

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

In the Matter of)	OAH No. 14-0164-ADQ
)	Division No.
K J)	Fraud Control Case No.
_____)	

DECISION AND ORDER

I. Introduction

K J applied for Food Stamp¹ and Temporary Assistance benefits. On January 31, 2014, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a third Intentional Program Violation of the Food Stamp and Temporary Assistance programs.²

Mr. J's hearing was held on March 6, 2014. He was provided advance notice of the hearing.³ Mr. J did not appear for the hearing and it was held in his absence.⁴ Administrative Law Judge (ALJ) Andrew Hemenway conducted the hearing for Lawrence Pederson, who was the assigned ALJ.

Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, represented the Division. The Division's exhibits were admitted into evidence and the case was submitted for consideration based on the record.

This decision concludes that Mr. J committed a third Intentional Program Violation of the Food Stamp and Temporary Assistance programs.

II. Facts

The following facts were established by clear and convincing evidence except where otherwise noted.

¹ Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp program to the Supplemental Nutrition Assistance program ("SNAP"). The program is still commonly referred to as the Food Stamp program.

² Ex. 3.

³ Ex. 1, p. 3; Ex. 3.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(b) (Temporary Assistance program). 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.

Mr. J applied for Food Stamp and Temporary Assistance benefits on March 30, 2012.⁵ In his application, he stated that his minor son resided with him and that he had never been convicted of a drug-related felony for an offense that occurred after August 22, 1996.⁶ Mr. J signed the application, certifying that the information contained in it was correct.⁷ Mr. J then participated in an eligibility interview on April 2, 2012, where he informed a Division Eligibility Technician that his child lived with him fulltime.⁸ The application was denied because the child was a member of another public assistance household.⁹

Mr. J's minor son was not residing with him at the time of his application. His son was in state custody and residing with a foster family. The son was placed in state custody on March 21, 2012, and was still in state custody as of November 13, 2013.¹⁰ Mr. J had also been convicted of a drug felony on February 25, 2000, for an offense that occurred on August 28, 1999.¹¹

Mr. J has two Intentional Program Violations that predate this case. The first was in 2007; it was for a violation of the Food Stamp and Temporary Assistance programs, where he admitted that he had received benefits for a child when that child was not living in his household.¹² The second was in 2010; it was for a violation of the Food Stamp and Temporary Assistance programs, where he was found, after hearing, to have intentionally misrepresented that his minor daughter resided with him on a benefit application when she did not reside with him.¹³

III. Discussion

A. Food Stamp Program

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence¹⁴ that Mr. J intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁵ To meet this

⁵ Ex. 6.
⁶ Ex. 6, p. 2.
⁷ Ex. 6, p. 8.
⁸ Ex. 7, p. 1.
⁹ Ex. 7, p. 1.
¹⁰ Ex. 7, p. 3; Ex. 8, pp. 2 – 3.
¹¹ Ex. 9, pp. 8 – 13.
¹² Ex. 10, pp. 1 – 4.
¹³ Ex. 10, pp. 5 – 12.
¹⁴ 7 C.F.R. § 273.16(e)(6).
¹⁵ 7 C.F.R. § 273.16(c).

standard, the division must show that it is *highly probable* that Mr. J intended to provide or knowingly provided incorrect information.¹⁶

A review of the facts demonstrates that Mr. J did not have his son living in his household when he applied for benefits, claiming he was there. In addition, Mr. J has a conviction for a drug felony, but represented that he did not. The question then arises as to whether these were intentional misrepresentations. Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, Mr. J failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹⁷ Mr. J undoubtedly knew his son was not living with him. He also undoubtedly knew he had a felony drug conviction, an event not easily forgotten. Consequently, Mr. J intentionally misrepresented both that his son was living with him and that he did not have a felony drug conviction.

The Division has therefore met its burden of proof and established that Mr. J made an intentional misrepresentation on his March 30, 2012 application for benefits. Because Mr. J had two prior Intentional Program Violations for the Food Stamp program, this was his third Intentional Program Violation.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must prove by clear and convincing evidence¹⁸ that Mr. J intentionally misrepresented, concealed or withheld a material fact on his application “for the purpose of establishing or maintaining a family’s eligibility for ATAP benefits.”¹⁹ As discussed above, Mr. J intentionally misrepresented that his son resided with him when he actually did not.

In order for a person to be eligible for Temporary Assistance benefits, there must first be a minor child residing in their home.²⁰ Whether a minor child resides in the home is a material fact for the purpose of determining Temporary Assistance eligibility.²¹

¹⁶ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

¹⁷ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct”

¹⁸ 7 AAC 45.585(d).

¹⁹ 7 AAC 45.580(n).

²⁰ 7 AAC 45.225(a).

The Division must then prove that the intentional misrepresentation of the material fact was for the purpose of establishing or maintaining the household's eligibility for Temporary Assistance benefits. Because Mr. J had two previous Intentional Program Violations based upon his application for/receipt of Temporary Assistance benefits when he did not have a minor child in the home, he was clearly aware of this eligibility requirement. The Division has the burden of proof in this case and demonstrated that Mr. J's misrepresentation on his March 30, 2012 application was made for the purpose of establishing his eligibility for Temporary Assistance benefits. Because Mr. J had two prior Intentional Program Violations for the Temporary Assistance program, this was his third Intentional Program Violation.

IV. Conclusion and Order

A. Food Stamp Program

Mr. J has committed a third Intentional Program Violation of the Food Stamp program. He is therefore permanently disqualified from receiving Food Stamp benefits and is required to reimburse the Division for benefits, if any, that were overpaid as a result of the Intentional Program Violation.²² The Food Stamp program disqualification period shall begin June 1, 2014.²³ This disqualification applies only to Mr. J, and not to any other individuals who may be included in his household.²⁴ For the duration of the disqualification period, Mr. J'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 as they may be used in these determinations.²⁵

The Division shall provide written notice to Mr. J 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 benefits have not been repaid, Mr. J or any remaining household members are now required to make restitution.²⁷ If Mr. J disagrees with the

²¹ Unlike the Food Stamp program, whether a person has a felony drug conviction is not a factor in determining eligibility or benefit levels for Temporary Assistance benefits. It is therefore not discussed as a potential Intentional Program Violation relative to the Temporary Assistance program.

²² 7 C.F.R. § 273.16(b)(1)(iii); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

²³ 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).

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).

Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²⁸

B. The Alaska Temporary Assistance Program

Mr. J has committed a third Temporary Assistance Intentional Program Violation. He is therefore permanently disqualified from participation in the Temporary Assistance program, and is required to reimburse the Division for benefits, if any, that were overpaid as a result of the Intentional Program Violation.²⁹ If Mr. J is currently receiving Temporary Assistance benefits, his disqualification period shall begin June 1, 2014.³⁰ This disqualification applies only to Mr. J, and not to any other individuals who may be included in his household.³¹ For the duration of the disqualification period, Mr. J's needs will not be considered when determining Temporary Assistance eligibility and benefit amounts for his household. However, Mr. J must report his income and resources as they may be used in these determinations.³²

If over-issued Temporary Assistance benefits have not been repaid, Mr. J or any remaining household members are now required to make restitution.³³ If Mr. J disagrees with the Division's calculation of the amount of over-issuance to be repaid, he may request a hearing on that limited issue.³⁴

Dated this 28th day of March, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

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.

²⁹ AS 47.27.015(e)(3); 7 AAC 45.580(d).

³⁰ 7 AAC 45.580(f).

³¹ 7 AAC 45.580(e)(1).

³² 7 AAC 45.580(e)(3).

³³ 7 AAC 45.570(a).

³⁴ 7 AAC 45.570(l).

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 8th day of April, 2014.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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