

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

In the Matter of)
)
 D U) OAH No. 13-1022-ADQ
) DPA/FCU No.
 _____) Agency No.

In the Matter of)
)
 B T) OAH No. 13-1021-ADQ
) DPA/FCU No.
 _____) Agency No.

DECISION AND ORDER

I. Introduction

D U and B T were recipients of Food Stamp¹ benefits in Alaska prior to March of 2013 and continuing in April of 2013. In that month, the Department of Health and Social Services, Division of Public Assistance (DPA) terminated their benefits on the basis of suspected nonresidence, and on July 23, 2013 it initiated an Administrative Disqualification case against each of them, alleging they had committed first Intentional Program Violations (IPVs) of the Food Stamp program.²

Hearings convened in both cases on August 26, 2013, with Mr. U and Ms. T having been provided advance notice of the hearings by both certified mail and standard First Class mail.³ Mr. U and Ms. T did not attend their respective hearings and could not be reached at the telephone numbers they had provided to the program, nor at any other known number for them. The hearings went forward in their absence.⁴

On motion made on the record in both cases by the administrative law judge under authority of 2 AAC 64.190(a), to which there was no objection, the two cases were consolidated. The exhibits and exhibit numbers in the two cases are identical.

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. T signed for the certified mail.

⁴ Once proper notice has been given, the Food Stamps and ATAP 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); 7 AAC 45.585(c). 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.

Dean Rogers, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearings. Mr. Rogers, Chris Lauer (another DPA investigator), and Amanda Holton (a DPA Eligibility Technician) testified on behalf of DPA. Exhibits 1-11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that D U and B T committed first Intentional Program Violations of the Food Stamp program. Each must be barred from Food Stamps for twelve months.

II. Facts

Mr. U and Ms. T were receiving Food Stamps prior to March of 2013. On March 3, 2013, they moved out of the apartment they were staying in on No Name Street in No Name, Alaska, telling the owner that they were relocating to the lower 48 states.⁵ Starting on March 3 and continuing into the following month, all purchases with their Alaska Food Stamps EBT card took place in California and Washington.⁶

As part of a routine eligibility review, Mr. U and Ms. T completed and signed an eligibility review form, dating it March 28, 2013.⁷ They faxed it to DPA from a fax machine in California on March 29, 2013.⁸ In multiple locations on the form, they claimed the No Name Street apartment in No Name, Alaska as both their mailing and residential address.⁹

On April 28, 2013, Mr. U and Ms. T applied for Food Stamps in the State of Washington, listing an address in Pacific Beach, Washington, as their address.¹⁰ To their credit, they disclosed that they had received benefits from another jurisdiction within the last 30 days.¹¹

DPA re-approved Food Stamp benefits for Mr. U and Ms. T on the basis of the March 28 form, crediting \$627 in benefits for the month of April.¹² At least \$625 of these benefits redeemed.¹³

DPA learned of Mr. U and Ms. T's departure from Alaska through its own investigation in April, triggered by the extended period of out-of-state redemptions.¹⁴ This proceeding ensued.

⁵ Ex. 10.

⁶ Ex. 8.

⁷ Ex. 7.

⁸ *Id.*; Ex. 9.

⁹ Ex. 7, pp. 1, 4.

¹⁰ Ex. 11.

¹¹ Ex. 11, p. 2.

¹² Ex. 8, p. 9; Holton testimony.

¹³ Ex. 8, p. 18.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁵ In this case, DPA seeks to show such a violation to be an Intentional Program Violation, or IPV. To establish an IPV, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁶ No evidence has been offered that either Mr. U or Ms. T has ever been found to have committed a prior IPV, and therefore their alleged IPVs will be evaluated on the assumption that this are first-time violations.

Except for someone with prior IPVs in his or her record or in certain other narrow circumstances that do not 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.¹⁷

It is clear that Mr. U and Ms. T reapplied for Food Stamps in Alaska after they had already moved out of state, falsely listing the No Name Street address as their residence. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Mr. U and Ms. T failed to appear for or testify at their hearings, but their intent can be deduced from circumstantial evidence. The couple had completely vacated the No Name address and were thousands of miles away when each of them signed the reapplication, which used the No Name address in multiple places. This cannot have been a mere oversight. Each has therefore committed a first IPV.

IV. Conclusion and Order

Mr. U and Ms. T have each committed first time Intentional Program Violations of the Food Stamp program. Each of them is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.¹⁸ The Food Stamp disqualification

¹⁴ Ex.2.

¹⁵ *See, e.g.*, 7 U.S.C. § 2015(b).

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

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

¹⁸ 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).

period shall begin November 1, 2013.¹⁹ This disqualification applies only to Mr. U and Ms. T, and not to any other individuals who may be included in their household(s).²⁰ For the duration of the disqualification period, Mr. U's and Ms. T's needs will not be considered when determining Food Stamp eligibility and benefit amounts for their household(s). However, they must report their income and resources so that they can be used in these determinations.²¹

DPA shall provide written notice to Mr. U and 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.²²

If over-issued Food Stamp benefits have not been repaid, Mr. U, Ms. T, or any remaining household members are now required to make restitution.²³ If Mr. U or Ms. T disagrees with DPA's calculation of the amount of over-issuance to be repaid, either of them may request a separate hearing on that limited issue.²⁴

Dated this 30th day of August, 2013.

Signed _____

Christopher Kennedy
Administrative Law Judge

¹⁹ 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).

²⁰ 7 C.F.R. § 273.16(b)(11).

²¹ 7 C.F.R. § 273.11(c)(1).

²² 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁴ 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 13th day of September, 2013.

By: Signed
Name: Christopher M. Kennedy
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]