

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

In the Matter of)	
)	
P B)	OAH No. 21-0584-ADQ
_____)	Agency No.

DECISION

I. Introduction

P B was approved for Supplemental Nutrition Assistance Program (SNAP) benefits in 2018.¹ She applied for renewal of those benefits in January and July of 2019. In May 2020 her file was randomly selected for a Quality Assurance Review (QAR). Based on information discovered in that review, the Department of Health and Social Services, Division of Public Assistance (DPA) concluded Ms. B failed to disclose assets and her failure materially impacted the amount of benefits she received. DPA, therefore, initiated an Administrative Disqualification (ADQ) case against Ms. B, alleging she had committed a first Intentional Program Violation (IPV) of the SNAP program.

The hearing was held May 6, 2021. Ms. B represented herself at the hearing. Ex. A., a letter submitted by Ms. B, was admitted.

The DPA was represented by Brent Fraser, an investigator employed by the DPA Fraud Control Unit. He and DPA Eligibility Technician Amanda Holton testified on behalf of DPA. Exhibits 1-13 were admitted into evidence.

This decision concludes DPA proved by clear and convincing evidence that Ms. B committed a first IPV of the SNAP benefits program. She is therefore barred from receiving SNAP benefits for twelve months pursuant to federal regulation.

In addition, DPA is authorized to recoup \$5,835.00 in overpaid benefits.

II. Facts²

P B was approved for SNAP benefits in 2018. The benefit application 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

¹ This program is often informally referred to as the “food stamp” program.

² The following facts were established by clear and convincing evidence through testimony at the hearing and exhibits filed by DPA.

from receipt of future benefits, and potential prosecution.³ In addition, the applicant may be required to repay any wrongly received benefits.⁴ 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. Ms. B would have been required to sign the application form.⁵

Ms. B’s benefits were approved. On January 30, 2019, the Division received an Eligibility Review Form (also called a renewal or recertification application) from Ms. B.⁶ This document is submitted by the benefit recipient to continue benefits. The renewal application is comprehensive and solicits a significant amount of household information about people in the household, as well as household assets, expenses, and income.⁷ Part 4 of the section on Asset Information directs benefit applicants to list cash and bank accounts. Ms. B left that section blank.⁸

The last page of the renewal application included a statement of truth where the person who signs asserts under penalty of perjury everything in the renewal application is true and correct the best of the person’s knowledge and that the individual has read the “Rights and Responsibilities” section of the application, including fraud penalties. Ms. B signed the January 30, 2019 renewal application.⁹

In the eligibility interview accompanying the renewal request Ms. B confirmed she had no assets. Ms. B’s benefits were approved for renewal. They were set at \$609.00 per month.¹⁰ Ms. B received benefits continuously from February 2019 to July 2019.¹¹

On July 22, 2019 the Division received an updated Eligibility Review Form from Ms. B.¹² The form was signed but not dated. Ms. B again left a blank space for Part 4 of the section

³ Testimony of B. Fraser and A. Holton.

⁴ *Id.*

⁵ *Id.*

⁶ Ex. 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ex. 13.

¹² Ex. 9.

on Asset Information directing benefit applicants to list cash and bank accounts. Ms. B did provide information on her new employment with Business A.¹³

The last page of the renewal application included a statement of truth where the person who signs asserts under penalty of perjury everything in the renewal application is true and correct the best of the person's knowledge and that the individual has read the "Rights and Responsibilities" section of the application, including fraud penalties. Ms. B signed the July 2019 renewal application.¹⁴

Ms. B's monthly SNAP benefits were renewed but reduced to \$447.00 per month based on the changed income due to her employment.¹⁵ Ms. B received benefits continuously from August 2019 to January 2020.¹⁶

Ms. B's file was randomly selected for a QAR in May 2020. Amanda Holton conducted the QAR. She discovered the existence of accounts at two banks held solely in Ms. B's name that were not disclosed in her January 30 or July 22, 2019 eligibility review applications or during either of Ms. B's eligibility interviews.¹⁷

Records from Navy Federal Credit Union (Navy FCU) demonstrate Ms. B opened checking and savings accounts on July 2, 2017. The amount in the savings account was under \$200.00 and appears to have remained below that sum. The checking account had a monthly balance of less than \$500.00 until March 2019 when the balance rose to over \$3,000.00. From March 2019 to March 2020, the checking account balance did not go below \$1,000.00. In July 2019 the balance fluxuated between \$1,927.62 and \$4,409.02.¹⁸

The Navy FCU records also demonstrate regular use of a debit card associated with the account. There were point of purchase sales at Costco, Fred Meyer, the Business B, and other merchants in City A. The debit card was regularly used in July 2019.¹⁹

Lastly, the Navy FCU records show frequent transfers from an account held by Ms. B's husband starting in March 2019. These transfers do not occur at predictable intervals. Nor are they in consistent amounts but range from \$50.00 to \$500.00.²⁰

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ex. 13.

¹⁷ Testimony of A. Holton.

¹⁸ Ex. 10.

¹⁹ *Id.*

²⁰ *Id.*

Bank records from Alaska USA Federal Credit Union (Alaska USA) demonstrate Ms. B opened a savings account on June 28, 2019, with an initial deposit of \$2,000.00. Subsequent deposits were made from the Business C. From June 28, 2019, to March 31, 2020, the monthly balance for the account remained at or above \$2,000.00.²¹

Based on these records, DPA initiated an administrative disqualification proceeding against Ms. B. DPA sought to temporarily disqualify Ms. B from receiving SNAP benefits and recoup \$5,835.00 in overpaid benefits from her.²² DPA asserted Ms. B did not have a prior program violation so her temporary disqualification should operate for a 12-month period.²³

DPA sent Ms. B a packet including the information forming the basis of this case, as well as notice of the hearing date and time, by certified, return receipt mail to her address of record. Postal tracking records demonstrate the package was delivered to her address of record on April 28, 2021.²⁴ Thus, Ms. B was provided notice of the proceeding and the relief sought by DPA, as well as notice of the date for her scheduled hearing before the OAH.²⁵

The hearing took place as scheduled on May 6, 2020. Ms. B invoked her right not to testify at the hearing. She did submit an unsworn statement via letter prior to the hearing. This letter was designated Exhibit A and admitted to the record.

The letter explained that Ms. B returned with her two daughters to City A, Alaska, after separating from her military spouse who remained in Germany. Ms. B believed she had accurately explained her marital situation to the eligibility technician during her first eligibility interview. She reported her marriage as emotionally and sometime physically abusive. There was no support order for the children, and she did not have access to her husband's accounts. Given those circumstances, she did not believe she could claim she received "money" from him at the time she applied for benefits and renewal. Her divorce was not final until August 11, 2020.²⁶

Ms. B gave birth to her third child in City A on February 2, 2019.²⁷ According to her letter, Ms. B's delivery was extremely difficult requiring her to be medevacked to City B. She

²¹ Ex.11.
²² Testimony of B. Fraser.
²³ *Id.*
²⁴ Ex. 6.
²⁵ *Id.*
²⁶ Ex. A.
²⁷ Ex. 9.

experienced depression after the birth and continued anxiety regarding the resulting medical bills. The letter apologized for any errors in her benefit applications. The letter also stated any error was not intentional.²⁸

DPA Fraud Investigator Brent Fraser represented the Division. In addition to his own testimony, he called one witness, DPA Eligibility Technician Amanda Holton. Exhibits 1-13 were admitted. The Division's case was straightforward: Mr. Fraser and Ms. Holton outlined the facts set forth above. Ms. B's application and renewal paperwork were presented along with bank records received from Navy FCU and Alaska USA.

The record closed at the end of the hearing.

III. Discussion

A person is prohibited from obtaining SNAP benefits through false or misleading statements or by concealing or withholding facts.²⁹ DPA seeks to temporarily disqualify Ms. B from future SNAP benefits and recoup overpaid benefits provided due to such misconduct. Those remedies are available if the applicant engages in an Intentional Program Violation (IPV) of a benefits program.³⁰ The Division bears the burden of proof to establish an IPV by clear and convincing evidence.³¹ To do so, the Division must clearly show that Ms. B intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."³²

The Division met its burden in this case. To be clear, the issue presented is not whether Ms. B should have disclosed erratic child support payments from her husband. The issue presented is whether she should have disclosed bank accounts held in her own name. Both eligibility renewal applications clearly asked for that information. Ms. B did not provide it. Instead she left the relevant answer block empty.

Ms. B's answers on her application forms and during the eligibility interviews were misrepresentations; she concealed and withheld facts regarding her bank accounts. Leaving the answer space empty acted to mislead or falsely advise the DPA reviewer by implying Ms. B did not have those resources. Thus, the only issue is whether the misrepresentations were intentional and an IPV finding is appropriate.

²⁸ Ex. A.

²⁹ See, e.g. 7 U.S.C. § 2015(b).

³⁰ 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).

³¹ *Id.*

³² 7 C.F.R. § 273-16(e)(6); 7 AAC 45.585(e).

Ms. B chose not to testify. Her intent can be deduced from circumstantial evidence, however.³³ The circumstantial evidence demonstrates Ms. B knew she had multiple bank accounts. Ms. B's January 30, 2019 application failed to disclose Navy FCU accounts which she had held since 2017. The July 22, 2019 eligibility review form failed to disclose not only the established Navy FCU accounts, but also the Alaska USA account opened by Ms. B in City A the month before. In July 2019, Ms. B would have been aware that the Navy FCU account held up to \$4,000.00 and the Alaska USA held the \$2,000.00 she deposited on June 28, 2019 when opening the account as well as repeated check deposits from the Business C. All Ms. B's accounts had regular activity. Ms. B also frequently used the debit card associated with the Navy FCU account. The accounts contained more than minor sums. The portion of the renewal forms asking the benefit applicant to list cash and bank accounts is direct and easily understood. A unintentional mistake is improbable.

The reasonable conclusion to be drawn from these circumstances is that Ms. B consciously and intentionally withheld the information to increase the likelihood she would receive SNAP benefits.

Accordingly, DPA met its burden of proof that an IPV occurred. DPA further demonstrated that Ms. B did not have a prior program violation. A staggered scale of increasing penalties attaches to commission of IPV.³⁴ Because Ms. B does not have a prior IVP, the penalties for a first violation apply: she is disqualified for 12 months.³⁵ Lastly, she must repay \$5,835.00 in benefits obtained as a result of the misrepresentation.³⁶

IV. Conclusion

Clear and convincing evidence demonstrated that Ms. B committed a first IPV of the SNAP program. She is disqualified from receiving Food Stamp benefits for a 12-month period.

She is also required to reimburse DPA for \$5,835.00 for benefits that were overpaid.

The SNAP disqualification period shall begin one month after the issuance of the notice of disqualification by the Final Decisionmaker.³⁷ It does not apply to any other individuals such

³³ See, *In re. M.N.*, OAH No. 18-0557-ADQ (Comm. of Health & Soc. Services 2018), Decision at 4. (Available online at aws.state.ak.us/OAH).

³⁴ 7 C.F.R. § 273.16(b)(1).

³⁵ 7 C.F.R. § 273.16(b)(1)(i).

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

³⁷ 7 USC 2015(b)(1)(i); 7 C.F.R. § 273.16(b) (13).

as Ms. B's children who may be included in her household.³⁸ Ms. B'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.³⁹

The Division shall provide written notice to Ms. B 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.⁴⁰

If over-issued SNAP benefits have not already been repaid, Ms. B is now required to make restitution.⁴¹ If Ms. B 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.⁴²

Dated: May 12, 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 27th day of May, 2021.

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.]

³⁸ 7 C.F.R. § 273.16(b) (11).

³⁹ 7 C.F.R. §273.11(c)(1).

⁴⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

⁴² 7 C.F.R. § 273.15.