

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

In the Matter of:)
)
K.F.) OAH No. 22-0894-ADQ
) Agency No. 05796691
_____)

DECISION AND ORDER

I. Introduction

K.F. is a former Food Stamp¹ recipient. The Department of Health, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he committed a first time Intentional Program Violation of the Food Stamp program.

K.F.’s hearing was held on December 22, 2022. Participating was Anna Avila, an investigator and representative for the Division’s Fraud Control Unit, and Daryl Johnson, an eligibility technician for the Division. K.F. also appeared and testified under oath.

Based on the testimony and exhibits offered at hearing, this decision concludes that K.F. committed a first intentional violation of the Food Stamp program.

II. Facts

The following facts were established by clear and convincing evidence except where otherwise noted. K.F. applied for Food Stamp program benefits on August 17, 2021.² His application indicated that he was the only person in his household.³ It also asked whether he was employed, and if so, to identify what his wages were. His responses indicated that he was not employed and had no wages. They also indicated that he had no assets, other than the \$172 per week he was receiving for unemployment benefits.⁴ He signed the application, certifying under penalty of perjury that the information contained within it was true and correct.⁵

At the time of his application, K.F. was also provided with rights and responsibilities information. This information explained his income reporting requirements, and the potential disqualification and fraud penalties that might be imposed should misreporting occur. The rights

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 Ex. 6, pp. 1, 11.
³ Ex. 6, pp. 2 - 5.
⁴ See generally, Ex. 6, pp. 6 – 10; Ex. 6, p. 7.
⁵ Ex. 6, pp. 11 - 12.

and responsibilities information also explained a recipient's obligation to repay the Division for any benefits incorrectly paid due to misreporting.⁶

Based on the information he provided in his initial application, including his general lack of income or assets, K.F. was approved for Food Stamp benefits beginning in August 2021.⁷ Specifically, the notice of approval instructed him that if his income at any point exceeds \$1,728, he must report the change of income to the Division within 10 days. The initial approval period for K.F.'s Food Stamp benefits was only for two months.⁸ However, that initial approval period was later extended through July 31, 2022.⁹

On June 30, 2022, K.F. completed and signed an eligibility review form. Once again, he indicated no employment, assets, or income, other than \$200 cash on hand.¹⁰ As occurred at the time of his initial application, the June 2022 eligibility review form also contained a certification, signed by K.F., declaring under penalty of perjury that the information it contained was true and correct.¹¹

The Division's records indicate that during the Summer of 2022, it became aware, through Department of Labor information, that K.F. may have been employed and receiving income. Accordingly, his case was subsequently pended for wage verification.¹²

The Division concluded that K.F. had been employed and earning wages beginning on August 13, 2021, through at least August 5, 2022. Also, during the period from September 2021, through July 2022, K.F. had received and failed to report to the Division income totaling \$22,001.61. He initially went over income eligibility beginning in October 2021 and should have reported doing so at that time.¹³ Based on this unreported income, he also was overpaid Food Stamp program benefits totaling \$3,194.¹⁴

⁶ Daryl Johnson Testimony; Ex. 7.

⁷ Ex. 9.

⁸ Ex. 9 at p. 2.

⁹ Ex. 9 at pp. 3 – 4.

¹⁰ Ex. 11.

¹¹ Ex. 11, p. 5.

¹² Daryl Johnson Testimony; Ex. 8, p. 6.

¹³ Anna Avila Testimony; Ex. 12.

¹⁴ Daryl Johnson Testimony; Anna Avila Testimony; Exs. 12, 13, and 17 (Ex. 17 is a corrected loss statement replacing Ex. 14, that the Division indicated contained some errors).

The Division further documented that based on his initial approval for Food Stamp program benefits, K.F. received benefits from August 2021 through July 2022. These monthly benefits ranged between \$289 and \$417.¹⁵

At hearing, all the Division's exhibits, 1-17, were admitted into evidence, without objection. K.F. did not challenge the accuracy of the above-referenced facts or exhibits. His only contention was that he inadvertently failed to report his income because he had so many other things going on in his life at that time, including being incarcerated and living at a rehabilitation facility. He testified that it was never his intent to defraud anybody. Instead, his errors in failing to report were by mistake and inadvertence.¹⁶

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by concealing or withholding facts.¹⁷ The Division alleges that K.F. 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 employment and income on his August 17, 2021, Food Stamp application and his June 30, 2022, eligibility review certification.

To establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁸ that K.F. intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."¹⁹ To satisfy this standard, the division must show that it is *highly probable* that he intended to misrepresent, conceal, or withhold facts.²⁰ Food Stamp eligibility and benefits are determined based upon a household's composition, assets, and income.²¹

Here, the evidence is clear that K.F. had recently been employed and was soon to receive income from that employment at the time of his August 17, 2021, Food Stamp program application. Not only did he fail to identify his employment in that initial application, but further, he also failed to report to the Division in October 2021, when his income began to

¹⁵ Exs. 10 and 14.

¹⁶ K.F. Testimony.

¹⁷ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁸ 7 C.F.R. § 273.16(e)(6).

¹⁹ 7 C.F.R. § 273.16(c).

²⁰ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003, emphasis supplied) (defining clear and convincing standard).

²¹ 7 C.F.R. § 273.10(e)(1)(i)(A).

exceed the eligibility limit for Food Stamp benefits.²² He again failed to report his income and employment in his June 30, 2022, eligibility review certification. This occurred despite very specific questions inquiring in detail regarding his employment status, income, and assets.²³

Here, the initial application contains very clear rights and responsibility language. That language is explicit regarding when changes need to be reported. It provides: “[y]ou must report changes in your household within 10 days of when you know of the change.”²⁴ Because K.F. had already been working for four days prior to submitting his initial application, it is unlikely that his failure to report this detail was inadvertent or simply an oversight. He was under a clear obligation to report his employment at that time, and he did not do so.²⁵ Further, he also had an obligation to accurately report his employment and income in his June 30, 2022, eligibility certification. But once again, he failed to do so.²⁶

The question then arises whether K.F.’s failure to disclose his employment and income was an intentional misrepresentation. Here, K.F.’s testimony came across as sincere and heartfelt. He acknowledged that an error had occurred and that he wrongfully failed to report his employment status and income. He acknowledged his obligation for repayment and for a disqualification period to be imposed. His only contention is that he did not intend to misrepresent or mischaracterize his employment or income.²⁷

However, in addition to this direct testimony, intent can also be deduced from circumstantial evidence.²⁸ Whether K.F. was employed, and the amount of his income, were significant and important facts directly related to his application and entitlement to benefits. The application and certification specifically sought this information, and he was asked explicit questions in those documents regarding his employment and income. In all instances, K.F. knew he was employed and getting paid or soon to be paid. Under the facts here, there can be no other conclusion but that his repeated failure to inform the Division of his employment and income at

²² Anna Avila Testimony; Exs. 12, 13, 15 and 17.

²³ Ex. 8, pp. 1-2; Ex. 11.

²⁴ Ex. 7, p. 1.

²⁵ Compare Ex. 6 with Ex. 12 at p. 3; Ex. 7, p. 4.

²⁶ Ex. 11.

²⁷ K.F. Testimony.

²⁸ In the criminal case of *Sivertsen v. State*, 981 P.2d 564, 567 (Alaska 1999), the Alaska Supreme Court stated that “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct”

the time he submitted his initial application and certification, were intentional misrepresentations.

The Division has therefore met its burden of proof and established that K.F. made intentional misrepresentations on his August 17, 2021, Food Stamp application and his subsequent June 30, 2022, eligibility certification. Consequently, K.F. has committed a first time Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

K.F. has committed a first time Intentional Program Violation of the Food Stamp program. He is therefore 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 March 1, 2023.³⁰ This disqualification applies only to K.F., and not to any other individuals who may be included in his household.³¹ For the duration of the disqualification period, K.F.'s needs will not be considered when determining Food Stamp eligibility and benefit amounts for him or his household. However, to the extent he is included in a future application for benefits as a member of a household, he must report his income and resources as they may be used in making determinations.³²

If over-issued Food Stamp benefits have not been repaid, K.F. is now required to make restitution.³³ If K.F. 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.³⁴

DATED this 29th day of December 2022

Signed

Z. Kent Sullivan

Administrative Law Judge

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

³⁴ 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 12th day of January, 2023.

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.]