



Mr. B had in fact been convicted of a felony in 2011.<sup>8</sup> He was convicted for violating AS 11.71.040(a)(3)(A). An element of that offense is the illegal possession of a controlled substance. A violation of this statute is a class C felony.<sup>9</sup>

As of the date of application, the Superior Court had issued a bench warrant for Mr. B' arrest.<sup>10</sup> This warrant was based on an affidavit stating that Mr. B had previously been convicted of the drug offense discussed above, and that he was in violation of the terms of his probation. The terms of probation required him to report to his probation officer monthly, and the affidavit asserts that he failed to report as required.<sup>11</sup> On three prior instances, Mr. B had been found to be in violation of his probation. He was ordered to serve additional jail time after each of the first two, but was not required to serve additional time after the third violation.<sup>12</sup> There is no evidence in the record that Mr. B had been served with the bench warrant before he filled out the Food Stamps application.

### **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[.]”<sup>13</sup> In order to prevail, the division must prove this violation by clear and convincing evidence.<sup>14</sup> 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.<sup>15</sup> In addition, the household must repay any benefits wrongfully received.<sup>16</sup>

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.<sup>17</sup> Convictions that count towards this exclusion are those for which an element of the offense is possession, use, or distribution of a controlled

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<sup>8</sup> Exhibit 10, page 8.

<sup>9</sup> AS 11.71.040(d).

<sup>10</sup> Exhibit 10, page 1.

<sup>11</sup> Exhibit 10, page 4.

<sup>12</sup> Exhibit 10, page 3.

<sup>13</sup> 7 C.F.R. § 273.16(c)(1).

<sup>14</sup> 7 C.F.R. § 273.16(e)(6).

<sup>15</sup> 7 C.F.R. § 273.16(b)(1).

<sup>16</sup> 7 C.F.R. § 273.16(b)(12).

<sup>17</sup> 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.

substance as defined by the Controlled Substance Act, 21 U.S.C. 802(6).<sup>18</sup> In addition, a person who is in violation of a condition of probation or parole is not an eligible household member.<sup>19</sup>

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.<sup>20</sup> 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.

Mr. B was asked if he had a felony conviction, and he answered falsely. It is highly probable that Mr. B was aware of his own conviction, knew that it was drug-related, and knew that it was a felony conviction. The division has proven an IPV by clear and convincing evidence.

The division also alleged that Mr. B committed an IPV by not disclosing his status as a fleeing felon. It is highly probable that Mr. B knew he was in violation of the conditions of his parole. He was not asked, however, whether he was in violation of his parole. Instead, he was asked whether he was fleeing from prosecution, custody, or confinement.<sup>21</sup>

The division argued that Mr. B knew from prior experience that violating his parole would result in further incarceration. According to the division, Mr. B knew he was fleeing incarceration because he knew he was violating parole by not reporting to his parole officer. The difficulty with this argument is that Mr. B was previously found to have violated parole but was not incarcerated.<sup>22</sup> It is the division's burden to prove Mr. B's state of mind when he was completing his Food Stamps application. This can be done through circumstantial evidence, but that evidence must be strong enough to show it is highly probable that Mr. B knew the state was seeking to incarcerate him. Given the facts in this case, the division has not met its burden of proving Mr. B intentionally gave a false or misleading answer to the question about fleeing incarceration.

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<sup>18</sup>

*Id.*

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7 C.F.R. § 273.11(n).

<sup>20</sup>

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

<sup>21</sup>

Exhibit 7, page 10.

<sup>22</sup>

Exhibit 10, page 3 (the third prior finding of violation was on February 22, 2013, and no suspended jail time was imposed).

#### IV. Conclusion and Order

Mr. B falsely stated on his application that he did not have a prior drug-related felony conviction. The division met its burden of proving this first known Intentional Program Violation of the Food Stamps program. Mr. B is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and required to reimburse the division for benefits that were overpaid as a result of the intentional program violation.<sup>23</sup> The Food Stamp disqualification period shall begin June 1, 2014.<sup>24</sup> This disqualification applies only to Mr. B, and not to any other individuals who may be included in his household.<sup>25</sup> For the duration of the disqualification period, Mr. B' 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.<sup>26</sup>

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.<sup>27</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. B or any remaining household members are now required to make restitution.<sup>28</sup> If Mr. B disagrees with the division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>29</sup>

Dated this 28<sup>th</sup> day of March, 2014.

Signed  
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Jeffrey A. Friedman  
Administrative Law Judge

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<sup>23</sup> 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).

<sup>24</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> 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).

<sup>25</sup> 7 C.F.R. § 273.16(b)(11).

<sup>26</sup> 7 C.F.R. § 273.11(c)(1).

<sup>27</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>28</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>29</sup> 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 15<sup>th</sup> day of April, 2014.

By: Signed \_\_\_\_\_  
Name: Jeffrey A. Friedman  
Title: Administrative Law Judge

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