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

In the Matter of	)	
	)	
L.N	)	OAH No. 22-0108-ADQ
	)	

DECISION

I. Introduction

L.N received Food Stamp benefits.[1] The fraud control unit of the Department of Health and Social Services, Division of Public Assistance (Division) initiated this administrative Disqualification case against her on February 1, 2022, alleging that Ms. N had committed an Intentional Program Violation (IPV) of the Food Stamps program by failing to declare a joint Bank A account, as well as the sources and amounts of income deposited into that account, for the time period from May 2019 through December 2019.[2] In addition, Ms. N failed to report her available household income, which exceeded the gross income limit in July 2019.[3]

Ms. N's hearing was held on March 7, 2022. On February 1, 2022, Ms. N was provided advance notice of the hearing by both certified mail and standard First-Class mail to her address of record.[4] Ms. N did not attend the hearing and could not be reached at the two telephone numbers she had provided to the Division. The hearing, therefore, went forward in her absence.[5] Dean Rogers, an Investigator III employed by the Division's fraud control unit, represented the Division, and testified at the hearing. Daryl Johnson, employed by the Division as a Fraud Eligibility technician III, also testified at the hearing. The hearing was recorded.

This decision concludes that Ms. N committed an IPV of the Food Stamps program.

II. Facts

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[1] Congress amended the Food Stamp Act in 2008 to change the official 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] Exh. 2, p. 2

[3] Exh. 1.

[4] Exh. 1, p. 2. The advance notice package sent by certified mail on February 1, 2022 was returned as "unclaimed" and "unable to forward." *See* Exh. 3, p. 2. Subsequently, a cover letter which referenced the March 7, 2022 hearing in this matter was sent out to Ms. N on February 17, 2022 by certified mail at her last known address of record. *See* Exh. 4; *see also* Testimony of Mr. Rogers. That material also was returned to the Division on February 22, 2022 as "unclaimed" and "unable to forward." *See* Exh. 5.

[5] Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR §273.26(e)(4). The same regulation sets out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

Ms. N has been a Food Stamps recipient since 2017.[6] Ms. N submitted a Food Stamp recertification application, which the Division received on December 26, 2018. As part of the recertification process, Ms. N was required to participate in an in-person interview with Division staff in connection with her eligibility review form. Part of Ms. N's application was a multi-page form entitled "Your Rights and Responsibilities" (GEN 51), which details change reporting requirements, fraud penalty warnings, and public assistance program information. The Division's standard practice is to separate the GEN 51 from the recertification form, hand it to the applicant during the in-person interview, and then review the applicant's rights and responsibilities.[7] The case notes for Ms. N's interview note that the "Rights and Responsibilities" were reviewed with Ms. N and that she understood them.[8] The Division's standard practice is also for the Eligibility Technician meeting with the applicant to advise the applicant that information provided in the application form and during the eligibility interview is used by the Division to determine the benefit eligibility and the benefit amount received. [9]

On January 3, 2019, Ms. N was notified that her Food Stamp recertification application had been approved. Based on the information provided in her application, which showed no countable income or expenses for her household, Ms. N was notified that she would be receiving $232 in Food Stamps in January of 2019 and, if eligible, would receive Food Stamps through June of 2019. This notice also asked Ms. N to report "when the monthly income of all persons receiving food stamp benefits in your case totals more than $1,645."[10]

Ms. N reapplied for Food Stamps by filling out a Food Stamps eligibility review form (GEN 72) on May 24, 2019.[11] Item 4, Assets Information on that form states: "List how much money you or anyone in your household has in cash and bank accounts." Ms. N left the response blocks for declaring financial accounts empty.[12] Question 8, Assets Information instructed: "List other money you or anybody in your household receives." The response blocks accompanying this question for declaring sources and amount of unearned income were left blank.[13]

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6 *See* Exh. 10, pp. 3-4.
7 Exh. 1, pp. 3-4.
8 Exh. 8, p. 2.
9 Exh. 1, p. 3
10 Exh. 2.9, p. 1. Ms. N was specifically advised by the Division that her recertification application was approved based on her having no countable income or expenses. *See* Exh. 9, p. 2.
11 *See* Exh. 6; *see also* Exh. 10, pp. 2-4.
12 *See* Exh. 6, p. 2.
13 *See* Exh. 6, p. 3.

Prominently displayed above the signature line of the eligibility form which Ms. N completed and signed is the following statement:

> I have read or had read to me the "Rights and Responsibilities" included with this application and I understand my right and responsibilities, including fraud penalties, as described in this application.[14]

Because Ms. N had attended an interview on or about December 16, 2018 in which rights and responsibilities, change reporting requirement, and fraud penalty warning for the Food Stamps program were discussed, she was not required to attend an interview in connection with her May 24, 2019 application.[15] Based on the declarations she made in her Food Stamps eligibility review form dated May 24, 2019, Ms. N was found to be eligible for Food Stamps for the period from July 1, 2019 through December 31, 2019.[16]

On or about December 2, 2021, the Division's Fraud control unit became aware of potential fraud associated with Ms. N's most recent reapplication for Food Stamps.[17] In response to a subpoena, Bank A provided the Division with information regarding a bank account in which Ms. N was a cosigner, along with D.N.[18] This account, which Ms. N had not disclosed to the Division, was active – *i.e*., deposits and withdrawals were being made -- throughout the fraud allegation time period (July through December, 2019). In addition, these bank records reflected that Ms. N had earned income from employment in the amount of $13,096.68 from July through November of 2019, which was direct-deposited in this undeclared account.[19] Certified Department of Labor records for Ms. N were obtained and those records substantiate that she was employed by Beauty Systems Group Inc. during the third and fourth quarter of 2019.[20] Dean Rogers, the Division's Investigator III assigned to this case, found no instance of Ms. N reporting to the Division her employment and related income.[21]

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14 Exh. 6, p. 5.
15 Exh. 1, p. 4.
16 Exh. 8, p. 1.
17 Exh. 1, p. 2.
18 Exh. 11, pp 1-73.
19 Exh. 11, pp. 23-52 & 64-68. The first such direct deposit occurred on July 12, 2019. *See* Exh. 11, p. 27. The last such deposit was on November 15, 2019. *See* Exh. 11, p. 47. Ms. N's gross wages during this time period were $10,055.95. Exh. 1, p. 5; *see also* Exh. 12, pp. 1-2.
20 Exh. 12.
21 Exh. 1, p. 5.

Based upon her recertification application, which did not list any income or bank accounts, Ms. N was approved for continued Food Stamp benefits for July through December 2019.[22] She received $1,410 in benefits as a result. Had the Division known of her true and correct household income during the months of July through December 2019, Ms. N would not have been eligible to those Food Stamp benefits.[23]

III. Discussion

In order to establish an IPV of the Food Stamp program, the Division must prove by clear and convincing evidence that Ms. N intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts.[24] To meet this standard, the Division must show that it is *highly probable* that Ms. N intended to misrepresent, conceal, or withhold facts. It must be noted that Food Stamp eligibility and benefits are determined based upon a household's composition, assets, and income.[25]

A. Bank A Account

A review of the facts demonstrates the Ms. N was the co-owner of a bank account at Bank A and had had that account at the time she completed her Food Stamps eligibility application on May 24, 2019.[26] However, she did not disclose the existence of that account on her application.[27] This act constituted a misrepresentation, concealment, or withholding of facts.

It must also be determined as to whether Ms. N's concealment of the existence of the Bank A account was an intentional act. During March, April, and May of 2019, there were deposits and multiple withdrawals made from this account for food, groceries, transportation, and other items.[28] These numerous transactions from Ms. N's Bank A account support a finding that Ms. N consciously and intentionally failed to notify the Division the bank account's existence when she completed her May 24, 2019, eligibility review application or subsequently.[29]

B. Ms. N's Earned Income

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22 Exh. 1, p. 5.
23 Exh. 1, p. 5; Exh. 13.
24 7 C.F.R. § 273.16(e) & 7 C.F.R. § 231.16(c).
25 *DeNuptiis v Unocal Corp*., 63 P.3d 272, 275 n. 3 (Alaska 2003)(defining the clear and convincing standard).
26 *See* Exh. 11, pp. 7-20.
27 *See* Exh. 6, p. 2.
28 *See* Exh. 11, pp. 7-20.
29 There also continued to be multiple deposits to and withdrawals from Ms. N's Bank A account from June 2019 through December 2019. *See* Exh. 11, pp. 19-52.

During the third quarter of 2019, Ms. N became employed and her employment continued through the fourth quarter of 2019.[30] The Division had previously advised Ms. N had been advised that she must report changes, such as starting a job, to the Division within 10 days of such a change.[31] In addition, the Division had instructed her to notify the Division when the monthly income of all persons receiving food stamp benefits in her case totals more than $1,645.[32] Records from the Division show that Ms. N's undeclared income in July through December 2019 was greater than $1,645 in any given month.[33] Consequently, Ms. N had an obligation to notify the Division of this change in circumstances but concealed or withheld this information from the Division.

Ms. Markley's repeated failure to notify the Division about her job and that her income was greater than $1,645 a month supports the finding that Ms. N consciously and intentionally failed to notify the Division of these facts.

IV. Conclusion and Order

Ms. N has committed a first-time Intentional Program Violation of the Food Stamp program arising out of her failure to disclose her bank account and a change in her financial circumstances that made her income too high to qualify for Food Stamps. She is, therefore, disqualified from receiving Food Stamp benefits for a 12-month period and is required to reimburse the Division for the benefits that were overpaid as a result of the Intentional Program Violation.[34] The Food Stamps Disqualification period shall begin on June 1, 2022.[35] This disqualification only applies to Ms. N, and not to any other individuals who may be included in her household[36]. For the duration of the disqualification period, Ms. N'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.[37]

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30 *See* Exh. 12.
31 *See* Exh. 7, p, 2, Exh. 1, p. 3, Exh. 8, p. 2.
32 Exh. 9, p. 1.
33 Exh. 13, p. 1.
34 7 C.F.R. § 273.16(b)(1)(i); 7 C.R.R. § 273.16(b)(12); 7 C.F.R. § 273.16(c)(8)(iii).
35 *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).
36 7 C.F.R. § 273.16(b)(11).
37 7 C.F.R. § 273.11(c)(1).

The Division shall provide written notice to Ms. N 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.[38]

If the overissued Food Stamp benefits have not been repaid, Ms. N or any remaining household members are now required to make restitution.[39] If Ms. N 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.

Dated: April 24, 2022

Signed
Kathleen A. Frederick
Administrative Law Judge

[38] 7 C.F.R. § 273.16(e)(9)(ii).
[39] 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

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 May, 2022.

By: *Signed*
Name: Kathleen A. Frederick
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.]