

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

In the Matter of)	
)	OAH No. 14-0148-ADQ
E M. G)	DPA/FCU No.
_____)	Agency No.

DECISION

I. Introduction

E G applied for Food Stamp benefits. The Division of Public Assistance (division) alleged that she committed an Intentional Program Violation (IPV) by not reporting a prior drug-related felony conviction. A hearing was scheduled to allow Ms. G the opportunity to contest that allegation.

The hearing was scheduled for February 26, 2014. Ms. G did not appear, and could not be reached by telephone. Ms. G has not contacted the Office of Administrative Hearings since that date to show good cause for failing to appear.

The division presented its evidence at the hearing. The record was left open to allow the division to submit additional evidence to show that Ms. G’s prior offense was a drug-related offense as defined by the applicable federal law. That additional evidence was received on February 27, 2014.

Because Ms. G falsely stated on her application that she did not have a prior drug-related felony conviction, she has committed an Intentional Program Violation.

II. Facts

Ms. G applied for Food Stamps on March 30, 2012.¹ Her application lists her Social Security number and birth date, and indicates an “other name” of N.² Ms. G answered “no” to question four of the application, which asks “Have you or anyone in your household been convicted of a drug-related felony for an offense that occurred on or after August 22, 1996?”³

¹ Exhibit 8.
² Exhibit 8, pages 1 & 2.
³ Exhibit 8, page 2.

Ms. G had in fact been convicted of violating AS 11.71.040(a)(3)(A).⁴ The person named in the judgment of conviction is E M. N, which matches the prior name listed on Ms. G's application. The judgment also contains a Social Security number and birth date matching what is listed on the application.

Based on the content of her application, Ms. G was approved to receive Food Stamps.⁵ She received \$19 in benefits for March of 2012, and \$239 a month in benefits for April, May, and June of 2012.⁶ The total of these amounts is \$736.⁷

III. Discussion

For Food Stamp recipients, an IPV is defined to include having intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts[.]"⁸ In order to prevail, the division must prove this violation by clear and convincing evidence.⁹ A person who is found to have committed an IPV is disqualified from receiving Food Stamps for 12 months for a first time violation, 24 months for a second violation, and permanently for a third IPV.¹⁰ In addition, the household must repay any benefits wrongfully received.¹¹

In calculating the household's benefits, individuals who have been convicted of a state or federal drug-related felony for conduct occurring after August 22, 1996 may not be included as a household member.¹² Convictions that count towards this exclusion are those for which an element of the offense is possession, use, or distribution of a controlled substance as defined by the Controlled Substance Act, 21 U.S.C. 802(6).¹³

Proof of facts 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.

⁴ Exhibit 11; The Amended Information submitted after the hearing shows that Ms. G (N) was charged with the possession of cocaine in violation of AS 11.71.040(a)(3)(A).

⁵ Exhibit 10.

⁶ Exhibit 13, page 2; Testimony of Amanda Holton.

⁷ *Id.*

⁸ 7 C.F.R. § 273.16(c)(1).

⁹ 7 C.F.R. § 273.16(e)(6).

¹⁰ 7 C.F.R. § 273.16(b)(1).

¹¹ 7 C.F.R. § 273.16(b)(12).

¹² 7 C.F.R. § 273.11(m). There are exceptions to this rule if the state legislature has enacted legislation that exempts them from this exclusion.

¹³ *Id.*

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

In this case, Ms. G denied having a drug-related felony conviction. That denial was false, and concealed relevant information. Since Ms. G did not appear at the hearing, she did not provide any explanation for why she answered as she did. It is reasonable to infer that Ms. G was aware of her prior conviction when she filled out her application. The division has proven by clear and convincing evidence that Ms. G intentionally committed an IPV when she incorrectly stated that she did not have a prior drug-related felony conviction.

The division asserted that this was Ms. G's third known IPV. She previously admitted to the following violations:

<u>Violation</u>	<u>Date Admitted</u>	<u>Exhibit</u>
First AFDC IPV	May 16, 1999	Exhibit 12, page 11
First Food Stamp IPV	May 16, 1999	Exhibit 12, page 10
Second AFDC IPV	May 16, 1999	Exhibit 12, page 8
Second Food Stamp IPV	May 16, 1999	Exhibit 12, page 9

The first IPV's relate to an incarceration in 1996 and the failure to report that her son H was no longer part of her household while incarcerated. The second IPV's relate to an incarceration in 1997, and the failure to report that her son was no longer part of her household while incarcerated.

At the hearing, the division acknowledged that its current practice would treat these four admissions as a single violation for purposes of counting the number of known prior violations. The division further stated that it would not object if the decision in this matter treated Ms. G's current violation as her second known violation for purposes of imposing a disqualification period.

There were two separate instances, a year apart, when Ms. G failed to report a change in her household composition. Thus, they could reasonably be treated as separate IPV's. However, both sets of violations were apparently discovered at one time, and she admitted to them all at one time. Having an escalating penalty based on the number of prior violations encourages the public assistance recipient to learn from her prior mistakes. In this case, Ms. G has had one prior opportunity to learn from her earlier violations. Thus, the current IPV should be treated as her second known violation.

IV. Conclusion and Order

The division met its burden of proving a second known Intentional Program Violation of the Food Stamps program. Ms. G is therefore 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.¹⁵ The Food Stamp disqualification period shall begin June 1, 2014.¹⁶ This disqualification applies only to Ms. G, and not to any other individuals who may be included in her household.¹⁷ For the duration of the disqualification period, Mr. G'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 as they may be used in these determinations.¹⁸

The division shall provide written notice to Ms. G 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.¹⁹

If over-issued Food Stamp benefits have not been repaid, Ms. G or any remaining household members are now required to make restitution.²⁰ If Ms. G disagrees with the division's calculation of the amount of over issuance to be repaid, she may request a separate hearing on that limited issue.²¹

Dated this 12th day of March, 2014.

Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁵ 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).

¹⁶ 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).

¹⁷ 7 C.F.R. § 273.16(b)(11).

¹⁸ 7 C.F.R. § 273.11(c)(1).

¹⁹ 7 C.F.R. § 273.16(e)(9)(ii).

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

²¹ 7 C.F.R. § 273.15.

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 26th day of March, 2014.

By: Signed

Name: Jeffrey A. Friedman

Title: Administrative Law Judge

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