

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

In the Matter of)	
)	OAH No. 14-008-ADQ
C M)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

C M received Food Stamp¹ benefits during 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 second Intentional Program Violation (IPV) of the Food Stamp program in connection with her January and July 2103 eligibility review forms.² This decision concludes that DPA proved by clear and convincing evidence that Ms. M committed her second Intentional Program Violation of the program. She must pay \$1,056 in restitution and is barred from receiving Food Stamps for twenty-four months.

A hearing convened in this case on February 7, 2014, with Ms. M having been sent advance notice of the hearing by both certified mail and standard First Class mail to her address of record.³ Ms. M 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 Dean Rogers, an investigator employed by DPA's Fraud Control Unit. Mr. Rogers and Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA.

II. Facts

Ms. M filled out a Food Stamp eligibility review form on January 28, 2013.⁶ Item 4, Assets Information, states: "List how much money you or anyone in your household has in cash

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. 3, The certified mail was returned marked "UTF, unable to find."; Ex. 4, Ms. M's January 25, 2014, application lists the same address.

⁴ The number was not receiving calls. Ex. 4, Ms. M's January 25, 2014, application lists the same number.

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.

⁶ Ex. 6.

and bank accounts. Please provide a copy of your most recent bank statement for each account.”⁷ Ms. M wrote, “N/A.”⁸ On her July 1, 2013, eligibility review form, Miss M again wrote “N/A” in response to the same question.⁹

Standard DPA investigation data-mining practices alerted DPA that Ms. M may have undeclared assets.¹⁰ In response to a subpoena, Key Bank provided DPA with information regarding Ms. M’s bank account.¹¹ Records show that Ms. M opened a bank account on January 9, 2013, with a \$1,220.56 deposit.¹² Ms. M’s bank statements show multiple deposits between January and July 2013.¹³ Ms. M’s bank statement also lists withdrawals on January 28, 2013, the same day Ms. M completed her eligibility review form.¹⁴ Ms. M did not report the income listed in the bank statements, as required by Food Stamp program rules.¹⁵

Because Ms. M failed to report the income described above, DPA issued Ms. M excessive Food Stamps benefits from February through July, 2013.¹⁶ The total overpayment amount is \$1,056.¹⁷ Database records of the Food and Nutrition Services of the U.S. Department of Agriculture show that Ms. M committed a first IPV in July 1999.¹⁸

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.¹⁹ In this case, DPA seeks to establish a second IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.²⁰

Federal Food Stamp law provides that a twenty-four month disqualification must be imposed on any individual found to have committed a second IPV.²¹ An intentional program

⁷ Ex. 6.
⁸ Ex. 6, pg. 2.
⁹ Ex. 6, pg. 6.
¹⁰ Holton testimony.
¹¹ Ex. 10.
¹² Ex. 10.
¹³ Ex. 10.
¹⁴ Ex. 10, pg. 5.
¹⁵ Holton testimony; Ex. 6.
¹⁶ Ex. 11; Holton testimony.
¹⁷ Ex. 11.
¹⁸ Ex. 12.
¹⁹ *See*, 7 U.S.C. § 2015(b).
²⁰ 7 C.F.R. § 273.16(e)(6).
²¹ 7 C.F.R. § 273.16(b)(1)(ii).

violation is defined as “having intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.²²

It is clear that Ms. M had a bank account and did not report to DPA income received to the account.²³ She did this twice, once on her January eligibility review form and again on her July 2013 eligibility review form.²⁴ This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. M failed to appear for or testify at her hearing, but her intent can be inferred from circumstantial evidence. It is highly unlikely that Ms. M did not remember she opened a bank account just weeks before completing her January 28, 2013, eligibility review form and that she once again forgot about its existence in July 2013. It is clear that Ms. M was aware of deposits into the account because she withdrew from the account regularly.²⁵ The evidence is clear and convincing that Ms. M's misrepresentation was intentional. She has therefore committed a second IPV.

IV. Conclusion and Order

Ms. M has committed a second Intentional Program Violation of the Food Stamp program. She is disqualified from receiving Food Stamp benefits for a twenty-four-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the IPV.²⁶ The Food Stamp disqualification period shall begin May 1, 2014.²⁷ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.²⁸ For the duration of the disqualification period, Ms. M'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.²⁹

²² 7 C.F.R. § 273.16(c)(1).

²³ Ex. 6; Ex. 10.

²⁴ Ex. 6.

²⁵ Ex. 10.

²⁶ 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).

²⁷ 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).

²⁸ 7 C.F.R. § 273.16(b)(11).

²⁹ 7 C.F.R. § 273.11(c)(1).

DPA shall provide written notice to Ms. M regarding the disqualification and reimbursement requirement.³⁰

Dated this 11th day of February, 2014.

Signed _____
Bride Seifert
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 3rd day of March, 2014.

By: *Signed* _____
Name: **Bride Seifert** _____
Title/Division: **ALJ/OAH** _____

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

³⁰ 7 C.F.R. § 273.16(e)(9)(ii); 7 C.F.R. § 273.18(d)(3).