

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

In the Matter of:)
)
K U) OAH No. 13-1624-ADQ
) DPA Case No.
) FCU Case No.
_____)

DECISION AND ORDER

I. Introduction

K U is a former recipient of Food Stamp program¹ benefits. On November 13, 2013 the Division of Public Assistance (DPA or Division) initiated this Administrative Disqualification case against Ms. U, alleging that she committed a first time Intentional Program Violation (IPV) of the Food Stamp program by intentionally failing to disclose a felony drug conviction.² This decision concludes, based on the evidence presented, that Ms. U did commit an Intentional Program Violation of the Food Stamp program, and that it is her first IPV. Accordingly, Ms. U is disqualified from participation in the Food Stamp program for twelve months.

II. Facts

On April 2, 2012 a judgment of conviction was entered against Ms. U, based on her plea of guilty, for the crime of Third Degree Misconduct Involving a Controlled Substance.³ The conviction was based on conduct which occurred on January 22, 2012.⁴ This was a Class B felony conviction under Alaska law.⁵

On January 8, 2013 Ms. U completed, signed, and submitted an application for Food Stamp and other benefits.⁶ In response to a question asking whether she or anyone living in her home had been convicted of a drug-related felony, Ms. U answer "no."⁷ On the last page of the application, Ms. U signed a statement certifying under penalty of perjury that the information contained in the application was true and correct to the best of her knowledge.⁸

¹ Congress amended the Food Stamp Act in 2008 and changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP). However, the program is still most commonly referred to as the "Food Stamp program," and this decision will therefore also refer to the program as the "Food Stamp program."

² Ex. 3 p. 2.

³ Ex. 9 p. 1.

⁴ Ex. 9 p. 1.

⁵ A.S. 11.71.030(c).

⁶ Ex. 6 pp. 1 - 8.

⁷ Ex. 6 p. 2.

⁸ Ex. 6 p. 8.

On January 8, 2013 Ms. U participated in an eligibility interview with a DPA eligibility technician.⁹ Notes from the Division's Electronic Information System (EIS) indicate that Ms. U failed to disclose her felony conviction during her eligibility interview.¹⁰ The Division approved Ms. U's Food Stamp application and issued Food Stamp benefits to her.¹¹

On March 11, 2013 the Division became aware of Ms. U's felony drug conviction and initiated a fraud investigation which culminated in the Division's filing of this case.¹² On November 13, 2013 the Division mailed notice to Ms. U advising of its filing of this case and of her hearing date.¹³ On November 13, 2013 the Office of Administrative Hearings independently mailed a notice to Ms. U regarding the pendency of these proceedings and the date of her hearing.

Ms. U's hearing was held on December 16, 2013. Ms. U did not attend and could not be reached by phone. The hearing proceeded in her absence as authorized by 7 CFR 73.16(e)(4). Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, attended the hearing and represented the Division. Eligibility technician Amanda Holton attended the hearing and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. Intentional Program Violations Under the Food Stamp Program

In order to establish that Ms. U committed an Intentional Program Violation of the Food Stamp program regulations, the Division must prove by clear and convincing evidence¹⁴ that Ms. U “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting her January 8, 2013 application, and that her misrepresentations / concealments were intentional.¹⁵

B. Disqualification of Persons Convicted of Drug-Related Felonies

Persons who have been convicted of felonies involving controlled substances are disqualified from participation in the Food Stamp program.¹⁶ Although states have the discretion to exempt recipients from the drug felony disqualification rule,¹⁷ Alaska has not done so.¹⁸

⁹ Ex. 7 p. 1.

¹⁰ Ex. 7 p. 1.

¹¹ Ex. 8 p. 1; Ex. 10 pp. 1 - 2.

¹² Ex. 2 p. 2.

¹³ Ex. 1 pp. 2 - 3; Ex. 3 p. 1.

¹⁴ 7 CFR § 273.16(e)(6).

¹⁵ 7 CFR § 273.16(c).

¹⁶ 21 USC § 862a (a)(1) provides in relevant part that “[a]n individual convicted (under Federal or State law) of any offense which is classified as a felony . . . and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for - (1) assistance under any State program funded under Part A of title IV of the Social Security Act [42 U.S.C.A. § 601 *et seq.*].” This includes the Food Stamp program.

C. Ms. U Committed an Intentional Program Violation

Initially, it is clear that Ms. U failed to report her felony drug conviction on the application at issue. It is likewise clear that Ms. U failed to report her felony drug conviction during her eligibility interview. This constitutes misrepresentation by omission or the concealment and/or withholding of facts.

The next issue is whether Ms. U's misrepresentation was intentional. A person's state of mind (for example, whether the person acted intentionally or merely recklessly or negligently) must often be inferred from circumstantial evidence.¹⁹ In this case Ms. U did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence.

Theoretically, Ms. U's failure to disclose her felony drug conviction could have been negligent rather than intentional. However, the application form signed by Ms. U contained a certificate requiring her to confirm, under penalty of perjury, that the form had been completed truthfully and accurately. Accordingly, it is reasonable to infer that Ms. U understood the importance of truthfully and accurately completing her benefit application. Also, at the time Ms. U first applied for benefits in January 2013, it was less than ten months after the entry of her felony drug conviction. The closeness in time between the felony drug conviction and Ms. U's Food Stamp application makes it less likely that her failure to report the conviction was accidental. Together, these factors constitute clear and convincing evidence that Ms. U's failure to report her felony drug conviction was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. U committed an Intentional Program Violation as defined by applicable Food Stamp program statutes and regulations. This is Ms. U's first known IPV of the Food Stamp program.²⁰

IV. Conclusion and Order

Ms. U has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp program benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid to her as a result of her Intentional Program Violation.²¹ The Food Stamp program disqualification period shall begin on

¹⁷ See 21 USC § 862a(d)(1) and 7 CFR § 273.11(m).

¹⁸ See AS 47.25.975 – 990; 7 AAC § 46.010 *et. seq.*

¹⁹ *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999).

²⁰ Ex. 1 p. 6.

²¹ 7 CFR § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 CFR § 273.16(e)(8)(iii).

April 1, 2014.²² This disqualification applies only to Ms. U and not to any other individuals who may be included in her household.²³ For the duration of the disqualification period, Ms. U's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for her household. However, Ms. U must report her income and resources as they may be used in these determinations.²⁴ The Division shall provide written notice to Ms. U 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.²⁵ If over-issued Food Stamp program benefits have not been repaid, Ms. U or any remaining household members are now required to make restitution.²⁶ If Ms. U disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.²⁷

Dated this 31st day of January, 2014.

Signed _____
Jay Durych
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 11th day of February, 2014.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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

²² 7 USC § 2015(b)(1); 7 CFR § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

²³ 7 CFR § 273.16(b)(11).

²⁴ 7 CFR § 273.11(c)(1).

²⁵ 7 CFR § 273.16(e)(9)(ii).

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

²⁷ 7 CFR § 273.15.