

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

In the Matter of	)	
	)	
L L. B	)	OAH No. 13-1182-ADQ
a/k/a N	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

L B applied for Food Stamp benefits. The Division of Public Assistance (division) determined that she had not reported a prior drug related felony conviction on her application. The division notified Ms. B of its determination, and scheduled a hearing at which she could contest the division’s determination that the failure to report the conviction constituted an Intentional Program Violation (IPV).

The hearing was scheduled for October 4, 2013. Ms. B did not appear, and could not be reached by telephone. Ms. B has not contacted the Office of Administrative Hearings since that date to show good cause for failing to appear.

The division presented its evidence at the hearing, and has met its burden of proving an IPV by clear and convincing evidence.

**II. Facts**

Ms. B signed an application for services on April 16, 2013.<sup>1</sup> Ms. B answered “no” to question 4 of the application, which asks whether anyone in the household had been convicted of a drug-related felony.<sup>2</sup> Ms. B had previously been convicted of Fourth Degree Misconduct Involving A Controlled Substance.<sup>3</sup> This offense is a class C felony.<sup>4</sup>

Between May of 2013 and August of 2013, Ms. B’s household received \$4,202 in Food Stamp benefits.<sup>5</sup> Because of Ms. B’s drug-related conviction, the household was only

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<sup>1</sup> Exhibit 6, page 1.  
<sup>2</sup> Exhibit 6, page 2.  
<sup>3</sup> Exhibit 9, page 1.  
<sup>4</sup> AS 11.71.040(d).  
<sup>5</sup> Exhibit 10; Testimony of Amanda Holton.

entitled to receive \$3,465.<sup>6</sup> The household received an overpayment of benefits totaling \$737.<sup>7</sup>

### III. Discussion

For Food Stamps recipients, an Intentional Program Violation is defined to include having intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts[.]”<sup>8</sup> In order to prevail, the division must prove this violation by clear and convincing evidence.<sup>9</sup> A person who is found to have committed an Intentional Program Violation is disqualified from receiving food stamps for 12 months for a first time violation,<sup>10</sup> and must repay any benefits wrongfully received.<sup>11</sup>

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.<sup>12</sup> This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

The division has shown that it is highly probable that Ms. B had been previously convicted of a drug-related felony at the time she completed her application for Food Stamp benefits. It has also shown that she did not disclose that conviction when she responded to the question asking about prior convictions. However, the division must also show that her failure to disclose this information was an intentional act.

There is no direct evidence of Ms. B’s state of mind when she completed and submitted her application. However, absent evidence to the contrary, it can reasonably be inferred that a person would be aware that he or she had been convicted. According to the court records, Ms. B was present with her attorney when the judgment suspending imposition of sentence was issued.<sup>13</sup> Again, absent evidence to the contrary, it can reasonably be inferred that Ms. B understood that her conviction was for a felony drug-related offense.

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<sup>6</sup> *Id.*  
<sup>7</sup> *Id.*  
<sup>8</sup> 7 C.F.R. 273.16(c)(1).  
<sup>9</sup> 7 C.F.R. § 273.16(e)(6).  
<sup>10</sup> 7 C.F.R. 273.16(b)(1).  
<sup>11</sup> 7 C.F.R. 273.16(b)(12).  
<sup>12</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).  
<sup>13</sup> Exhibit 9, page 1.

#### IV. Conclusion and Order

The division met its burden of proving a first time Intentional Program Violation of the Food Stamps program. Ms. B is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and required to reimburse the division for benefits that were overpaid as a result of the intentional program violation.<sup>14</sup> The Food Stamp disqualification period shall begin December 1, 2013.<sup>15</sup> This disqualification applies only to Ms. B, and not to any other individuals who may be included in her household.<sup>16</sup> For the duration of the disqualification period, Mr. B'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.<sup>17</sup>

The division shall provide written notice to Ms. B 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>18</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. B or any remaining household members are now required to make restitution.<sup>19</sup> If Ms. B 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>20</sup>

Dated this 21<sup>st</sup> day of October, 2013.

Signed  
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Jeffrey A. Friedman  
Administrative Law Judge

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<sup>14</sup> 7 C.F.R. § 273.16(b)(1); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>15</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>16</sup> 7 C.F.R. § 273.16(b)(11).

<sup>17</sup> 7 C.F.R. § 273.11(c)(1).

<sup>18</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>19</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>20</sup> 7 C.F.R. § 273.15.

## Adoption

The undersigned, by delegation from of 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 5<sup>th</sup> day of November, 2013.

By: Signed  
Name: Jeffrey A. Friedman  
Title: Administrative Law Judge

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