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

In the Matter of	)	
	)	
U.E	)	OAH No. 21-2589-ADQ
	)	

DECISION

I. Introduction

As part of an application for continued Food Stamp benefits, U.E participated in an interview with a Division of Public Assistance Eligibility Technician in which he falsely identified his daughter, S, as part of his current household. Because S was and continues to be in foster care, and not living with Mr. E, he ultimately obtained more Food Stamp benefits than those to which he was entitled. The Division of Public Assistance Fraud Control Unit brought this action against Mr. E to establish that he intentionally committed a violation of the Food Stamp program rules, and to implement the associated penalties for that violation.

II. Facts

T.T and U.E are the parents of S.E. S has been in state custody since July 15, 2020, when she was eight days old.[1] Since entering state custody S has lived in a foster home, and not with her parents.[2]

On October 30, 2020, Ms. T submitted an Eligibility Review Form for continued Food Stamp and Alaska Temporary Assistance benefits for the family.[3] The Eligibility Review Form requires applicants to identify the members of their household, directing the applicant to, "List all persons who live with you[.]" Ms. T identified her household as consisting of herself, Mr. E, and 6-month-old S.[4] At the time Ms. T submitted this form, however, S had been in foster care outside the home for nearly four months.[5]

For recertification of benefits, the Division's eligibility verification process requires that a Division Eligibility Technician have either a face to face or telephonic interview with at least one adult household member listed on the application.[6]

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1 Ex. 2; Ex. 8, p. 1.
2 Ex. 2; Jennings test.
3 Ex. 8, pp. 1-5.
4 Ex. 8, p. 1.
5 Ex. 9; Jennings test.
6 Mercado testimony.

On December 2, 2020, Ms. T was interviewed by Division Eligibility Technician Tania Mercado as part of the review of her recertification application. As is standard practice in eligibility interviews, Ms. Mercado discussed the content of the Division's "Rights and Responsibilities" document with Mr. E at the start of the interview, and documented that he understood and had no questions about those provisions.[7]

In the interview, Mr. E informed Ms. Delgado that S was a member of the household he shared with Ms. T. At the time of the interview, S had been in foster care and placed outside the T.E home for nearly five months.[8]

Based on Ms. T's written application and Mr. E's interview statements, the household was approved to receive Food Stamp benefits as a three-person household consisting of Mr. E, Ms. T, and S.[9] The household continued to receive those Food Stamp benefits through at least June 2021.[10]

The Division did not learn of possible inaccuracies in Ms. T's public benefits until late May 2021. At that time, the Division's Fraud Control Unit was notified that Ms. T and Mr. E had claimed S as a household member on their benefits application when she did not live with them and was instead in the state foster care system.[11] Investigator Wynn Jennings contacted OCS and received verification of S's placement outside the home.[12] Investigator Jennings also wrote to Ms. T in June but got no response.[13]

As part of the Division's investigation, Eligibility Technician III Daryl Johnson analyzed the benefits paid to Mr. E and the benefits for which he was actually eligible, and prepared a Loss Statement Summary based on that analysis.[14] Because Food Stamp benefits during this

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7 *Id*. The Division's Eligibility Review Form includes a four-page section titled "Your Rights and Responsibilities." Ex. 7. This section advises applicants of various reporting requirements as well as fraud penalties associated with failing to comply with those requirements.

8 Ex. 9; Jennings test.

9 For reasons that are not material to this case, the actual amount of benefits the household then received was lower because during the period in question Ms. T and Mr. E were subjected to a program participation penalty that had reduced their actual benefit amounts. The net result of this penalty having been imposed during the same period as is now at issue in this case is that the household was paid fewer benefits overall, and therefore has a smaller overpayment than it otherwise would have had.

10 Ex. 10; Johnson test.

11 Ex. 2; Jennings testimony.

12 Ex. 2.

13 Ex. 10. The copy sent by first class mail was not returned; the copy sent by certified mail was returned as "unclaimed." Jennings test.; Ex. 10, p. 2.

14 Johnson test.; Ex. 11.

time period were retroactively increased by various pandemic-related federal measures, the ultimate amount of Mr. E's overpaid Food Stamp benefits is lower than it otherwise would have been. As a result of these measures, the only months for which the household's Food Stamps amount ultimately exceeded the amount received were April, May, and June 2021.[15] For those months, Mr. E's household received benefits based on a household of three, when the household size for benefits purposes was only two people. This resulted in an overpayment totaling $478.[16]

A hearing on the Division's request for Administrative Disqualification was set for January 27, 2022, and multiple attempts were made to provide notice to Mr. E. On December 23, 2021, the Fraud Control Unit mailed Mr. E a Thirty-Day Advanced Notice packet, notifying him of the hearing scheduled in this matter. The 27-page packet, which contained a summary of the allegations and evidence as well as a statement of hearing rights, was sent via regular first-class mail and certified, return-receipt requested mail.[17] Mr. E did not pick up the packet sent by certified-mail.[18]

On January 14, 2022, the Division mailed its exhibit packet to Mr. E – again by both certified and regular mail.[19] As of the date of the hearing, the Certified mail had not been picked up.[20]

Meanwhile, on December 28, 2021, the Office of Administrative Hearings mailed Mr. E a Notice of Hearing in this matter. The Notice identified the hearing date and time, and the phone number the judge would use to call Mr. E for the hearing.

The hearing was held on January 27, 2022, as scheduled. However, Mr. E did not answer his phone when called for the hearing.[21] As allowed by applicable regulations, the hearing went forward in his absence.[22] Testimony was taken from Division Investigator Wynn Jennings; Tania Mercado, the Division Eligibility Technician who interviewed Ms. T and Mr. E in

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15 Johnson test.; Jennings test.

16 Ex. 11.

17 Ex. 3; Ex. 4.

18 Ex. 4.

19 Ex. 5; Jennings test.

20 Ex. 6.

21 When an Office of Administrative Hearings staff person called that number earlier in the day of the hearing, it was answered by someone who denied the number – which Mr. E had previously provided to the Division – belonged to Mr. E.

22 Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. See 7 CFR § 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.

conjunction with their application; and Daryl Johnson, the Division Eligibility Technician who prepared the Loss Statement Summary analyzing the difference between the amount of benefits received by Mr. E and the amount for which he was actually eligible. Exhibits 1 – 11 were admitted without objection. This decision now issues.

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.[23] In this case, the Division seeks to establish an IPV, and to do so it must prove the elements of that IPV by clear and convincing evidence.[24]

It has not been alleged that Mr. E has ever been found to have committed a prior IPV, and therefore this alleged IPV will be evaluated on the assumption that 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.[25]

Both eligibility and benefit levels are determined based upon household composition.[26] False statements about household composition are, therefore, considered to have been made for the purpose of acquiring benefits.[27]

It is clear and undisputed that throughout the recertification process Mr. E made false statements about his household composition by falsely claiming that S was living in the household at a time when she was in foster care and living in a different home. He made this misstatement at the eligibility interview, both failing to correct the misstatement on Ms. T's application, and instead falsely endorsing that misstatement in response to Ms. Mercado's questions.

Plainly, given S's custody status, it was a misrepresentation for Mr. E to claim that S was living with him and Ms. T. The remaining issue is whether the misrepresentation was intentional. As Mr. E did not testify, the answer to this question must be found through the totality of the surrounding circumstances. In this case, it is not a close question. There is no doubt Mr. E

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23 *See, e.g.,* 7 U.S.C. § 2015(b).
24 7 C.F.R. § 273.16(e)(6).
25 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).
26 7 C.F.R. § 273.1; 7 C.F.R. § 273.8; 7 C.F.R. § 273.9.
27 7 C.F.R. § 273.16(c).

knew, when he made these statements, that they were untrue. He knew that S did not live with him and Ms. T, but rather, had been in state custody and living in a foster home since she was eight days old. There is simply no credible way to view this statement as anything other than an intentional and material misrepresentation.

Under these circumstances, there is simply no credible way to see Mr. E's statements to the contrary as anything other than a material misrepresentation made for the purpose of committing an intentional program violation. The evidence is sufficient to satisfy the standard of "clear and convincing," and is thus sufficient to constitute an IPV.

IV. Conclusion and Order

The Division met its burden of showing by clear and convincing evidence that Mr. E has committed a first time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a twelve-month period.[28] The Food Stamp disqualification period shall begin April 1, 2022.

This disqualification applies only to Mr. E, and not to any other individuals who may be included in his household.[29] For the duration of the disqualification period, Mr. E'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.[30]

The Division shall provide written notice to Mr. E 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.[31]

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If over-issued Food Stamp benefits have not been repaid, Mr. E is now required to make restitution.[32] If Mr. E disagrees with the Division's calculation of the benefits amount to be repaid, he may request a hearing on that limited issue.[33]

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28 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).
29 7 C.F.R. § 273.16(b)(11).
30 7 C.F.R. § 273.11(c)(1).
31 7 C.F.R. § 273.16(e)(9)(ii).
32 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).
33 7 C.F.R. § 273.15.

Dated: February 9, 2022

Signed

Cheryl Mandala
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 3rd day of March, 2022.

By: *Signed*
Name: Cheryl Mandala
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.]