

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

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|------------------|---|---------------------|
| In the Matter of |) | |
| |) | OAH No. 13-1627-ADQ |
| N J. C |) | Agency No. |
| _____ |) | |

DECISION

I. Introduction

Ms. C applied for Food Stamps and Alaska Temporary Assistance benefits, listing her daughter S L and her son K C as residing in her household. The Division of Public Assistance (division) determined that this constituted an Intentional Program Violation (IPV) of both programs.

A hearing was scheduled for December 18, 2013. At the time of the hearing, Ms. C stated that she had not yet received a copy of the division's exhibits. Her hearing was continued, and rescheduled for January 17, 2014. A notice of the new hearing date was mailed to Ms. C on December 18, 2013, and as of January 17, 2014, it had not been returned as undeliverable. Ms. C did not appear for the hearing on January 17, and the phone number available for her was not accepting phone calls.

The hearing was held in Ms. C's absence pursuant to 7 AAC 45.585(b). The division was represented by Fraud Control Unit Investigator Wynn Jennings.¹ The evidence presented establishes an IPV of both programs by clear and convincing evidence.

II. Facts

Ms. C applied for Food Stamps and Temporary Assistance on April 7, 2013.² She listed S as one of the individuals living in her home.³ However, S had been placed in foster care by the Office of Children's Services on February 5, 2013, and was still in state custody on April 17, 2013.⁴ On April 26, 2013, the division denied Ms. C's application for failing

¹ Mr. K testified that Ms. C was incarcerated at No Name Correctional Facility as of December 22, 2013, and that he personally delivered the division's exhibits to her. See Exhibit 6.

² Exhibit 8. Ms. C also applied for Medicaid, but that benefit program is not at issue in this case.

³ Exhibit 8, page 2.

⁴ Exhibit 11

to provide requested information about child support, whether her son K was living in the household, and proof that she no longer owned two vehicles registered in her name.⁵

Ms. C had admitted to her first IPV in 1996.⁶

III. Discussion

It is an IPV for a person applying for Temporary Assistance benefits to intentionally misrepresent, conceal, or withhold material information.⁷ The division has the burden of proving the violation by clear and convincing evidence.⁸ A person who is found to have committed an intentional violation is disqualified from receiving Temporary Assistance benefits for twelve months for a second IPV.⁹

For Food Stamp recipients, an IPV is defined to include having intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts[.]”¹⁰ In order to prevail, the division must prove this violation by clear and convincing evidence.¹¹ A person who is found to have committed second IPV is disqualified from receiving food stamps for 24 months,¹² and must repay any benefits wrongfully received.¹³

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.¹⁴ This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

Here, Ms. C’s application for benefits has her signature on pages 1 and 8. She participated in an interview with an eligibility technician to confirm the information on her application.¹⁵ At that time, Ms. C indicated that S was staying at Ms. C’s mother’s home.¹⁶ In fact, S was in OCS custody. Ms. C’s statements about where S was living were false or misleading. Since Ms. C had previously admitted to an IPV, her statements constitute her second IPV.

⁵ Exhibit 10.

⁶ Exhibit 12.

⁷ 7 AAC 45.580(n).

⁸ 7 AAC 45.585(d).

⁹ AS 47.27.015(e)(2).

¹⁰ 7 C.F.R. 273.16(c)(1).

¹¹ 7 C.F.R. 273.16(e)(6).

¹² 7 C.F.R. 273.16(b)(1).

¹³ 7 C.F.R. 273.16(b)(12).

¹⁴ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

¹⁵ Exhibit 9, page 1. Testimony of Eligibility technician Erik Ross.

¹⁶ *Id.*

IV. Conclusion and Order

Ms. C committed a second Intentional Program Violation in regards to two programs: Temporary Assistance and Food Stamps.

Ms. C is disqualified from participation in the Temporary Assistance program for a period of 12 months.¹⁷ Her disqualification period shall be postponed until she applies for, and is found eligible for, Temporary Assistance benefits.¹⁸ This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. C's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for her household. However, Ms. C must report her income and resources as they may be used in these determinations.²⁰

Ms. C is disqualified from receiving Food Stamp benefits for a 24 month period, and required to reimburse the division for benefits that were overpaid as a result of the intentional program violation.²¹ The Food Stamp disqualification period shall begin April 1, 2014.²² This disqualification applies only to Ms. C, and not to any other individuals who may be included in her household.²³ For the duration of the disqualification period, Ms. C's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report his income and resources as they may be used in these determinations.²⁴

The division shall provide written notice to Ms. C 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

Dated this 27th day of January, 2014.

Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁷ AS 47.27.015(e)(2).

¹⁸ 7 AAC 45.580(g).

¹⁹ 7 AAC 45.580(e)(1).

²⁰ 7 AAC 45.580(e)(3).

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

²² 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).

²³ 7 C.F.R. § 273.16(b)(11).

²⁴ 7 C.F.R. § 273.11(c)(1).

²⁵ 7 C.F.R. § 273.16(e)(9)(ii).

Adoption

The undersigned, by delegation from of 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: Jeffrey A. Friedman
Title: Administrative Law Judge

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