

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

In the Matter of:)
) OAH No. 22-0865-ADQ
C.U.) Agency No. 05843923
_____)

DECISION and ORDER

I. Introduction

C.U. is a former Food Stamp¹ recipient. The Department of Health, Division of Public Assistance (Division), initiated this Administrative Disqualification case, alleging he had committed a first time Intentional Program Violation of the Food Stamp program. C.U. was provided notice of the hearing and it was held on November 30, 2022. However, he did not appear, and it was held in his absence.²

Dean Rogers, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division, as did eligibility technician Amanda Holton. This decision concludes that C.U. committed a first Intentional Program Violation of the Food Stamp program.

II. Facts

The following facts were established by clear and convincing evidence unless otherwise noted. C.U. was a Food Stamp recipient who submitted a Food Stamp benefits application on October 28, 2021.³ On page 9 of the application, he was asked to declare various types of assets, including bank account information. At question 106, he answered “No” when asked to identify whether he possessed any of the identified assets, including bank accounts. He left the response to question 107 blank, when asked to identify any account information, including current balances.⁴

The last page of the application contains the following certification:

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). The program is still commonly referred to as the Food Stamp program.
² The federal Food Stamp program regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4). 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.
³ Ex. 6.
⁴ Ex. 6, p. 9.

Under penalty of perjury, I certify that all information contained in this application, including U.S. citizenship or lawful immigrant status of all persons applying for benefits is true and correct to the best of my knowledge. I have read or heard read to me the ‘Rights and Responsibilities’ section of the application and understand my rights and responsibilities, including fraud penalties, as described in this application.⁵

The last page of the application also includes a section titled as the “Statement of Truth.” It requires that the applicant certify by their signature that all statements in the application are true and correct to the best of their knowledge and that they have also read the “Rights and Responsibilities” information included within the application. The “Rights and Responsibilities” includes a discussion regarding fraud penalties that may be imposed if the application is submitted based on intentionally untruthful information or statements. C.U. signed the application immediately below the above-referenced acknowledgments.⁶

After submitting his application, C.U. spoke to an eligibility technician from the Division on November 5, 2021. At that time, he confirmed his Social Security Number. He was also asked again to confirm his resources. He indicated that he did possess a bank account with a balance of \$1,200. Other than his vehicle identified within his initial application and the \$1,200 he identified as being in a bank account, C.U. did not identify any other assets.⁷ On the basis of the representations contained in his application and the information provided by phone to the eligibility technician, C.U.’s Food Stamp benefits application was approved on November 8, 2021.⁸ From the period beginning shortly after his application in October 2021 until August 2022, C.U. received monthly Food Stamp benefits totaling approximately \$3,827.⁹

The Division’s Fraud Control Unit began an investigation in August 2022 by issuing a subpoena duces tecum to the bank.¹⁰ The bank produced records to the Division identifying two separate bank accounts for C.U..¹¹ The bank records matched the information contained in the

⁵ Ex. 6, p. 11.

⁶ *Id.*; Testimony of Amanda Holton.

⁷ Ex. 9, p. 3; Testimony of Amanda Holton.

⁸ Ex. 9, pp. 3-5; Testimony of Amanda Holton.

⁹ Exs. 10 and 12.

¹⁰ Subpoena Duces Tecum (August 29, 2022).

¹¹ Ex. 11.

subpoena and C.U.'s Food Stamp application, including both his name and date of birth.¹² C.U. was identified as the sole signer on these two accounts.¹³

As the banking information reflects, as of November 5, 2021, C.U.'s two bank accounts totaled approximately \$7,773 as opposed to the \$1,200 he had identified to the eligibility technician.¹⁴ During the period at issue in this case, from October 2021, to August 2022, the eligibility resource limit for C.U. was \$2,500.¹⁵ However, as the bank's records reflect throughout the entirety of that period, C.U.'s account balances in his two bank accounts totaled thousands of dollars above that limit.¹⁶

As the bank documentation for C.U. also confirms, his most recent address as of August 31, 2022, is in Washington.¹⁷ As the Division confirmed, it was that address that was used for service of both the 30-day advance notification of Food Stamps administrative disqualification hearing packet and for delivery of the Division's evidence and exhibits in this case. The advance packet was sent via first-class prepaid U.S. mail and certified return-receipt U.S. mail. None of the documentation sent via first-class mail was returned as undeliverable. Further, the certified mail receipt was returned by the Postal Service as unclaimed.¹⁸

A telephonic hearing took place on November 30, 2022. C.U. was notified of the hearing by U.S. mail sent to his Washington address, and by email at the address identified on his Food Stamps application.¹⁹ He did not appear and could not be reached at his phone number of record. Dean Rogers represented the Division and testified at the hearing, as did eligibility technician Amanda Holton. Exhibits 1 – 13 were admitted into evidence without restriction. Following the hearing, the Division also provided the subpoena duces tecum it had served upon the bank. There was no evidence presented that C.U. had ever previously committed an Intentional Program Violation.²⁰

¹² Compare Ex. 6, p. 2 with Subpoena Duces Tecum (August 29, 2022) and Ex. 11, p. 4.

¹³ Ex. 11, p. 3.

¹⁴ Compare Ex. 6, p. 9 and Ex. 9, p. 3, with Ex. 11, pp. 16, 73.

¹⁵ Ex. 13, p. 1; Dean Rogers Testimony.

¹⁶ Ex. 11; Dean Rogers Testimony.

¹⁷ Ex. 11, p. 109.

¹⁸ Exs. 1-5; Dean Rogers Testimony.

¹⁹ Ex. 6, p. 1; Notice of Assignment and Confirmation of Hearing Schedule (October 28, 2022).

²⁰ See also, Ex. 2, p. 4.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.²¹ The Division alleges that C.U. violated that prohibition and committed an Intentional Program Violation of the Food Stamp program. It asserts he did so by making false or misleading statements and withholding material facts regarding his bank accounts, and in his subsequent call to a Division eligibility technician on November 5, 2021.

To establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence²² that C.U. intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”²³ To satisfy this standard, the Division must show that it is *highly probable* that C.U. intended to misrepresent, conceal, or withhold facts.²⁴ Food Stamp eligibility and benefits are determined based on a household’s composition, assets, and income.²⁵

The facts in this case clearly establish that C.U. did not notify the Division about both of his bank accounts in his application or his subsequent phone call to the Division.²⁶ This was a concealment or withholding of facts.

It must therefore be determined whether C.U.’s concealment/withholding of his bank account information was intentional. Two facts are significant as to this issue. First, is that C.U. failed to identify either account in his initial application despite having ample opportunity to do so. Second, although he later indicated that he possessed one bank account with a balance of approximately \$1,200, this representation failed to identify the second account and failed to accurately represent the balances of the accounts. As the evidence reflects, these balances totaled many thousands of dollars over and above the maximum resource eligibility limit of \$2,500.²⁷ These facts support a finding that C.U. intentionally omitted the existence of the bank accounts and the monies they contained from his Food Stamp application and during his

²¹ See, e.g., 7 U.S.C. § 2015(b).

²² 7 C.F.R. § 273.16(e)(6).

²³ 7 C.F.R. § 273.16(c).

²⁴ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003, emphasis supplied) (defining clear and convincing standard).

²⁵ 7 C.F.R. § 273.10(e)(1)(i)(A).

²⁶ Ex. 9, p. 3; Testimony of Amanda Holton.

²⁷ Exs. 1, p. 5, 12 and 13.

subsequent phone call with the Division’s eligibility technician. This was his first Intentional Program Violation.²⁸

IV. Conclusion and Order

C.U. has committed a first time Intentional Program Violation of the Food Stamp Program. He is disqualified from receiving Food Stamp benefits for a 12-month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.²⁹ The Food Stamp Program disqualification period shall begin February 1, 2023.³⁰ This disqualification applies only to C.U., and not to any other individuals who may be included in his household.³¹ For the duration of the disqualification period, C.U.’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.³²

The Division shall provide written notice to C.U. 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.³³

If over-issued Food Stamp benefits have not been repaid to date, C.U. is now required to make restitution.³⁴ If he disagrees with the Division’s calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.³⁵

Dated this 1st day of December 2022.

Signed

Z. Kent Sullivan

Administrative Law Judge

²⁸ Ex. 2, p. 4.

²⁹ 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).

³⁰ 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 7 C.F.R. § 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).

³¹ 7 C.F.R. § 273.16(b)(11).

³² 7 C.F.R. § 273.11(c)(1).

³³ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁵ 7 C.F.R. § 273.15.

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 15th day of December, 2022.

By: Signed
Name: Z. Kent Sullivan
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.]