

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

In the Matter of)	
)	OAH No. 13-1392-ADQ
N Q G)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

N Q G has received Food Stamp¹ benefits off and on since 1997, with the most recent period running from mid-2011 through September of 2013. On October 2, 2013, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

A hearing was scheduled in this case for November 4, 2013, with Mr. G having received and signed for notice of the hearing.³ At the appointed time, Mr. G was not present for the hearing and could not be reached at the telephone number he had provided to the program.⁴ That hearing had to be rescheduled due to an emergency in the building. Mr. G was sent notice of a new hearing date by regular and certified mail.⁵ As with the first hearing date, he did not attend and did not answer his phone. The hearing went forward in his absence.⁶

Vance Canoy, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Eligibility Technician Susan Beyer and former Eligibility Technician N M K testified on behalf of DPA. Exhibits 1-12 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Mr. G committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months.

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

² Ex. 3.

³ Ex. 4.

⁴ The administrative law judge left a messages for Mr. G. He did not call back, and subsequent efforts by Office of Administrative Hearings staff to contact him received no response.

⁵ The certified mail tracking number showed that the mail was made available to him but he did not pick it up.

⁶ 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 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.

II. Facts

Mr. G received Food Stamp benefits continuously from July of 2011 through the events at issue in this case.⁷ As part of a routine eligibility review, he completed and signed an eligibility review form, dating it June 30, 2012.⁸ On the form, he indicated that he was not employed at that time and that he anticipated no change to that situation.⁹ The form was followed up by an eligibility interview on July 18, 2012, conducted by Susan Beyer.¹⁰ Again, Mr. G revealed no employment.¹¹ He was instructed of his obligation to report any changes in income that could take him over the \$1474 per month threshold for eligibility.¹²

The reality of Mr. G's situation was very different from what he portrayed in the application process. He had been hired by No Name Services on June 20, 2012, ten days before he signed the application. He actually received \$288 from that job during July of 2012 (accruing another \$1703 in earnings).¹³ He received over \$8000 in August.¹⁴ Through No Name and another employer, he remained employed, with earnings well over \$4000 per month, until early January of 2013.¹⁵ He never disclosed this employment; it was discovered in 2013 through independent investigation by DPA.¹⁶

DPA re-approved Food Stamp benefits for Mr. G in reliance on his June 30, 2012 eligibility review form and his July 2012 interview.¹⁷ Benefits were issued and redeemed in August through December of 2013,¹⁸ months in which Mr. G clearly did not qualify to receive assistance at all. Mr. G also received higher benefits in July of 2013 than he would have had his income been disclosed.¹⁹ DPA has calculated the excessive benefits as \$1,109.²⁰

⁷ Ex. 8; Beyer testimony.

⁸ Ex. 7, pp. 12-17.

⁹ Ex. 7, p. 13.

¹⁰ Ex. 9, p. 8; Beyer testimony.

¹¹ Beyer testimony.

¹² Beyer testimony; *see also* Ex. 10, p. 7; Ex. 7, p. 30.

¹³ Ex. 11, p. 3.

¹⁴ Ex. 11, p. 3.

¹⁵ Ex. 11, pp. 3, 6.

¹⁶ K testimony.

¹⁷ Ex. 10, p. 7.

¹⁸ Ex. 8, 12.

¹⁹ Ex. 12.

²⁰ Ex. 12.

III. Discussion

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.²¹

In this case, DPA seeks to establish an IPV. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.²² DPA concedes that Mr. G has never been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation.

Except for someone with prior IPV's in his or her record, someone who falls in the ten-year provision discussed above, or someone who has used food stamps in a drug or weapons transaction, 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.²³

It is clear that Mr. G claimed to be unemployed and without income when he sought recertification for Food Stamps in the summer of 2012. In fact, however, he had just been hired into a job with very substantial earnings. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Mr. G failed to appear for or testify at his hearing, but his intent can be deduced from circumstantial evidence. Employment and income is a central focus of the eligibility review form and of the eligibility interview. It simply cannot have slipped Mr. G's mind that he had just been hired by No Name and that the economic situation he was describing was fictional. The evidence is therefore clear and convincing that Mr. G's misrepresentation was intentional, and it follows that he has committed a first IPV.

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 twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the Intentional Program Violation.²⁴ The Food Stamp disqualification period shall begin February 1,

²¹ See, e.g., 7 U.S.C. § 2015(b).

²² 7 C.F.R. § 273.16(e)(6).

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

²⁴ 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).

2014.²⁵ This disqualification applies only to Mr. G, and not to any other individuals who may be included in his household.²⁶ 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 so that they can be used in these determinations.²⁷

DPA 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.²⁸

If over-issued Food Stamp benefits have not been repaid, Mr. G or any remaining household members are now required to make restitution.²⁹ If Mr. G disagrees with DPA's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.³⁰

Dated this 20th day of November, 2013.

Signed

Christopher Kennedy
Administrative Law Judge

²⁵ 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).

²⁶ 7 C.F.R. § 273.16(b)(11).

²⁷ 7 C.F.R. § 273.11(c)(1).

²⁸ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁰ 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 4th day of December, 2013.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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