

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

In the Matter of )  
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U.A. ) OAH No. 19-1164-ADQ  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

U.A. was approved for Supplemental Nutrition Assistance Program (SNAP) benefits in 2016.<sup>1</sup> She applied for renewal of those benefits on February 17, 2017, and again on February 13, 2018. During the 2018 renewal review, the Department of Health and Social Services, Division of Public Assistance (DPA) concluded Ms. A. failed to disclose employment in both the 2017 and 2018 benefit renewal applications and that failure materially impacted the amount of benefits she received. DPA, therefore, initiated an Administrative Disqualification (ADQ) case against Ms. A., alleging she had committed a second Intentional Program Violation (IPV) of the SNAP program.

The hearing was held January 9, 2020. Ms. A. was provided notice of the hearing, but did not attend. She could not be reached at the telephone number she provided to the Office of Administrative Hearings (OAH). The hearing went forward in her absence.

The DPA was represented by Sharon Carter, an investigator employed by the DPA Fraud Control Unit. Amanda Holton, DPA Eligibility Technician III, testified on behalf of DPA. Exhibits 1-12 were admitted into evidence.

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

In addition, DPA is authorized to recoup \$6,741.00 in overpaid benefits.<sup>2</sup>

**II. Facts<sup>3</sup>**

Ms. A. was approved for SNAP benefits in 2016.<sup>4</sup> Ms. A. submitted an Eligibility Review Form (also called a renewal or recertification form) to continue her benefits on February 17, 2017.<sup>5</sup> The

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<sup>1</sup> This program is often informally referred to as the “food stamp” program.  
<sup>2</sup> Ex. 11.  
<sup>3</sup> The following facts were established by clear and convincing evidence through testimony at the hearing and exhibits filed by DPA.  
<sup>4</sup> Ex. 8, p. 1; Testimony of A Holton.  
<sup>5</sup> Ex. 7, pp. 1-12.

renewal application is comprehensive, and solicits a significant amount of household information. 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 from receipt of future benefits, and potential prosecution.<sup>6</sup> In addition, the applicant may be required to repay any wrongly received benefits.<sup>7</sup>

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. A. signed the application form.<sup>8</sup>

In the section on the application titled, “Income in Your Household,” Question 7 asks the applicant to disclose any employment for herself or a household member.<sup>9</sup> Ms. A. left that question blank.<sup>10</sup> When asked during the in-person interview about her employment and sources of financial support, Ms. A. told the DPA interviewer that she supported her household through a combination of Supplemental Security Income (SSI) and child support.<sup>11</sup>

Her benefits were approved. They were set at \$578.00 per month.<sup>12</sup> Ms. A. received benefits continuously from March 2017 to February 2018.<sup>13</sup>

Ms. A. submitted another Eligibility Review Form to continue her benefits on February 13, 2018.<sup>14</sup> The 2018 application solicited similar information about people in the household, as well as household assets, expenses, and income. It included the Rights and Responsibilities advisement.<sup>15</sup>

Ms. A. answered the question directing the applicant to “Complete if you or anyone in your household is working” contained in the in the section headed, “Money Received Information,” with the notation “N/A” indicating it was not applicable to her.<sup>16</sup> On February 14, 2018, she told the DPA interviewer that she had previously been working at Employer A, but was laid off in December 2017.<sup>17</sup>

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<sup>6</sup> *Id.* at 11-12.

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.* at 15.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> Ex. 8, pp. 3-5; Testimony of A. Holton.

<sup>12</sup> Ex. 9, p. 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> Ex. 7, pp. 13-25.

<sup>15</sup> *Id.* at 21-25.

<sup>16</sup> *Id.*

<sup>17</sup> Ex. 8, p. 4.

The last page of the 2018 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 to 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. A. signed the renewal application.<sup>18</sup>

Ms. A.'s 2018 benefits were placed in pending status for her to provide additional information regarding termination of her employment.<sup>19</sup> She did not submit the information, and her benefits were denied on March 2, 2018.<sup>20</sup>

DPA received records regarding Ms. A.'s employment from the Alaska Department of Labor and Workforce Development on or about September 20, 2018.<sup>21</sup> The certified records demonstrate Ms. A. was employed at Employer A from November 14, 2016 to June 1, 2018.<sup>22</sup> Copies of some of her Employer A employment paychecks were received with the state labor records. These checks cover pay periods of 12/31/17 to 1/13/18, 1/14/18 to 1/27/18, 1/28/18 to 2/10/18, and 2/11/18- 2/24/18.<sup>23</sup> The records establish Ms. A. received \$28,987.93 in undeclared income from Employer A while she was receiving SNAP benefits.<sup>24</sup> She also received \$5,380.15 in undeclared income from another employer in 2017 for a total of \$34,368.08 in undeclared income.<sup>25</sup>

Based on these records, DPA initiated an administrative disqualification proceeding against Ms. A. DPA sought to temporarily disqualify Ms. A. from receiving SNAP benefits and recoup \$6,741.00 in overpaid benefits from her.<sup>26</sup> DPA asserted Ms. A. had a prior program violation in 2011 so her temporary disqualification should operate for a 24-month period.<sup>27</sup>

DPA sent Ms. A. 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. The certified mail tracking system shows the records were delivered.<sup>28</sup> Thus, Ms. A. was provided notice of

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<sup>18</sup> Ex. 7, p. 17.

<sup>19</sup> Ex. 9, p. 2.

<sup>20</sup> *Id.* at 3; Testimony of A. Holton.

<sup>21</sup> Ex. 10.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 4-7.

<sup>24</sup> Ex. 10, p. 3.

<sup>25</sup> *Id.* The records indicate Ms. A. may have received more from her second employer in 2018, but this decision does not speculate on when in the first quarter of 2018 that income was received and it is not included in this assessment.

<sup>26</sup> Ex. 3; Ex. 11.

<sup>27</sup> Ex. 12.

<sup>28</sup> Ex. 4; Ex. 6.

the proceeding and the relief sought by DPA, as well as notice of the date for her scheduled hearing before the OAH.<sup>29</sup>

The hearing took place as scheduled on January 9, 2020 at 9:00 a.m. Ms. A. did not attend the hearing, and she could not be reached by telephone at the number she provided the OAH. Accordingly, the hearing proceeded as required by 7 C.F.R. § 273.16(e)(4). DPA Fraud Investigator Sharon Carter represented the Division. She called one witness, DPA Eligibility Technician Amanda Holton. Both women appeared by telephone. The hearing was recorded. All submitted documents were admitted into the record. The record closed at the end of the hearing.

### **III. Discussion**

A person is prohibited from obtaining SNAP benefits through the claim of false or misleading statements or by concealing or withholding facts.<sup>30</sup> DPA seeks to temporarily disqualify Ms. A. from future SNAP benefits and recoup overpaid benefits provided to her due to such misconduct. Those remedies are available if the applicant engages in an Intentional Program Violation (IPV) of a benefits program.<sup>31</sup> The Division bears the burden of proof to establish an IPV by clear and convincing evidence.<sup>32</sup> To do so, the Division must clearly show that Ms. A. intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”<sup>33</sup>

The Division met its burden in this case. Ms. A. falsely responded to questions regarding her employment under penalty of perjury after having been advised that knowing or intentional misrepresentations could result in administrative disqualification from receipt of future benefits for 24 months and the requirement she repay any benefits received due to the misrepresentation.<sup>34</sup> She did not reveal her employment at Employer A on either her February 17, 2017, or her February 13, 2018, renewal forms. In February 2017, she left the answer block empty and told the agency representative her household income came from child support and SSI payments. In February 2018, she answered the employment question with “N/A” for not applicable and told the agency representative that she was not working at Employer A as of December 2017.

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<sup>29</sup> Exs. 4, 5, and 6.

<sup>30</sup> *See, e.g.* 7 U.S.C. § 2015(b).

<sup>31</sup> 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).

<sup>32</sup> *Id.*

<sup>33</sup> 7 C.F.R. § 273-16(e)(6); 7 AAC 45.585(e).

<sup>34</sup> Ex. 7, pp. 12 and 24.

These were misrepresentations. Ms. A. was employed at Employer A on both occasions as demonstrated by certified state records. The only issue is whether the misrepresentations were intentional and an IPV finding is appropriate.

Ms. A. failed to appear or testify at the hearing.<sup>35</sup> Her intent can be deduced from circumstantial evidence, however.<sup>36</sup> On two occasions, separated by a year, she failed to report her employment with Employer A on forms she signed under penalty of perjury. She had been working at Employer A for several months prior to her 2017 SNAP renewal application and was still employed there when she submitted her 2018 renewal application. Department of Labor statistics reflect that Ms. A. earned over thirty thousand dollars through undisclosed employment.

She also failed to reveal this employment and income to DPA during her interviews. Instead, on February 17, 2017, she provided a deceitful suggestion that her income rested solely on child support and income from SSI. Then on February 14, 2018 she falsely claimed that she had been laid off from Employer A in December 2017 even though she had received regular paychecks from that employer since November 2016 and expected a paycheck the day after the interview.<sup>37</sup> She never disclosed a second employer. The reasonable conclusion to be drawn from this conduct is that Ms. A. 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. A. had a prior program violation in 2011.<sup>38</sup> A staggered scale of increasing penalties attaches to commission of IPV.<sup>39</sup> Because Ms. A. committed a prior IVP in 2011, the penalties for a second violation apply: she is disqualified for 24 months.<sup>40</sup> Lastly, she must repay \$6,741.00 in benefits obtained as a result of her misrepresentations.<sup>41</sup>

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<sup>35</sup> Following the hearing, the OAH respected a ten-day waiting period prior to issuing a proposed decision to give Ms. A., the opportunity to initiate contact and demonstrate good cause for her failure to attend. *See* 7 C.F.R. § 273.16(e)(4). Once proper notice has been given, regulations permit the hearing to be held without participation of the household member who allegedly committed the IVP. The same regulation provides circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear. Ms. A. did not contact OAH during the waiting period or at any time prior to the issuance of this decision.

<sup>36</sup> *See, In re. M.N.*, OAH No. 18-0557-ADQ (DHSS 2018), Decision at 4. (Available online at [aws.state.ak.us/OAH](http://aws.state.ak.us/OAH)).

<sup>37</sup> Ms. A. signed her 2018 renewal application on February 13, 2018. Ex. 7, p. 17. Her interview took place on February 14, 2018. Ex. 8, p. 4. Her Toys R. Us pay records indicate a pay date of February 16, 2018. Ex. 10, p. 6.

<sup>38</sup> Ex. 12.

<sup>39</sup> 7 C.F.R. § 273.16(b)(1).

<sup>40</sup> 7 C.F.R. § 273.16(b)(2)(i).

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

#### IV. Conclusion

Clear and convincing evidence demonstrated that Ms. A. committed a second IPV of the SNAP program. Because this is Ms. A. second violation, she is disqualified from receiving Food Stamp benefits for a 24-month period.<sup>42</sup>

She is also required to reimburse DPA for \$6,741.00 for benefits that were overpaid to her because of her Intentional Program Violation.<sup>43</sup>

The SNAP disqualification period shall begin one month after the issuance of the notice of disqualification by the Final Decisionmaker.<sup>44</sup> The disqualification applies solely to Ms. A. It does not apply to any other individuals such as her children who may be included in her household.<sup>45</sup> For the duration of the disqualification period, Ms. A.'s needs will not be considered when determining SNAP/food stamp 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 the benefit amount.<sup>46</sup>

The Division shall provide written notice to Ms. A. 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.<sup>47</sup>

If over-issued SNAP benefits have not already been repaid, Ms. A. is now required to make restitution.<sup>48</sup> If Ms. A. 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.<sup>49</sup>

Dated: February 7, 2020

*Signed*

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Carmen E. Clark  
Administrative Law Judge

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<sup>42</sup> 7 C.F.R. § 273.16(b)(1). 7 C.F.R. 273.16(b)(10(i) and (b) (12); 7 C.F.R. 273.16(e)(8)(iii)

<sup>43</sup> 7 C.F.R. § 273.16(b) (12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>44</sup> 7 USC 2015(b)(1)(i); 7 C.F.R. § 273.16(b) (13).

<sup>45</sup> 7 C.F.R. 273.16(b) (11).

<sup>46</sup> 7 C.F.R. 273.11(c)(1).

<sup>47</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>48</sup> 7 C.F.R. § 273.16(b) (12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>49</sup> 7 C.F.R. § 273.15.

## 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 21<sup>st</sup> day of February 2020.

By: Signed \_\_\_\_\_  
Name: Carmen Clark  
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.]