that she was using unemployment to get by and her unemployment benefits had ended; she reported no other income.<sup>8</sup> During this application process, she was informed both in writing and orally of her rights and responsibilities, including the obligation to report income.<sup>9</sup> When these responsibilities were discussed in her interview, she had no questions about them. Based on the information she provided during this process, Ms. M was approved for Food Stamp benefits on January 5, 2018 based on an income of zero.<sup>10</sup>

On July 23, 2018, she again applied to recertify, again answering “N/A” when asked if “anyone in your household is working.”<sup>11</sup> She indicated a goal “To get a Job”, and again signed under penalty of perjury.<sup>12</sup>

In fact, however, Ms. M had been working at Employer A. since the fourth quarter of 2017 (continuing into 2018), and at Employer B from early 2018 onward.<sup>13</sup> She earned more than \$2600 per month in each month from January through August of 2018.<sup>14</sup> Ms. M failed to declare any of this income on either of her applications for recertification, nor when asked directly in her interview.

Based on this history, I am left with the firm conclusion that Ms. M deliberately chose not to jeopardize her Food Stamps by disclosing her employment. She was consistently deceptive about that income. There is no credible basis to believe that it was a mere oversight that she denied any employment on her forms and failed to disclose it in her interview.

The undisclosed income put Ms. M over the earnings limit for Food Stamps for her household of two between January 2018 and August of 2018. DPA has calculated the resulting

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<sup>6</sup> Ex. 8.  
<sup>7</sup> Ex. 8, p. 10.  
<sup>8</sup> Ex. 9, p. 1.  
<sup>9</sup> Ex. 7; Ex. 9, p.1; J testimony.  
<sup>10</sup> Ex. 9.  
<sup>11</sup> Ex. 10, p.3.  
<sup>12</sup> Ex. 10.  
<sup>13</sup> Ex. 12. p. 1  
<sup>14</sup> Ex. 13.

excess benefits at \$3,376.00.<sup>15</sup> This decision does not make a finding of fact regarding the exact amount of the overpayments.

In a decision by Hearing Examiner (now Administrative Law Judge) Lawrence Pederson, Ms. M was found to have committed an IPV once before, by deliberately receiving Food Stamps in two states.<sup>16</sup> The violation occurred in 2003.

### **III. Discussion**

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.<sup>17</sup>

In this case, DPA seeks to establish an IPV. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.<sup>18</sup> DPA showed that Ms. M has been found to have committed one prior IPV, and therefore the alleged IPV will be evaluated as a second-time violation.

For someone with one prior IPV in his or her record, federal Food Stamp law provides that a twenty-four months disqualification must be imposed on any individual proven to have “intentionally . . . concealed or withheld facts” in connection with the program.<sup>19</sup>

Clear and convincing evidence shows that, through falsified applications and false statements in an interview, Ms. M intentionally concealed jobs with substantial and regular income. Her direct misrepresentations and failures to report represent intentional concealment or withholding of facts. It follows that she has committed a second IPV.

### **IV. Conclusion and Order**

Ms. M has committed a second-time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twenty-four months period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.<sup>20</sup> The Food Stamp disqualification period shall begin April 1,

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<sup>15</sup> Ex. 13, p. 2.

<sup>16</sup> Ex. 14.

<sup>17</sup> *See, e.g.*, 7 U.S.C. § 2015(b).

<sup>18</sup> 7 C.F.R. § 273.16(e)(6).

<sup>19</sup> 7 C.F.R. §§ 273.16(b)(1)(ii); 273.16(c)(1).

<sup>20</sup> 7 C.F.R. § 273.16(b)(1)(ii); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

2019.<sup>21</sup> This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.<sup>22</sup> For the duration of the disqualification period, Ms. M 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.<sup>23</sup>

DPA shall provide written notice to Ms. M 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.<sup>24</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. M or any remaining household members are now required to make restitution.<sup>25</sup> If Ms. M disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.<sup>26</sup>

Dated this 31<sup>st</sup> day of January, 2019.

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.]

## 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.

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<sup>21</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>22</sup> 7 C.F.R. § 273.16(b)(11).

<sup>23</sup> 7 C.F.R. § 273.11(c)(1).

<sup>24</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>25</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii); AS 47.25.260.

<sup>26</sup> 7 C.F.R. § 273.15.

DATED this 19<sup>th</sup> day of February, 2019.

By: *Signed*

Name: Cheryl Mandala

Title: Administrative Law Judge

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