

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

In the Matter of)	OAH No. 13-1163-ADQ
)	Division No.
N X)	Fraud Control Case No.
_____)	Food Stamp Program

DECISION AND ORDER

I. Introduction

N X is a former Food Stamp¹ recipient. On August 22, 2013, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against her, alleging she had committed a first time Intentional Program Violation of the Food Stamp program.²

Ms. X's hearing was held on September 27, 2013. She was provided advance notice of the hearing.³ Ms. X did not appear for the hearing and it was held in her absence.⁴

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Fraud Control Unit, testified for the Division.

This decision concludes that Ms. X committed a first Intentional Program Violation of the Food Stamp program.

II. Facts

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

Ms. X and her husband were Food Stamp recipients who applied to renew those benefits on January 29, 2013.⁵ The renewal application contained a question asking whether anyone in her household was employed and earning wages. Ms. X answered that question by indicating

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. 3.

³ Ex. 1, p. 3; Ex. 4.

⁴ 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.

⁵ Exs. 7, 9.

that her husband was receiving unemployment, but did not state that she was herself employed.⁶ Ms. X signed the application, certifying that the information contained in it was correct.⁷ Ms. X then participated in an eligibility interview on February 11, 2013, where she informed the Division that she was not working. The Food Stamp application was approved and benefits were issued.⁸

Ms. X, however, was working and earning income at the time of her January 29, 2013 Food Stamp application. Department of Labor records show that Ms. X began working for No Name, LLC sometime during the last quarter of 2012 and was employed there continuously through the second quarter of 2013, a period which included her January 29, 2013 application and the February 11, 2013 interview.⁹ Alaska Medicaid program records show that Ms. X's employment with No Name continued beyond the end of the second quarter of 2013 through at least the end of August 2013.¹⁰

The Division initiated a fraud investigation which culminated in this case.¹¹ The Division calculated Ms. X received \$3,294 in Food Stamp benefits that she was not entitled to receive during the period from January 2013 through July 2013.¹²

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹³ that Ms. X committed an Intentional Program Violation of the Food Stamp program: that she intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts" with regard to her January 2013 application.¹⁴ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household's income.¹⁵

The evidence is clear that Ms. X did not list her employment income on the Food Stamp application, despite there being an explicit question regarding it. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only direct evidence of a

⁶ Ex. 7, p. 2.

⁷ Ex. 7, p. 4.

⁸ Exs. 8, 9.

⁹ Ex. 11.

¹⁰ Ex. 12.

¹¹ Ex. 2.

¹² Holton testimony; Ex. 13.

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. § 273.16(c).

¹⁵ 7 C.F.R. § 273.10(e)(1)(i)(A).

person's intent is testimony from that person on that subject. However, Ms. X failed to appear for or testify at her hearing. Accordingly, there is no direct evidence of her intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹⁶ Ms. X undoubtedly knew she was employed. Her failure to notify the Division of her employment in response to the question posed on the application was therefore an intentional misrepresentation. The fact that she continued to misrepresent her employment during her February 11, 2013 eligibility interview reinforces this finding of intentionality.

The Division has therefore met its burden of proof and established that Ms. X made an intentional misrepresentation on her January 29, 2013 Food Stamp application. Consequently, Ms. X has committed a first Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

Ms. X has committed a first time Intentional Program Violation of the Food Stamp program. She 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.¹⁷ The Food Stamp program disqualification period shall begin January 1, 2014.¹⁸ This disqualification applies only to Ms. X, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. X's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.²⁰

The Division shall provide written notice to Ms. X 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.²¹

If over-issued Food Stamp benefits have not been repaid, Ms. X or any remaining household members are now required to make restitution.²² If Ms. X disagrees with the

¹⁶ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (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"

¹⁷ 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).

¹⁸ 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).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.²³

Dated this 21st day of October, 2013.

Signed

Lawrence A. Pederson
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 5th day of November, 2013.

By: Signed

Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, DOA/OAH

[This document has been modified to conform to the technical standards for publication.]

²² 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
²³ 7 C.F.R. § 273.15.