

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

In the Matter of )  
 )  
M J ) OAH No. 20-0952-ADQ  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

M J was approved for Supplemental Nutrition Assistance Program (SNAP) benefits. Following an investigation, the Department of Health and Social Services, Division of Public Assistance (Division) concluded Ms. J misrepresented her circumstances on the application and that conduct materially impacted the amount of benefits she received. The Division, therefore, initiated an Administrative Disqualification (ADQ) case against Ms. J, alleging she had committed a first Intentional Program Violation (IPV) of the SNAP program.

This decision concludes the Division proved by clear and convincing evidence that Ms. J committed a first IPV of the SNAP benefit program. She is therefore disqualified from receiving additional benefits for six months and is required to reimburse the Division, if over-issued benefits have not already been repaid.

**Because Ms. J failed to appear for her hearing on two occasions, she may utilize the Proposal for Action process to present any information, including exculpatory material, she would like considered regarding the Administrative Law Judge's (ALJ) findings.**

**II. Facts<sup>1</sup>**

*A. Ms. J's application and the Division's Quality Review*

M J applied for SNAP benefits for herself and son on March 9, 2020.<sup>2</sup>

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<sup>1</sup> These facts were established by clear and convincing evidence from testimony and exhibits presented by the Division.

<sup>2</sup> Ex. 7. In order to qualify for this benefit the applicant must complete, sign and submit a form, known as the GEN50, which requires the applicant to disclose pertinent information regarding individual's living in the applicant's home, all money and benefits received by anyone living in the home, and other pertinent social and financial information regarding the applicant's assets and resources. The application is comprehensive. It is followed by a personal interview prior to the final eligibility determination.

Question 104 of the application asks: “Does any person applying for Health Insurance or any other public assistance service own *any* property such as a house, land, apartment, mobile home, duplex, condo, camper, or cabin?”<sup>3</sup>

Ms. J answered, “Yes” to this question.<sup>4</sup>

The question has an area to declare relevant information if the answer is yes. Ms. J listed a single property, her home, the value of which she estimated at \$100,000.00.<sup>5</sup>

The Alaska SNAP benefit application also includes a four-page document entitled “Your Rights and Responsibilities” which informs the applicant that failure to provide accurate information can result in denial of benefits, administrative preclusion from receipt of future benefits, and potential prosecution. In addition, the applicant may be required to repay any wrongly received benefits. On the final page of the application there is a signature line with a “Statement of Truth” that asserts the person who signs it acknowledges all the information contained in the application is true and correct to the best of the person’s knowledge and that the individual has read and understood the “Rights and Responsibilities” section of the application.<sup>6</sup>

Ms. J signed the Statement of Truth and acknowledged she read or had read to her the Rights and Responsibilities included with the application and understood those responsibilities, including the potential for penalties.<sup>7</sup>

The Division interview accompanying the March 9, 2020 SNAP application took place telephonically the same day. According to James Boudin, the Eligibility Technician who conducted the interview, Ms. J stated she understood the application and had no questions about it. He specifically discussed her rights and responsibilities. Ms. J indicated she understood them.<sup>8</sup>

Ms. J’s SNAP benefits were approved based on the information she provided on her application and in her interview.<sup>9</sup> Her benefits were determined using gross income from her self-employment as a babysitter offset by standard deductions, taxes, and home heating costs.<sup>10</sup> Ms. J’s resource limitation to

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<sup>3</sup> Ex. 7. (Emphasis added.)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; Testimony of J. Boudin.

<sup>7</sup> Ex. 6, p. 12.

<sup>8</sup> Testimony of J. Boudin.

<sup>9</sup> Ex. 9.

<sup>10</sup> Ex. 10., p. 1.

retain SNAP eligibility was \$2,020.50. As an exempt resource, her home did not affect the calculation of her resources.<sup>11</sup>

Ms. J received \$324.00 in SNAP benefits for March 2020. The benefit amount was raised to \$437.00 for April, May, June, July, and August.<sup>12</sup>

A quality review of Ms. J's application was initiated July 20, 2020.<sup>13</sup> Ms. J's case was selected at random as part of the Division's on-going control procedures. Division Specialist Trina Richards conducted the quality review. She has ten years' experience with public benefits. Auditing files for accuracy is her primary assignment.<sup>14</sup>

Ms. Richards reviewed Ms. J's SNAP application. She also did a public record check to verify Ms. J's claimed resources. When she did so, Ms. Richards found that Ms. J was the listed owner of three properties: the property listed as her home in response to Question 104 and two other properties.<sup>15</sup>

Public records demonstrate Ms. J purchased all three properties outright through a foreclosure sale on August 27, 2019.<sup>16</sup> The 2019 taxable value of the property she listed as her residence was \$137,605.00; Ms. J paid \$14,250.00. Another property in the Area A neighborhood had a 2019 taxable value of \$73,542.00; Ms. J paid 15,250.00. The third lesser developed property, in the Area B neighborhood, had a 2019 taxable value of \$24,296.00; Ms. J paid \$5,650.00.<sup>17</sup>

A notice of quality control review was mailed to Ms. J on September 10, 2020.<sup>18</sup> Ms. Richards subsequently spoke with Ms. J regarding the discrepancy between the public record listings and the disclosures in her application. Ms. J stated that she had liquidated a retirement account in order to make the August 27, 2019 purchases. She planned to live in one home, rent the other, and use the lesser developed property for commercial purposes. However, her plans for rental and commercial income had been unsuccessful. Her tenants, who were friends, fell on

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<sup>11</sup> Testimony of J. Boudin.

<sup>12</sup> Ex. 12.

<sup>13</sup> Ex. 9, p. 5.

<sup>14</sup> Testimony of T. Richards.

<sup>15</sup> *Id.*

<sup>16</sup> Ex. 11, pp. 6, 9, and 12.

<sup>17</sup> *Id.*

<sup>18</sup> Ex. 9., p. 7.

hard times and were unable to pay the rent. Nor had she been able to develop the other property into a salvage yard as she had hoped.<sup>19</sup>

At the time she spoke with Ms. Richards, Ms. J claimed her failure to disclose the rental and commercial properties on her benefit application were the result of good faith mistake and confusion. She explained she “did not realize” they should have been listed because she “was not living in them.”<sup>20</sup>

After their telephone conversation, Ms. Richards mailed several releases of information to Ms. J.<sup>21</sup> Ms. J did not sign and return the releases, and she was disqualified from benefits in September 2020 for failure to cooperate as a result.<sup>22</sup>

Ms. Richards completed her quality review. She determined that had the other two properties been disclosed on Ms. J’s application, the Division would have denied her application because she was over the resource limit for eligibility. The Division calculated Ms. J received a total of \$2,509.00 SNAP benefits from inception to termination of her case.<sup>23</sup> Ms. Richards, therefore, forwarded the information to Division Investigator Vance Canoy.<sup>24</sup>

Investigator Canoy initiated an administrative disqualification proceeding against Ms. J. The Division sent Ms. J a packet including the information forming the basis of this case as well as notice of the hearing date and time by both regular and certified, return receipt mail to her address of record. The packet contains an explicit advisement outlining Intentional Program Violations and the consequences if a determination is made.<sup>25</sup> It informed Ms. J that the Division calculated she was overpaid \$2,509.00 SNAP benefits and reimbursement was sought. Postal records establish certified delivery of the notice packet took place on December 14, 2020.<sup>26</sup> Thus, Ms. J was provided notice of the investigation and the relief sought by the Division, as well as notice of the date and time for her scheduled hearing before the OAH.

### *B. Procedural Background and the Hearing*

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<sup>19</sup> Testimony of T. Richards. The information from this conversation was also memorialized in a required report to the federal government. Ex. 2, p. 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Ms. Richard’s found it interesting that 31-year old Ms. J claimed she liquidated a retirement account large enough to enable her to buy multiple properties in August 2019, but seven months later in March 2020 listed her only employment as babysitting at \$300.00 a month with no money in her bank accounts.

<sup>22</sup> Ex. 10., p. 1. *See*, 7 C.F.R. § 2015(c)(Refusal to Provide Necessary Information).

<sup>23</sup> Ex. 12; Affidavit of R. Bowen.

<sup>24</sup> Testimony of T. Richards.

<sup>25</sup> Ex. 3.

<sup>26</sup> Ex. 4. This information was also emailed to Ms. J in advance of the February 16, 2021 hearing.

The hearing took place as scheduled on January 5, 2021. Ms. J did not attend the hearing, and she could not be reached by telephone at the number listed in her Division records. A message, including a return telephone number, was left at the beginning of the hearing requesting her to contact the Office of Administrative Hearings (OAH) immediately. She was also informed that another attempt to reach her would be made in fifteen minutes. Fifteen minutes passed without a return call from Ms. J. The subsequent call to her telephone also went to voicemail. A second message requesting her to contact OAH was left, including the information that a decision would be made based solely on the material submitted by the Division if she did not make contact within ten days. Accordingly, the hearing proceeded as required by 7 C.F.R. § 273.16(e)(4).<sup>27</sup>

Investigator Canoy represented the Division. He testified and submitted two affidavits. ET James Boudin and Specialist Trina Richards testified on behalf of the Division as discussed above. Fourteen exhibits were admitted.

However, within the ten-day grace period provided by regulation Ms. J contacted the Office of Administrative Hearings (OAH) and the matter was rescheduled for February 16, 2020.<sup>28</sup> Ms. J did not answer the telephone call placed to her. A message was left informing her of a 15-minute grace period and directing her to call the OAH immediately. Ms. J did not do so during the grace period. The Division submitted its case for decision based on the evidence presented at the prior hearing.

Ms. J did contact OAH after the second hearing was complete to request a third hearing be scheduled. There is no statutory or regulatory right to a third hearing. This decision concludes it is better practice to permit Ms. J to use the Proposal for Action (PFA) process to submit any information she wishes considered before a final decision is made.

### **III. Discussion**

The Division seeks to disqualify Ms. J from future benefits for twelve months and recoup overpaid benefits provided to her. Those remedies are available if the applicant engaged in an

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<sup>27</sup> Following the hearing, the OAH respected a ten-day waiting period prior to issuing a proposed decision to give Ms. J the opportunity to initiate contact and demonstrate good cause for her failure to attend. *See* 7 C.F.R. § 273.16(e)(4). Once proper notice has been given, regulations permit the hearing to be held without participation of the household member who allegedly committed the IVP. The same regulation provides circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

<sup>28</sup> 7 C.F.R. § 273.16(e)(3). The Notice of Rescheduled Hearing included the information required by 7 C.F.R. § 273.13 and advised Ms. J that she could refuse to answer any questions.

Intentional Program Violation (IPV) of a benefits program.<sup>29</sup> The Division bears the burden of proof to establish Ms. J committed an IPV by clear and convincing evidence.<sup>30</sup> To do so, the Division must demonstrate she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>31</sup>

When she filed her Alaska SNAP benefit application, Ms. J failed to disclose her ownership of two properties which caused her to receive SNAP benefits that she would not have been entitled to receive. This was a misrepresentation. The only question is whether the misrepresentation was intentional. This decision concludes the concealment by Ms. J was intentional and an IPV finding is appropriate.

Although Ms. J did not appear, her intent can be determined from circumstantial evidence. The following totality of circumstances support the IPV finding. First, there is no legitimate doubt that Ms. J understood the Division would rely on the application form to determine whether she would receive benefits.

Second, the language in Question 104 is clear and simple. It specifically asks the applicant if they own *any* property. There is no suggestion that the property is limited to places the applicant resides. Nor would such a limitation be expected by a reasonable person since the purpose of the application is to permit the Division to evaluate all the applicant’s assets and resources.

Third, Ms. J’s purchased the three properties on the same date, August 27, 2019. It is not probable she would have forgotten ownership of the other two properties.

Fourth, had Ms. J genuinely been confused about Question 104, she could have asked Mr. Boudin to explain it during her interview. However, she told him that she had no questions regarding the application process or form.

Finally, her claim of good faith mistake is inconsistent not only with the straightforward nature of Question 104, but also Ms. J’s apparent level of general financial sophistication. Assuming her statement to Ms. Richards was true and Ms. J purchased the properties at a foreclosure sale after cashing retirement accounts, Ms. J was able to successfully navigate the banking intricacies of her retirement account and the byzantine process surrounding foreclosure sales. Those types of transactions and

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<sup>29</sup> 7 C.F.R. § 2015(b).

<sup>30</sup> 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is established if the truth of the asserted facts is highly probable. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>31</sup> 7 C.F.R. § 273.16(c)(i).

business dealings entail a degree of reading comprehension far in excess of that required by the SNAP application form. Ms. J developed and implemented a comprehensive plan to create passive income using a combination of rental and commercial property. To do so she astutely purchased property far below its assessed value. The fact that her plan may have been unsuccessful during a world-wide pandemic does not negate her reasoning or reading capabilities. Her claim to Ms. Richards that she was confused is not persuasive.

In summary, on her sworn application form, Ms. J failed to disclose her ownership of two pieces of property which would have materially impacted the decision to approve SNAP benefits for her. She also failed to reveal this information during a personal interview with a Division employee. Her attempt to explain this failure as a good faith mistake was not persuasive. The reasonable conclusion to be drawn from the totality of Ms. J's conduct is that she consciously and intentionally withheld accurate information to increase the likelihood she would receive benefits. Her actions cannot have been a mere oversight or misunderstanding. Accordingly, the Division met its burden of proof that an IPV occurred.

A staggered scale of increasing penalties attaches to commission of an IPV.<sup>32</sup> The Division did not allege that Ms. J has committed a prior IPV.<sup>33</sup> Therefore, the penalties for a first violation apply: she is disqualified from benefit receipt for twelve months.<sup>34</sup>

If over-issued benefits have not already been repaid, Ms. J is now required to make restitution.<sup>35</sup> If she 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.<sup>36</sup>

#### **IV. Conclusion**

Clear and convincing evidence demonstrated that Ms. J committed a first IPV of the SNAP programs. Because this is her first violation, she is disqualified from receiving SNAP/Food Stamp benefits for twelve months.<sup>37</sup>

The disqualification period shall begin no later than the second month from the time the final decision in this case is announced. Distribution of the final decision in this case qualifies as notice of disqualification as required in 7 C.F.R. § 273.16(b)(3).

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<sup>32</sup> 7 C.F.R. § 273.16(b)(i).

<sup>33</sup> Ex. 17.

<sup>34</sup> 7 C.F.R. § 273.16(b)(1)(iii).

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

<sup>36</sup> 7 C.F.R. § 273.15.

<sup>37</sup> 7 C.F.R. § 273.16(b)(1).

The SNAP disqualification applies solely to Ms. J. It does not apply to any other individuals such as her son who may be included in her household.<sup>38</sup> Ms. J's needs will not be considered when determining benefit eligibility and benefit amounts for her household. However, she must report her income and resources so they may be used in the determination of benefit amounts.<sup>39</sup>

The Division shall provide written notice to Ms. J 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>40</sup>

If over-issued benefits have not already been repaid, Ms. J is now required to make restitution.<sup>41</sup> If she 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.<sup>42</sup>

Dated: February 23, 2021

Signed  
Carmen E. Clark  
Administrative Law Judge

## 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 9<sup>th</sup> day of March, 2021.

By: Signed  
Name: Carmen Clark  
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.]

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<sup>38</sup> 7 C.F.R. 273.16(b) (11).

<sup>39</sup> 7 C.F.R. 273.11(c)(1).

<sup>40</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>41</sup> 7 C.F.R. § 273.16(b) (12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>42</sup> 7 C.F.R. § 273.15.