

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

In the Matter of	)	
	)	
T. G.	)	OAH No. 22-0953-ADQ
_____	)	

DECISION AND ORDER

I. Introduction

T. G. is a former Food Stamp¹ recipient. On December 22, 2022, the Department of Health, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first time Intentional Program Violation of the Food Stamp program.²

Mr. G.'s hearing was held on January 26, 2023. He was provided notice of the hearing.³ Mr. G. did not appear for the hearing, and it was held in his absence.⁴

Anna Avila, 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. Dean Rogers, an investigator employed by the Fraud Control Unit also testified.

This decision concludes that Mr. G. 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.

¹ Congress changed the 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. 2, pp. 3 – 24.

³ The notice of hearing and the Division's exhibit packet were sent to Mr. G. both at his last known address, which was the address listed on his August 8, 2022 application, of Address A., City A., AK as well as Address B., City A., AK (Exs. 3, 4). The record also contains signed certified mail receipts from W. G., who was the person who answered the Division's Investigator's phone call made to the phone number listed on the application. She identified herself as Mr. G.'s mother, would not take a message for him and stated he was in another community, and would contact her periodically, calling from a different phone number each time he called (Ex. 1, Para. 6; Ex. 3; Ms. Avila's testimony).

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.

Mr. G. has been an intermittent Food Stamp recipient since 2017.⁵ He was receiving Food Stamp benefits in the summer of 2022. Those benefits expired at the end of July 2022. He reapplied for Food Stamp benefits in August of 2022. His application is dated August 8, 2022 and was received on August 9, 2022.⁶ His application stated that his home address, where he received his mail, was Address A., City A., Alaska.⁷ The application contained a “Rights and Responsibilities” section, which advises an applicant of the requirement to provide truthful and complete information, and the consequences for “knowingly giv[ing] false, incorrect, or incomplete information.”⁸ Mr. G. signed the application, certifying under penalty of perjury that the information contained in it was correct and that he understood his “rights and responsibilities, including fraud penalties.”⁹

Mr. G. telephoned in for an interview with a Division Eligibility Technician on August 23, 2022. That interview was recorded. The audio recording shows that while he was on hold waiting for his interview, that his legal rights and responsibilities, including a warning regarding fraudulent applications, were recited during the hold period. In the interview, he was asked regarding whether he had any questions about those rights and responsibilities. His answer was no. During the interview, he stated that he lived rent free in a house owned by his father, which was the residence address provided on his application.¹⁰ Mr. G.’s application was then approved, and he was sent written notice that he would receive Food Stamp benefits based upon having no income.¹¹ He then received Food Stamp benefits for the months of August and September, 2022 in the amount of \$666.¹²

The Division later became aware that Mr. G. was not actually living in City A. at the time of his application. Instead, he was incarcerated in a State of Alaska correctional facility in Town B from the end of April 2022 through mid-October 2022.¹³ The Division initiated a fraud investigation which culminated in this case. The Division calculated Mr. G. received \$666 in Food Stamp benefits that he was not entitled to receive during the months of August and

⁵ Ms. Holton’s testimony; Ex. 9.

⁶ Ms. Holton’s testimony; Ex. 4.

⁷ Ex. 4, p. 1.

⁸ Ex. 5.

⁹ Ex. 4, p. 8.

¹⁰ Exs. 6, 7.

¹¹ Ex. 8.

¹² Exs. 9, 11; Ms. Holton’s testimony.

¹³ Ex. 10.

September 2022 period.¹⁴ The Division is not aware of any prior Food Stamp program intentional program violations.

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹⁵ that Mr. G. committed an Intentional Program Violation of the Food Stamp program: that he intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to his August 8, 2022 applications.¹⁶

The evidence is clear that Mr. G. was incarcerated when he applied for Food Stamp benefits. It is also clear that he did not list his current physical address on his application, being the correctional center where he was incarcerated, despite there being an explicit question regarding it. Instead, he listed a property in City A., which he stated was owned by his father. The question then arises as to whether this was an intentional misrepresentation. Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. However, Mr. G. failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹⁷ Mr. G. undoubtedly knew he was incarcerated. He, however, did not disclose that on his application or during his telephonic interview. Instead, he stated that he was residing in City A. at his father’s house. Mr. G., who had been a recipient of Food Stamp benefits for a number of years, would have been advised multiple times of his obligation to accurately complete his applications and the penalties for providing false or misleading information. Accordingly, his misrepresentation was intentional.

It is important to note that Mr. G.’s misrepresentation was of a highly relevant fact. Someone who is residing in an institution that provides him with the majority of his meals is not eligible for Food Stamp benefits.¹⁸ A correctional facility is such an institution. In other words,

¹⁴ Ex. 11; Ms. Holton’s testimony.

¹⁵ 7 C.F.R. § 273.16(e)(4).

¹⁶ 7 C.F.R. § 273.16(c)(1).

¹⁷ 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”

¹⁸ 7 CFR § 273.1(b)(7)(vi).

Mr. G., if he had properly disclosed where he was actually living at the time of his application, would not have been approved for Food Stamp benefits.

The Division has therefore met its burden of proof and established that Mr. G. made an intentional misrepresentation on his August 8, 2022 Food Stamp application and his subsequent August 23, 2022 interview. Consequently, Mr. G. has committed a first Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

Mr. G. 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.¹⁹ The Food Stamp program disqualification period shall begin April 1, 2023.²⁰ This disqualification applies only to Mr. G., and not to any other individuals who may be included in his household.²¹ For the duration of the disqualification period, Mr. G.'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.²²

The Division shall provide written notice to Mr. G. 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.²³

If over-issued Food Stamp benefits have not been repaid, Mr. G. is now required to make restitution.²⁴ If Mr. G. disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²⁵

Dated: February 7, 2023

SIGNED
Lawrence A. Pederson
Administrative Law Judge

¹⁹ 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).

²⁰ 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).

²¹ 7 C.F.R. § 273.16(b)(11).

²² 7 C.F.R. § 273.11(c)(1).

²³ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁵ 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 22nd day of February, 2023.

By: SIGNED

Name: Lawrence A. Pederson

Title: Administrative Law Judge