

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

In the Matter of	)	OAH No. 13-1253-ADQ
	)	Division No.
K H	)	Fraud Control Case No.
_____	)	Food Stamp Program

**DECISION AND ORDER**

**I. Introduction**

K H is a former Food Stamp<sup>1</sup> recipient. On September 12, 2013, the Department of Health and Social Services, 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.<sup>2</sup>

Mr. H's hearing was held on October 15, 2013. He was provided advance notice of the hearing.<sup>3</sup> Mr. H did not appear for the hearing and it was held in his absence.<sup>4</sup>

William Schwenke, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Victoria O'Brien, an eligibility technician employed by the Division, also testified for the Division.

This decision concludes that Mr. H 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.

Mr. H was a Food Stamp recipient who applied to renew those benefits on August 2, 2011. In his application, he stated that he and his two minor children were the only persons in

---

<sup>1</sup> 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.

<sup>2</sup> Ex. 2.

<sup>3</sup> Ex. 1, p. 3; Ex. 3.

<sup>4</sup> 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.

his household, and that his was the only source of income for his household.<sup>5</sup> Mr. H signed the application, certifying that the information contained in it was correct.<sup>6</sup> Mr. H then participated in an eligibility interview on August 2, 2011, where he repeated those same assertions.<sup>7</sup> The Food Stamp application was approved and benefits were issued based upon a household of three persons with Mr. H as the sole wage earner.<sup>8</sup>

Mr. H, however, had an additional wage earning adult living in his household when he submitted his August 2, 2011 Food Stamp renewal application. S N was working, and she and her two children were living with Mr. H by the end of March 2011 at the latest, as shown by the following:

- Mr. H lives in low income housing. Ms. N applied to be added to his lease in August 2010.<sup>9</sup> There was a delay in processing the application. It was processed sometime in February 2011 and Ms. N was officially added to the lease in May 2011.<sup>10</sup>
- In a July 2, 2012 interview, Ms. N told the Division investigator that she moved in with Mr. H in February or March 2011.<sup>11</sup>
- Ms. N applied for the 2011 PFD on March 28, 2011. That application states her physical address is the same as Mr. H's.<sup>12</sup>
- Ms. N was continuously employed and earning wages with the same employer from July 2004 through early January 2012.<sup>13</sup>

The Division initiated a fraud investigation which culminated in this case.<sup>6</sup> The Division calculated, by not counting Ms. N and her income as part of Mr. H's household, that Mr. H received \$3,440 in Food Stamp benefits that he was not entitled to receive during the period from August 2011 through January 2012.<sup>14</sup>

---

<sup>5</sup> Exs. 7.  
<sup>6</sup> Ex. 7, p. 4.  
<sup>7</sup> Ex. 9.  
<sup>8</sup> Exs. 8, 9.  
<sup>9</sup> Ex. 11.  
<sup>10</sup> Ex. 12.  
<sup>11</sup> Ex. 10.  
<sup>12</sup> Ex. 12.  
<sup>13</sup> Ex. 13.  
<sup>14</sup> Ex. 14.

### III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence<sup>15</sup> that Mr. H 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 2011 application.<sup>16</sup> It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.<sup>17</sup>

The evidence is clear that Ms. N was living with Mr. H and working when he filed his August 2, 2011 Food Stamp renewal application. However, Mr. H omitted any mention of Ms. N and her income from the application. 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. H 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.<sup>18</sup> Mr. H undoubtedly knew Ms. N lived with him and was employed. His failure to notify the Division of that information was an intentional misrepresentation. The fact that he continued to misrepresent his household composition and income during his August 2, 2011 eligibility interview reinforces this finding of intentionality.

The Division has therefore met its burden of proof and established that Mr. H made an intentional misrepresentation on his August 2, 2011 Food Stamp application and eligibility interview. Consequently, Mr. H has committed a first Intentional Program Violation of the Food Stamp program.

### IV. Conclusion and Order

Mr. H 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.<sup>19</sup> The Food Stamp program disqualification period shall begin

---

<sup>15</sup> 7 C.F.R. § 273.16(e)(6).

<sup>16</sup> 7 C.F.R. § 273.16(c).

<sup>17</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

<sup>18</sup> 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 . . . .”

<sup>19</sup> 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).

February 1, 2014.<sup>20</sup> This disqualification applies only to Mr. H, and not to any other individuals who may be included in his household.<sup>21</sup> For the duration of the disqualification period, Mr. H'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.<sup>22</sup>

The Division shall provide written notice to Mr. H 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>23</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. H or any remaining household members are now required to make restitution.<sup>24</sup> If Mr. H disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.<sup>25</sup>

Dated this 28th day of October, 2013.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

---

<sup>20</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>21</sup> 7 C.F.R. § 273.16(b)(11).

<sup>22</sup> 7 C.F.R. § 273.11(c)(1).

<sup>23</sup> 7 C.F.R. § 273.16(e)(9)(ii).

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

<sup>25</sup> 7 C.F.R. § 273.15.

## 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 13<sup>th</sup> day of November, 2013.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge, DOA/OAH

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