

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

In the Matter of)	
)	OAH No. 13-1643-ADQ
K W. S)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

K E. S was a Food Stamp¹ recipient. On November 15, 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 because he failed to inform the DPA when his monthly income exceed the maximum allowed for a household of his size.²

A hearing was scheduled in this case for December 19, 2013. Two attempts were made to inform Mr. S of this claim against him and provide him with notice of the hearing by certified mail.³ Each time a notice was left and each time the notice package remained unclaimed.⁴ At the appointed time, his telephone number was called, only to receive a busy signal. The hearing went forward in his absence.⁵

Angel Romero, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Eligibility Technician III Amanda Holton 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. S committed a first Intentional Program Violation of the Food Stamp program. He must be barred from Food Stamps for twelve months and make restitution for the Food Stamps received while he was ineligible.

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, 6.

⁴ *Id.* The certified mail tracking number showed that the mail was made available to him, but he did not pick it up.

⁵ 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

Food Stamp recipients are certified to participate in the program for a distinct period of time. They must reapply prior to the end of the certification period if they wish to continue to receive the benefit. On his eligibility review form, Mr. S indicated that he was not employed at that time, and that he anticipated no change to that situation.⁶ The form was followed up by an eligibility interview, and again Mr. S revealed no employment or employment prospects.⁷ He was instructed of his obligation to report any changes in income that could take him over the \$1,514 per month threshold for eligibility.⁸

Mr. S's situation soon changed. He started work in mid-May 2012, and continued working through October 20, 2012.⁹ He disclosed his May through October employment during his next recertification interview on November 1, 2012.¹⁰ On November 2, 2012, an Early Fraud Detection was initiated.

Mr. S received Food Stamp benefits from April through October 2012.¹¹ Mr. S's income exceeded the threshold amount for the months of August 2012, September 2012, and October 2012, so he clearly did not qualify to receive assistance. DPA has calculated the excessive benefits at \$717.¹²

III. Discussion

It is prohibited by federal law for a person to receive Food Stamp benefits by concealing or withholding facts.¹³

In this case, DPA seeks to establish an IPV by Mr. S. To do so, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ DPA concedes that Mr. S 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 like Mr. S who has not used Food Stamps in a drug or weapon's transfer, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have

⁶ Ex. 7, p. 2 – 3.

⁷ Holton testimony.

⁸ Holton testimony; *see also* Ex. 9.

⁹ Ex. 3.

¹⁰ Ex. 2.

¹¹ Ex. 9.

¹² Ex. 11, p 2.

¹³ *See, e.g.*, 7 U.S.C. § 2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6).

“intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁵

It is clear that Mr. S began working in May 2012 and continued working up through October 2012. During this period he was also receiving Food Stamps. His monthly earnings placed him well over the threshold amount. A Food Stamp recipient is required to report changes in income within ten days of when the change becomes known.¹⁶ Mr. S did not. Therefore, the remaining issue is whether the failure to report was intentional.

Mr. S failed to appear for or testify at his hearing, but his intent can be deduced from circumstantial evidence. Mr. S started work in May 2012, shortly after his interview. Employment and income is a central focus of the eligibility review form and of the eligibility interview. At the time of the review he was not working. Within a month he was employed. It is incredible that it would have slipped Mr. S’s mind that his income had changed and should be reported. The evidence is therefore clear and convincing that Mr. S’s misrepresentation was intentional, and it follows that he has committed a first IPV.

IV. Conclusion and Order

Mr. S 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 \$717 for benefits that were overpaid as a result of the Intentional Program Violation.¹⁷ The Food Stamp disqualification period shall begin March 1, 2014.¹⁸ This disqualification applies only to Mr. S, and not to any other individuals who may be included in his household.¹⁹ For the duration of the disqualification period, Mr. S’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.²⁰

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

¹⁶ 7 C.F.R. § 273.12(a)(2).

¹⁷ 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).

¹⁸ See 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

DPA shall provide written notice to Mr. S 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.²¹

If over-issued Food Stamp benefits have not been repaid, Mr. S or any remaining household members are now required to make restitution.²² If Mr. S disagrees with DPA's calculation of the amount of over issuance to be repaid, \$717, he may request a separate hearing on that limited issue.²³

Dated this 6th day of January, 2014.

Signed _____

Rebecca Pauli

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 22nd day of January, 2014.

By: *Signed* _____

Name: Rebecca L. Pauli

Title: Administrative Law Judge

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

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

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

²³ 7 C.F.R. § 273.15.