

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

In the Matter of)
)
T G) OAH No. 19-0067-ADQ
) Agency No. 05912550
_____)

DECISION

I. Introduction

T G received Food Stamp Program benefits.¹ The Division of Public Assistance (Division) initiated this administrative disqualification proceeding, alleging that Ms. G committed an Intentional Program Violation of the Food Stamp program by failing to disclose her employment and income on her benefits eligibility review form. After a duly noticed hearing and a review of the evidence, this decision finds clear and convincing evidence that Ms. G withheld information about her employment and income in order to increase her Food Stamp benefits. As a result of this Intentional Program Violation, Ms. G is temporarily disqualified from participation in the Food Stamp program and she must pay restitution for the overpaid amounts, as further discussed below.

II. Facts

A. Program background

After their initial program application is approved, Food Stamp recipients must submit periodic eligibility review forms to confirm their ongoing eligibility. Recipients must also periodically complete interviews with Division eligibility technicians to confirm that the information provided is complete and correct.

Both the application and the eligibility review form are signed under penalty of perjury and penalty of unsworn falsification. Both also require the signer to confirm they have read and understood the Division’s four-page document titled “Your Rights and Responsibilities.” That form detailed reporting requirements, fraud penalty warnings, and general program information.² Eligibility technicians also confirm receipt and understanding of the rights and responsibilities document as part of the eligibility interview.³

¹ Although 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.
² Exhibit 7, pp. 1-4.
³ J testimony; Ex. 1, p. 4.

B. Key facts

Ms. G began receiving Food Stamp benefits in January 2018.⁴ On June 4, 2018, she signed and submitted an Eligibility Review Form.⁵ The Eligibility Review Form contains sections asking about an applicant’s household composition, income, and expenses. In the income section, Question 7 directs the applicant to provide certain information “if you or anyone in your household is working.” The specific information requested is: “Person Employed, Employer, Hours Worked per week, Hourly Wage, and Frequency of Payments.”⁶ In response to Question 7, Ms. G disclosed that another adult in the home was employed, but did not list any employer or income for herself.⁷

Two weeks after submitting her Eligibility Review Form, Ms. G participated in an eligibility interview with a Division Eligibility Technician. Ms. G disclosed having had prior employment during 2017, but stated she had no current income.⁸

In fact, at the time she submitted her Eligibility Review Form, Ms. G had been employed for two and a half months as a personal caregiver with Employer A.⁹ She was still employed with Employer A in July 2018, when she had told her Eligibility Technician that she had no income.¹⁰

When Ms. G signed her Eligibility Review Form, she certified both that she had read and understood the “Rights and Responsibilities” document, and that the information she provided on the application was “true and correct” to the best of her knowledge.¹¹ Likewise, at her July 18, 2018 eligibility interview, Ms. G confirmed that she understood the information and warnings provided in the “Rights and Responsibilities” document, and that she had no questions about these.¹²

⁴ Ex. 8.

⁵ Ex. 8, p. 3.

⁶ Ex. 8, p. 3.

⁷ Ex. 8, p. 3.

⁸ Ex. 9, p. 1.

⁹ Ex. 10, pp. 2-3.

¹⁰ Ex. 10, pp. 2-3.

¹¹ Ex. 8, p. 5.

¹² Ex. 9, p. 1. It is standard practice for Eligibility Technicians to discuss the rights and responsibilities document and inquire as to whether the applicant or recipient has any questions. J testimony. The case notes from Ms. G’s eligibility review interview reflect that this discussion occurred, and that she reported having no questions. Ex. 9, p. 1.

In the meantime, the Division had continued providing Food Stamp benefits to Ms. G's household based on her false representations about her household income.¹³ From July 2018 through September 2018 – and based on her false representations about having no household income – Ms. G was issued Food Stamp benefits totaling \$1,266.00.¹⁴

In September 2018, the Division learned that Ms. G was employed by Employer A – employment and income she had not disclosed on her Eligibility Review Form or in her eligibility interview.¹⁵ According to sworn documentation submitted by Ms. G's employer during the Division's investigation, Ms. G had begun working as a caregiver for Employer A on March 22, 2018, and was still employed there as of November 2018.¹⁶

Division Eligibility Technician B J has calculated that, based on her actual income during that time period, Ms. G's benefits during this time should have been \$357.00, and that Ms. G thus received \$909.00 in overpaid Food Stamp benefits.¹⁷

C. Procedural History

The Division initiated this action in January 2019, requesting that Ms. G be temporarily disqualified from receiving Food Stamp benefits, and be required to repay the amount of overpaid benefits.¹⁸ On January 24, 2019, the Division filed a Thirty-Day Advance Notification of Food Stamps Administrative Disqualification Hearing, and mailed copies of the notification to Ms. G via both regular and certified mail.¹⁹ The notice advised Ms. G of the date, time and place of the hearing; the allegations against her; a summary of the Division's evidence; a listing of her rights under 7 CFR 273.15(p); a warning of the consequences of failure to appear; and a statement that she would have ten days from the date of the hearing to present good cause for failure to appear.²⁰

¹³ Ex. 9, pp. 1-4.

¹⁴ Ex. 11, p. 1.

¹⁵ D testimony; Ex. 2; Ex. 10.

¹⁶ Ex. 10, pp. 2-3.

¹⁷ Ex. 11; J testimony.

¹⁸ Exhibit 1.

¹⁹ See 7 CFR § 273.16(e)(3)(i) (“The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested.”)

²⁰ Ex. 3, pp. 2-17; 7 CFR § 273.16(e)(3)(iii).

Ms. G signed a certified mail return receipt for this notice.²¹ She did not, however, retrieve the Division's February 8, 2019 certified mailing of its hearing exhibits.²²

The administrative disqualification hearing was held on February 22, 2019. Sharon Carter, an investigator employed by the Division's Fraud Control Unit, participated by telephone and represented the Division. Division Eligibility Technician III B J also testified. Ms. G did not appear for the hearing.²³ Pursuant to 7 CFR 273.16(e)(4), and upon a finding that Ms. G had received adequate notice of the hearing, the hearing went forward in her absence.²⁴ The hearing was recorded. All submitted documents were admitted to the record.

Following the hearing the record remained open for ten days pursuant to 7 CFR 273.16(e)(4) for Ms. G to show good cause for her failure to appear.²⁵ Ms. G did not contact the Office of Administrative Hearings during this time, and the record closed at the end of the ten days.

III. Discussion

Federal law prohibits a person from obtaining Food Stamp benefits by making false or misleading statements, or by concealing or withholding facts.²⁶ In order to prove an Intentional Program Violation of the Food Stamps Program, the Division must prove by clear and convincing evidence that Ms. G intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts" on her eligibility review form.²⁷ A person proven

²¹ Ex. 4.

²² Ex. 6.

²³ When the administrative law judge called Ms. G's phone number of record, the person who answered stated that Ms. G was "at work," declined to give his name, and terminated the call. When a second call to the same number went to voicemail, the administrative law judge left a detailed message for Ms. G stating that the scheduled hearing was beginning, providing the number to call to participate, and explaining that the hearing would be held whether or not Ms. G participated. Ms. G did not return this call.

²⁴ 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.

²⁵ 7 CFR § 273.16(e)(4) ("[T]he household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.")

²⁶ See, e.g. 7 U.S.C. §2015(b).

²⁷ 7 C.F.R. § 273.16(c)(1); 7 C.F.R. § 273.16(e)(6). Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are "highly probable;" this is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

to have “intentionally ... concealed or withheld facts” in connection with the program may, upon a first such violation, be disqualified from the program for twelve months.²⁸

The record in this case supports by clear and convincing evidence the conclusion that Ms. G intentionally concealed information about her employment during the eligibility review process. It is clear that Ms. G was employed at the time she filled out the eligibility review form. The Division submitted certified records from the employer documenting Ms. G’s employment with Employer A. It is also clear that Ms. G did not report her employment – and instead denied having any income – during the eligibility review process.

The evidence is also clear and convincing that Ms. G’s failure to report this information was intentional. As noted above, although Ms. G received notice of the hearing, she did not attend, nor did she submit any written statements or evidence. The record is thus devoid of any explanation from Ms. G explaining the omissions on her eligibility review form, or disputing the allegations. However, under the totality of circumstances here, including the fact that she had held the Employer A job for more than two months when she submitted her eligibility review form, it is exceedingly unlikely that Ms. G’s complete failure to disclose her employment and income was a mere oversight.

Plainly, Ms. G was aware that she was employed; she had held the job since March 2018, receiving regular paychecks for work performed. She also knew the eligibility review form required her to report all household members’ employment information and income – she provided that information for another household member, but failed to disclose her own employment and income. Ms. G signed the eligibility review form under penalty of perjury and unsworn falsification, verifying that its contents were true and correct, when they were materially false as to her employment status. She likewise failed to disclose this information – and instead falsely reported having no household income – during the July interview. The amount of Ms. G’s household’s benefits was determined based on her false statements in her review form and in her eligibility interview. This evidence strongly supports the conclusion that Ms. G purposefully withheld information about her employment status in order to receive benefits to which she would not otherwise be entitled.

²⁸ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1). The Division does not contend that Ms. G has ever committed a prior IPV, so the alleged violation is evaluated here as a first-time violation.

The evidence is thus clear and convincing that Ms. G intentionally made false statements and withheld information in her eligibility review process. She then continued receiving benefits to which she was not entitled by continuing to fail to report her employment. Ms. G's direct misrepresentations and failures to report constitute intentional concealment or withholding of facts, and thus constitute an IPV as defined by the Food Stamps program regulations.

IV. Conclusion

Because Ms. G has committed a first-time Intentional Program Violation of the Food Stamp program, she is disqualified from receiving Food Stamp benefits for a period of twelve months.²⁹ Additionally, Ms. G is now required to make restitution of any overpaid amounts.³⁰

Dated: March 12, 2019

By: Signed
Name: Cheryl Mandala
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.

DATED this 27th day of March, 2019.

By: Signed
Name: Cheryl Mandala
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.]

²⁹ The disqualification period applies only to Ms. G and not to any other individuals in her household. 7 C.F.R. § 273.16(b)(11). For the duration of the disqualification period, Ms. G'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. 7 C.F.R. § 273.11(c)(1). The Division shall provide written notice to Ms. G 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. 7 C.F.R. § 273.16(e)(9)(ii).

³⁰ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii). If Ms. G disagrees with DPA's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue. 7 C.F.R. § 273.15

