

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

In the Matter of:)	
)	
L S. B)	OAH No. 14-0004-ADQ
)	DPA Case No.
_____)	Fraud Control Case No.

DECISION AND ORDER

I. Introduction

L B is a former recipient of Food Stamp program¹ benefits. On January 3, 2014 the Division of Public Assistance (Division) initiated this Administrative Disqualification case against Mr. B, alleging that he committed a first time Intentional Program Violation (IPV) of the Food Stamp program by intentionally failing to disclose a felony drug conviction. This decision concludes, based on the evidence presented, that Mr. B did commit a first Intentional Program Violation of the Food Stamp program by intentionally failing to report a felony drug conviction. Accordingly, Mr. B is disqualified from participation in the Food Stamp program for twelve months.

II. Facts

On August 26, 2011 a judgment of conviction was entered against Mr. B for the crime of Third Degree Misconduct Involving a Controlled Substance.² This was a felony offense under Alaska law.³ The conviction was based on conduct which occurred on December 30, 2009.⁴

Mr. B received Food Stamp benefits intermittently from December 2001 through December 2013.⁵ On June 14, 2013 Mr. B completed, signed, and submitted an application form for Food Stamp Program benefits.⁶ In response to a question asking whether anyone in his household had

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. 10 p. 1.

³ Mr. B was convicted of violating Alaska Statute (A.S.) § 11.71.030(a)(1). That statute, titled "Misconduct Involving a Controlled Substance in the Third Degree," provides in relevant part:

(a) Except as authorized in [inapplicable], a person commits the crime of misconduct involving a controlled substance in the third degree if the person . . . (1) . . . manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver . . .

. . . .

(c) Misconduct involving a controlled substance in the third degree is a Class B felony.

⁴ Ex. 10 p. 1.

⁵ Ex. 9 pp. 1 - 6.

⁶ Ex. 7 pp. 1 - 12.

been convicted of a drug-related felony, Mr. B answered “no.”⁷ On the last page of the application Mr. B signed a statement certifying under penalty of perjury that the information contained in the application was correct to the best of his knowledge.⁸

On June 17, 2013 Mr. B participated in an eligibility interview regarding his application for Food Stamp benefits; there is no record that he disclosed his felony drug conviction to the Division during this interview.⁹ The Division approved Mr. B's Food Stamp application and issued Food Stamp benefits to him for the next six months.¹⁰

The Division subsequently became aware of Mr. B's felony drug conviction and initiated a fraud investigation which culminated in the Division's filing of this case.¹¹ The Division notified Mr. B of its filing of this case, and of his hearing date, on January 3, 2014.¹² On January 6, 2014 the Office of Administrative Hearings independently mailed a notice to Mr. B informing him of the pendency of these proceedings and the date of his hearing.

Mr. B's hearing was held on February 6, 2014. Mr. B did not attend and could not be reached by phone. The hearing proceeded in his absence as authorized by 7 C.F.R. 73.16(e)(4). Dean Rogers, 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 prove that Mr. B committed an Intentional Program Violation of Food Stamp program regulations, the Division must prove by clear and convincing evidence¹³ that Mr. B “made a false or misleading statement, or misrepresented, concealed, or withheld facts” when submitting his June 14, 2013 application for Food Stamp benefits, and that these misrepresentations / concealments were intentional.¹⁴

⁷ Ex. 7 p. 2.

⁸ Ex. 7 p. 8.

⁹ Ex. 8 pp. 1 - 2.

¹⁰ Ex. 9 p. 1.

¹¹ Ex. 6.

¹² Ex. 2 pp. 2 - 18.

¹³ 7 C.F.R. § 273.16(e)(6).

¹⁴ 7 C.F.R. § 273.16(c).

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.¹⁵ Although the states have the discretion to exempt recipients from the drug felony disqualification rule,¹⁶ the State of Alaska has not enacted legislation either exempting Alaska state residents from disqualification or limiting the period of program ineligibility.¹⁷

C. Mr. B Committed an Intentional Program Violation

Initially, it is clear that Mr. B did not report his felony drug conviction on the June 14, 2013 Food Stamp application form or during his June 17, 2013 eligibility interview.¹⁸ This constitutes misrepresentation by omission or the concealment and/or withholding of facts.

The next issue is whether Mr. B'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 Mr. B did not participate in his hearing, so his state of mind can only be inferred from circumstantial evidence.

Theoretically, Mr. B's failure to disclose his felony drug conviction could have been negligent rather than intentional. However, the application form signed by Mr. B contained a certificate requiring him to confirm, under penalty of perjury, that the form had been completed truthfully and accurately. Accordingly, it is reasonable to infer that Mr. B understood the importance of truthfully and accurately completing his application for Food Stamp benefits. Also, at the time Mr. B applied for benefits in June 2013, it was less than two years after the entry of his felony drug conviction, and only about eight months after his sentence was completed.²⁰ The relative closeness in time between these events makes it less likely that Mr. B's failure to report the conviction was accidental. Based on these facts it is reasonable to infer that Mr. B knew that he had been convicted of a drug-related felony, and understood the importance of truthfully and accurately

¹⁵ 21 U.S.C. § 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. § 601 et seq.].” This includes the Food Stamp Program. 7 C.F.R. § 273.11(m), one of the implementing regulations for 21 U.S.C. § 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 by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered an eligible household member

¹⁶ See 21 U.S.C. § 862a(d)(1) and 7 C.F.R. § 273.11(m) (quoted above).

¹⁷ See A.S. §§ 47.25.975 – 990; 7 AAC § 46.010 *et. seq.*

¹⁸ Exs. 7, 8.

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

²⁰ Ex. 10.

completing applications for public assistance at the time he submitted the application at issue. Together, these factors constitute clear and convincing evidence that Mr. B's failure to report his felony drug conviction was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Mr. B committed an Intentional Program Violation as defined by applicable Food Stamp program statutes and regulations. This is Mr. B's first Intentional Program Violation of the Food Stamp program.²¹

IV. Conclusion and Order

Mr. B has committed a first time Intentional Program Violation of the Food Stamp program. He 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 him as a result of his Intentional Program Violation.²² The Food Stamp program disqualification period shall begin on May 1, 2014.²³ This disqualification applies only to Mr. B and not to any other individuals who may be included in his household.²⁴ For the duration of the disqualification period, Mr. B's needs will not be considered when determining Food Stamp program eligibility and benefit amounts for his household. However, Mr. B must report his income and resources as they may be used in these determinations.²⁵ The Division shall provide written notice to Mr. B 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.²⁶ If over-issued Food Stamp Program benefits have not been repaid, Mr. B or any remaining household members are now required to make restitution.²⁷ If Mr. B disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²⁸

Dated this 19th day of February, 2014.

Signed

Jay Durych

Administrative Law Judge

²¹ Ex. 1 p. 7.

²² 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).

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

²⁴ 7 C.F.R. § 273.16(b)(11).

²⁵ 7 C.F.R. § 273.11(c)(1).

²⁶ 7 C.F.R. § 273.16(e)(9)(ii).

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

²⁸ 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 5th day of March, 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.]