

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

In the Matter of	)	
	)	
N. C.	)	OAH No. 23-0414-ADQ
_____	)	

DECISION AND ORDER

I. Introduction

In July 2022 N. C. applied for and was approved for Food Stamp¹ benefits for a household consisting of himself and his son, O. C. After learning in November 2022 that O. had been in state custody and living in a foster home for three weeks prior to Mr. C.’s application, the Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation of the Food Stamp program.

Mr. C.’s hearing in this matter was held on August 2, 2023. Mr. C. represented himself and testified on his own behalf. Megan Gosda, an investigator with DPA’s Fraud Control Unit, represented DPA and testified on the Division’s behalf. Daryl Johnson, who is employed by DPA as an Eligibility Technician, also testified. All persons participated telephonically. Ten exhibits provided by DPA were admitted into evidence, and the hearing was recorded.

This decision concludes that DPA has proven by clear and convincing evidence that Mr. C. committed his first Intentional Program Violation and must accordingly be barred from receiving Food Stamps benefits for 12 months.

II. Facts

The following facts were established by clear and convincing evidence.

On June 13, 2022, the Office of Children’s Services took custody of O. following an incident that occurred while staying at his mother’s home.² Thereafter O. was placed in a foster home where he remained for the rest of the year.³ Mr. C. did not offer any evidence or testimony as to where O. had been living prior to OCS taking custody of him.⁴

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program (“SNAP”).

² Ex. 9, p. 2-3; C. testimony.

³ Ex. 9, p. 2; C. testimony.

⁴ Mr. C. testified that O. was visiting his mother’s home when OCS took custody of him without elaborating on where his son had been living prior to that time.

On July 5, 2022, Mr. C. signed and submitted an Eligibility Review Form for the Food Stamp program that was received by DPA on July 14, 2022.⁵ In the “Household Information” section of that form, Mr. C. listed his son as living with him on a full-time basis.⁶ Mr. C. signed the “statement of truth” provision at the end of the form which advises that all information an applicant provides must be “true and correct to the best of [the applicant’s] knowledge.”⁷ The statement also contains an acknowledgement that Mr. C. had read and understood the Rights and Responsibilities document provided to all applicants, including the summary of “fraud penalties” that can be imposed for providing false information.⁸

During a follow-up telephonic interview with a DPA eligibility technician on August 8, 2022, Mr. C. again represented that his son was living in the same household with him on a full-time basis.⁹

Based on these false representations DPA approved Mr. C. for Food Stamp benefits for a two-person household.¹⁰ He received these benefits through November 2022, at which point DPA was notified that O. had been living in a foster home while in OCS custody. The matter was referred for a fraud investigation, which eventually led to this proceeding.¹¹ DPA calculated that Mr. C. received \$1,441 in Food Stamp benefits to which he was not entitled for the period of August through November 2022.¹²

III. Discussion

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements, or by concealing or withholding facts.¹³ In this case, the Division seeks to establish an Intentional Program Violation (IPV), and to do so it must prove the elements of that IPV by clear and convincing evidence.¹⁴ To meet this standard, the division must show that it is *highly probable* that Ms. T. intended to misrepresent, conceal, or withhold facts.¹⁵

⁵ Ex. 8, p. 1.

⁶ Ex. 8, p. 1.

⁷ Ex. 8, p. 5.

⁸ Ex. 8, p. 5.

⁹ Ex. 8, p. 7; Gosda testimony.

¹⁰ Ex. 8, pp. 8-9; Gosda testimony.

¹¹ Ex. 2.

¹² Ex. 3, p. 9; Johnson testimony.

¹³ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6).

¹⁵ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

No evidence has been offered that Mr. C. has committed a prior IPV. Thus, this matter will be evaluated on the assumption it is a first-time violation. Other than certain exceptions not alleged to apply here, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁶

Program eligibility and benefit levels are determined based upon household composition.¹⁷ False statements about household composition are, therefore, considered to have been made for the purpose of acquiring benefits.¹⁸ It is clear and undisputed that Mr. C. made a false statement about his household composition by claiming his son was living with him at a time when O. was, in fact, in foster care. Mr. C. did this multiple times, first by listing O. as a person who lives with him on the Eligibility Review Form, then again when he asserted that O. lived with him during the follow-up eligibility interview.¹⁹ This was plainly a misrepresentation given O.’s OCS custody status and foster home placement.

The remaining issue is whether the misrepresentation was intentional. In his testimony Mr. C. acknowledged that he knew O. was not living with him at the time he made the misleading statements to the contrary.²⁰ However, Mr. C. claims he was confused when filling out the Eligibility Review Form based on his subjective belief that he still had legal custody of O. to some undefined extent. Working from this assumption, Mr. C. asserts it was reasonable of him to regard O. as a member of his household regardless of where his son was actually living.²¹ This testimony is not credible for three key reasons.

First, the form Mr. C. filled out asked him to list “all persons who live with you.”²² The form then asks, “Is this person a full-time or part-time member of your household?” For part-time household residents, there is a follow-up question asking, “[W]hat percentage of the time does this person reside with you?”²³ Though he was fully aware that O. was living in a foster home where his nutritional needs were provided by others, Mr. C. chose to assert that his son was living with him on a full-time basis. Regardless of what Mr. C. may have believed regarding

¹⁶ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

¹⁷ 7 C.F.R. § 273.1; 7 C.F.R. § 273.8; 7 C.F.R. § 273.9.

¹⁸ 7 C.F.R. § 273.16(c).

¹⁹ Ex. 8, p. 1; Ex. 9, p. 1.

²⁰ C. testimony.

²¹ C. testimony.

²² Ex. 8, p. 1.

²³ Ex. 8, p. 1.

issues of legal custody it was plainly self-evident that O. was not, at that point in time, living with Mr. C. on a full-time basis.

Second, there is no evidence that Mr. C. mentioned any confusion about O.'s custody status during the subsequent eligibility interview.²⁴ While this would have been the ideal time to address such questions or concerns, Mr. C. instead persisted with the assertion that O. was living with him on a full-time basis.

Finally, the Statement of Rights and Responsibilities provided to Mr. C. lists the obligation to promptly report changes when, "Someone moves into or out of your home."²⁵ This statement highlights the importance of truthfully reporting who is actually living with the applicant at the time benefits are sought, regardless of any questions that might exist regarding legal custody.

Given these circumstances, there is no credible way to view Mr. C.'s statements to DPA as anything other than a material misrepresentation made with the intent of obtaining Food Stamp benefits for a child who was not living in the same household. The evidence is thus sufficient to meet the standard of "clear and convincing" required to find an Intentional Program Violation.

IV. Conclusion and Order

Mr. C. has committed a first time Intentional Program Violations of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.²⁶ The Food Stamp disqualification period shall begin October 1, 2023.²⁷ This disqualification applies only to Mr. C., and not to any other individuals who may be included in his household.²⁸ For the duration of the disqualification period, Mr. C.'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 so that they can be used in these determinations.²⁹

²⁴ Ex. 8, pp. 7-8; Gosda and Johnson testimony.

²⁵ Ex. 7, p. 1.

²⁶ 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).

²⁷ 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 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).

²⁸ 7 C.F.R. § 273.16(b)(11).

²⁹ 7 C.F.R. § 273.11(c)(1).

DPA shall provide written notice to Mr. C. 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.³⁰

If over-issued Food Stamp benefits have not been repaid, Mr. C. is now required to make restitution.³¹ If Mr. C. disagrees with the division's calculation of the amount of over issuance to be repaid then he may request a separate hearing on that limited issue.³²

Dated: August 7, 2023.

Signed

Max D. Garner
Administrative Law Judge

³⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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

³² 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 August, 2023.

By: *Signed* _____

Name: Max D. Garner

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.]