

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

In the Matter of)	
)	OAH No. 13-1641-ADQ
C N. D)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

C N. D received Food Stamp¹ benefits during a portion of 2013, and applied again for benefits in July of 2013. On November 15, 2013, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program in connection with her July application.²

A hearing convened in this case on December 19, 2013, with Ms. D having been sent advance notice of the hearing by both certified mail and standard First Class mail to her address of record.³ Ms. D did not attend the hearing and could not be reached at the telephone number she had provided to the program.⁴ The hearing went forward in her absence.⁵

DPA was represented at the hearing by Wynn Jennings, an investigator employed by DPA's Fraud Control Unit. Mr. Jennings and Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. Exhibits 1-11 were admitted into evidence without objection and without restriction.

This decision concludes that DPA proved by clear and convincing evidence that Ms. D committed a first Intentional Program Violation of the program. She 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. 1, pp. 2-3; Ex. 3; Ex. 4. She did not claim the certified mail.

⁴ The number was not in service.

⁵ Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. See 7 CFR § 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

After receiving Food Stamp benefits for at least part of the first half of 2013, C D filed a new application for those benefits on July 2, 2013.⁶ On the application, she listed two children, T and K, as living with her.⁷

T had actually been in state custody, in a foster home, since January of 2013.⁸ She remained in the foster home at least until September of 2013.⁹

Ms. D attended an eligibility interview on July 17, 2013 in connection with the application she submitted on July 2. She continued to maintain that T would be living with her until confronted with the fact that T was in state custody.¹⁰

DPA re-approved Food Stamps for Ms. D, but only after removing T as a household member.¹¹ No excessive benefits were issued.¹² The eligibility technician who conducted the interview reported the inaccurate claim of a household member to the fraud unit.

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.¹³ In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ No evidence has been offered that Ms. D has ever been found to have committed a prior IPV, and therefore both alleged IPV's 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.¹⁵

⁶ Ex. 8.
⁷ Ex. 8, p. 2.
⁸ Ex. 11.
⁹ Ex. 11.
¹⁰ Ex. 2; Jennings testimony.
¹¹ Ex. 10; Holton testimony.
¹² Holton testimony.
¹³ *See, e.g.*, 7 U.S.C. § 2015(b).
¹⁴ 7 C.F.R. § 273.16(e)(6).
¹⁵ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

It is clear that Ms. D claimed that T was living with her at a time when she was in fact in foster care. She did this twice: first on her written application and again in the followup interview. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. D failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Household composition is a central focus of both the application and of any eligibility interview. It simply cannot have slipped Ms. D's mind that her daughter had been taken from her home and that the household composition she was describing was fictional. The evidence is clear and convincing that Ms. D's misrepresentation was intentional. She has therefore committed a first IPV.

IV. Conclusion and Order

Ms. D has committed a first time Intentional Program Violation of the Food Stamp program. She is 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.¹⁶ The Food Stamp disqualification period shall begin March 1, 2014.¹⁷ This disqualification applies only to Ms. D, and not to any other individuals who may be included in her household.¹⁸ For the duration of the disqualification period, Ms. D'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 so that they can be used in these determinations.¹⁹

DPA shall provide written notice to Ms. D 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.²⁰

Dated this 23rd day of December, 2013.

Signed

Christopher Kennedy
Administrative Law Judge

¹⁶ 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).

¹⁷ 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).

¹⁸ 7 C.F.R. § 273.16(b)(11).

¹⁹ 7 C.F.R. § 273.11(c)(1).

²⁰ 7 C.F.R. § 273.16(e)(9)(ii).

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 7th day of January, 2014.

By: Signed
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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