

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

In the Matter of: )  
) )  
W.B. ) OAH No. 22-0721-ADQ  
\_\_\_\_\_ ) Agency No. 05672997

**DECISION**

**I. Introduction**

W.B. applied for and received benefits under the Alaska Supplemental Nutrition Assistance (SNAP or Food Stamp) program beginning in March 2022. He failed to disclose at that time that he was already receiving Food Stamp benefits from the State of Washington. As a result, he received benefits from both states from March through July 31, 2022. The Department of Health, Division of Public Assistance (DPA or Division) learned of these facts and after further investigation, initiated this Administrative Disqualification case against W.B., alleging he had committed a first Intentional Program Violation of the Food Stamp program.

A telephonic hearing was convened on September 23, 2022. W.B. did not appear, so the hearing was held without his participation.<sup>1</sup> DPA was represented at the hearing by Megan Gosda, an investigator with DPA’s fraud control unit. She and DPA Eligibility Technician Daryl Johnson provided sworn testimony. Exhibits 1-13 were admitted into evidence.

This decision concludes that DPA proved by clear and convincing evidence that W.B. committed a first Intentional Program Violation of the Food Stamp program by not disclosing his ongoing receipt of Washington Food Stamp benefits, and that he received \$1,360 in benefits from the State of Alaska to which he was not entitled.<sup>2</sup> DPA also proved that W.B. misrepresented his state of residence at the time he applied for Alaska benefits. Consequently, he is disqualified from receiving Food Stamps for a period of 10 years. He is also obligated to repay the overpaid benefits.

**II. Facts**

The following facts were established by clear and convincing evidence except where otherwise noted.

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<sup>1</sup> Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 C.F.R. § 273.16(e)(4).

<sup>2</sup> This does not mean he was consciously engaged in fraud; it is simply a finding that an IPV took place.

W.B. applied for Food Stamps in Alaska on April 25, 2022, listing an address in Alaska as his home address.<sup>3</sup> On his application form, question no. 118 asks “[h]as anyone in your household received public assistance (Temporary Assistance, case, [Food Stamps], Medicaid ... ) in Alaska or any other state?” W.B. checked the box for “No.”<sup>4</sup> Based on the representations made by W.B. in his application, the Division approved his eligibility for Food Stamp benefits on April 15, 2022.<sup>5</sup>

Prior to applying for Alaska Food Stamp benefits, and contrary to his response to question no. 118 on his Alaska application, W.B. had obtained Food Stamp benefits in the State of Washington. He applied for Washington benefits on September 20, 2021, listing an address in Washington as his home address.<sup>6</sup> On September 23, 2021, the Washington Department of Social and Health Services approved W.B. for 11 months of Food Stamp benefits, for the period of August 30, 2021 through July 31, 2022.<sup>7</sup> The Division provided records of W.B.’s usage of his Washington Food Stamps for this hearing. The records show that his benefits were spent in Washington from late September 2021 through January 12, 2022, and in Alaska from January 15, 2022 through July 30, 2022.<sup>8</sup>

The Division did not establish by clear and convincing evidence where W.B. was actually residing as of the date of his Alaska Food Stamp application, April 25, 2022, but evidence indicates that more likely than not he was physically in Alaska when he filled out the application. Although he was not required to attend an in-person interview for his Alaska application due to COVID-19 pandemic restrictions, he was interviewed by telephone, and at that time he indicated that he was temporarily living with family in Anchorage.<sup>9</sup> Records provided by the Washington Department of Social and Health Services indicate that he spent Washington Food Stamp benefits in Alaska on April 12 and May 2, 2022.<sup>10</sup>

After the Division approved W.B.’s application for Alaska Food Stamps, benefits were issued to him through transfers to an “EBT” (electronic benefit transfer) card. W.B. received Alaska Food Stamp benefits for the months of March 2022 through August 2022. Records submitted by the Division show that he initially spent the Alaska benefits in Alaska, but beginning

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<sup>3</sup> Exh. 8, p. 1.

<sup>4</sup> *Id.*, p. 10.

<sup>5</sup> *Id.*, p. 10.

<sup>6</sup> Exh. 9, p. 1.

<sup>7</sup> *Id.*, p. 12.

<sup>8</sup> *Id.*, pp. 16-17.

<sup>9</sup> Gosda testimony; exh. 8, p. 14.

<sup>10</sup> *Id.*, p. 16.

in mid-May, 2022, he spent the Alaska benefits in Hawaii.<sup>11</sup> As mentioned above, records from the Washington Department of Social and Health Services show that his Washington Food Stamp benefits were being spent in Alaska January 15, 2022 through July 30, 2022.<sup>12</sup> Thus, from mid-May through late July 2022, W.B.’s Washington Food Stamp benefits were being spent in Alaska, while at the same time his Alaska Food Stamp benefits were being spent in Hawaii.

W.B. received Alaska Food Stamp benefits from March 2022 through August 2022, totaling \$1,682 in Food Stamps.<sup>13</sup> These benefit months coincided or overlapped with his Washington benefits during the months of March through July 2022; he received \$1,360 in Alaska benefits for those months.<sup>14</sup>

### III. Discussion

Apart from exceptional circumstances that do not apply here, it is prohibited by federal law for a person to participate in the Food Stamp program from two different households or two different states in the same month.<sup>15</sup> It is also prohibited to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.<sup>16</sup>

In this case, DPA seeks to establish an Intentional Program Violation (IPV) and impose a disqualification penalty. There are two kinds of IPVs that are potentially applicable to what W.B. did, and they lead to different penalties. To establish either of them, DPA must prove the elements of the IPV by clear and convincing evidence.

No evidence has been offered that W.B. has ever been found to have committed a prior IPV, and therefore both types of IPV will be evaluated on the assumption that this is a first-time violation.

#### *A. IPV causing a twelve-month disqualification*

Except for someone with prior IPVs in his or her record, someone who falls in the ten-year provision discussed below, or someone who has used Food Stamps in a drug or weapons transaction, federal Food Stamp law provides that a twelve-month disqualification must be imposed

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<sup>11</sup> Exh. 10.

<sup>12</sup> Exh. 9, pp. 16-17.

<sup>13</sup> Exh. 11.

<sup>14</sup> Amended Exh. 1 (Gosda affidavit), p. 5.

<sup>15</sup> See 7 C.F.R. §§ 273.3(a). The exceptional circumstances are when a person is residing in a battered persons’ shelter and was, during the same month, a member of the abuser’s household. This exception clearly does not apply in W.B.’s case.

<sup>16</sup> 7 U.S.C. §2015(b).

on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.<sup>17</sup>

It is undisputed that W.B. omitted to disclose his receipt of Washington Food Stamps in answer to the question on his Alaska application that clearly called for that information—the question about whether he had received Food Stamps or other public assistance in Alaska or any other state. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. Here, however, because W.B. failed to appear for or testify at his hearing, there is no direct evidence of his intent in the record.

Intent, however, can be deduced from circumstantial evidence.<sup>18</sup> Based on the fact that W.B. was actively receiving and using Washington benefits around the time of his Alaska application and telephonic Alaska eligibility interview, the overall weight of the evidence creates a clear and convincing picture of a person who knew what he was doing. The Washington benefits cannot simply have slipped his mind under these circumstances, and one must infer that W.B. was consciously aware that he was omitting important information on his application for eligibility. The evidence is clear and convincing that W.B.’s misrepresentation was intentional.

W.B. therefore committed a first IPV.

*B. IPV causing a ten-year disqualification*

Except for someone with two prior IPV’s on his record, federal Food Stamp laws provide that a ten-year disqualification must be imposed on any individual proven to have “made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple [Food Stamp] benefits simultaneously.”<sup>19</sup> In this case, it is clear, based on the prior discussion, that W.B. certainly (a) made a fraudulent representation in his Alaska application (b) in order to receive benefits simultaneously in Alaska and Washington.

However, there is a third element required for this type of IPV disqualification under the referenced federal regulation: the fraudulent representation must have been “with respect to

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<sup>17</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

<sup>18</sup> In a criminal case, *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct . . . .”

<sup>19</sup> 7 CFR 273.16(b) disqualification penalties “(5) . . . an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.”

[W.B.’s] identity or place of residence.” There is no evidence that he misrepresented his identity at any time throughout the process of obtaining Alaska benefits. Therefore, the only question is whether his misrepresentation, as discussed above, was a misrepresentation with respect to his place of residence. This issue was analyzed in detail in a prior OAH Food Stamp decision, *In the Matter of N.Y.T.*, OAH No. 12-0280-ADQ,<sup>20</sup> as set forth below.

“Residence” for purposes of Food Stamp eligibility is a unique and somewhat complex concept. To be a resident and eligible, a person must “live in” the state.<sup>21</sup> A state cannot require the person to have lived in the state for any particular duration, nor require a fixed place of abode, nor require that the person have the intent to remain in the state.<sup>22</sup> Thus, residency for Food Stamp purposes is distinct from residency under Alaska law, which requires the intent to remain indefinitely demonstrated by, among other things, “maintaining a principal place of abode in the state for at least 30 days.”<sup>23</sup> A person who lives in the state on a transient basis can be a resident for purposes of the program.<sup>24</sup> Nonetheless, one cannot be a resident while remaining a resident elsewhere, so that, for example, a person in the area “solely for vacation purposes” is not a resident for purposes of Food Stamp eligibility.<sup>25</sup> It is also inconsistent with residency to be drawing and using Food Stamps elsewhere.

This last point is demonstrated by the federal case of *Villegas v. Concannon*.<sup>26</sup> That case was about migrant farm workers who were enrolled in another state’s Food Stamp program at the beginning of a month and then moved to Oregon during the course of the month. The court overturned an Oregon practice of barring these workers from immediate participation in the Oregon program on the basis of nonresidence, simply because they had been enrolled in another state the same month and Food Stamps from that state might be in the mail to them. However, the court was careful to specify that, to be residents in Oregon for purposes of receiving Food Stamps in Oregon, the workers would have to “attest[] to nonparticipation in the prior area that month.”<sup>27</sup> Thus, it would be inconsistent with residency in the new state to actually use food stamps from the prior state.

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<sup>20</sup> The decision can be reviewed online at [ADQ120280 \(state.ak.us\)](http://ADQ120280.state.ak.us).

<sup>21</sup> 7 C.F.R. § 273.3, “Residency.”

<sup>22</sup> *Id.*

<sup>23</sup> AS 01.10.055.

<sup>24</sup> See, e.g., *Villegas v. Concannon*, 742 F. Supp. 1083 (D. Oregon 1990) (migrant farm workers).

<sup>25</sup> 7 C.F.R. § 273.3(a).

<sup>26</sup> *Supra* note 21.

<sup>27</sup> 742 F. Supp. at 1087.

Alaska’s Food Stamp application does not expect applicants to understand the nuances of residency, and it does not ask them to state or certify their state of residence.<sup>28</sup> Instead, the application asks questions from which eligibility technicians can determine residency. At least for a person who is receiving and using Food Stamps from another state *at the time of application*, a critical part of this determination is having a correct answer to Question 118, the question asking when and where the applicant has received public assistance. In W.B.’s case, it follows that in answering this question falsely and concealing that he was, at that very time, receiving and using Washington Food Stamps—an act inconsistent with residence in Alaska—W.B. made a misrepresentation “with respect to . . . place of residence.” Since, as demonstrated in the previous section, he did this intentionally and did it for the purpose of receiving Food Stamps in two states simultaneously, he has committed an IPV that calls for a ten-year suspension.

#### IV. Conclusion

W.B. has committed a first-time Food Stamp IPV involving a fraudulent statement or representation with respect to place of residence. He is therefore disqualified from receiving Food Stamp benefits for a ten-year period, and is required to reimburse DPA for \$1,360 in benefits that were overpaid as a result of his IPV. The Food Stamp disqualification period shall begin 30 days after the issuance of the notice of disqualification by the Final Decisionmaker.<sup>29</sup>

This disqualification applies only to W.B. and not to any other individuals who may be included in his household in the future.<sup>30</sup> For the duration of the disqualification period, W.B.’s needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in these determinations.<sup>31</sup>

The Division shall provide written notice to W.B. and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply if the certification period has expired.<sup>32</sup>

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<sup>28</sup> Exh. 8. The application does ask for a “home address” and “mailing address,” *id.* at 1, but these are not necessarily the same as residence.

<sup>29</sup> 7 USC 2015(b)(1)(i); 7 C.F.R. § 273.16(b)(1), (b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>30</sup> 7 C.F.R. §273.16(b)(11).

<sup>31</sup> 7 C.F.R. §273.11(c)(1).

<sup>32</sup> 7 C.F.R. §273.16(e)(9)(ii).

If the overpaid Food Stamp benefits have not been repaid, W.B. is now required to make restitution.<sup>33</sup> If he disagrees with DPA’s calculation of the amount of over-issued benefits to be repaid, he may request a hearing on that limited issue.<sup>34</sup>

Dated: November 30, 2022

Signed \_\_\_\_\_  
Andrew M. Lebo  
Administrative Law Judge

## Adoption

The undersigned, by delegation from the Commissioner of Health, 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 14<sup>th</sup> day of December, 2022.

By: Signed \_\_\_\_\_  
Name: Andrew M. Lebo  
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>33</sup> 7 C.F.R. §273.16(b)(12); 7 C.F.R. §273.16(e)(8)(iii).

<sup>34</sup> 7 C.F.R. §273.15.