

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

In the Matter of)	
)	OAH No. 14-0431-ADQ
C M)	DPA/FCU No.
_____)	Agency No.

DECISION and ORDER

I. Introduction

C M received Food Stamp¹ benefits during 2013, and sought to renew them by mailing in an eligibility review form in early 2014. The Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a third Intentional Program Violation (IPV) of the Food Stamp program in connection with her 2014 eligibility review form by misrepresenting her residence and that of her children.

A hearing convened in this case on April 28, 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.² Ms. M did not attend the hearing and could not be reached at the telephone number she had provided to the program.³ The hearing went forward in her absence.⁴

This decision concludes that DPA proved by clear and convincing evidence that Ms. M committed her third IPV, and must be barred from the program for the rest of her life.

II. Facts

C M has two prior IPVs in the Food Stamp program. The first occurred in 1999. The second was quite recent, involving the intentional concealment of income between February and July of 2013. The second IPV was discovered by early January of 2014 and fully adjudicated as of March 3, 2014.⁵

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program (“SNAP”).

² The certified mail was returned marked “UTF, unable to forward.” Ex. 3. The address used matches the one Ms. M gave on her January 25, 2014 eligibility review form (Ex. 4).

³ The number was not receiving calls. Ms. M most recently provided this number in her January 25, 2014 eligibility review form (Ex. 4).

⁴ 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.

DPA was represented at the hearing by Dean Rogers, an investigator employed by DPA’s Fraud Control Unit. Amanda Holton, a DPA eligibility technician, testified on behalf of DPA.

⁵ *See* OAH Case No. 14-0008-ADQ (Ex. 9).

On January 25, 2014, Ms. M filled out and mailed in a Food Stamp eligibility review form.⁶ On the form, she listed an address on XX Avenue at No Name as both her mailing address and residence. She claimed that five sons and one daughter lived with her at that address. Official school records, however, show that five of these children have been enrolled in schools in No Name, Kentucky since October of 2013 (the sixth, a 19-year-old, does not appear in school records and may not be a student).⁷ Ms. M herself used her Alaska Food Stamps regularly and exclusively in Kentucky from November of 2013 through, and beyond, the date of her eligibility review form.⁸ Since October 20, 2013, someone other than Ms. M has been living at the XX Avenue address she gave as her place of residence.⁹

Perhaps because Ms. M was already under suspicion for her second IPV, DPA noted these problems immediately and denied the January 25, 2014 reapplication. Accordingly, no benefits were issued as a result of the misstatements on that document.¹⁰

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.¹¹ In this case, DPA seeks to establish a third IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.¹²

A special issue is presented by the fact that Ms. M was in the adjudication process regarding a second IPV when the conduct alleged to be her third IPV took place. Food Stamp law provides that “[t]he same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.”¹³ Thus, if the conduct alleged in this case were simply a continuation of the income concealment that was being evaluated for her second IPV, it would have to have been addressed in the second proceeding, and could not have formed the basis for a third IPV. However, the conduct alleged in this proceeding is entirely different—it is a misrepresentation of residence, not a concealment of income. Thus, it is possible for it to form the basis for an independent, third IPV.

⁶ Ex. 4; Holton testimony.
⁷ Compare Ex. 4 with Ex. 7.
⁸ Ex. 8.
⁹ Ex. 6.
¹⁰ Holton testimony.
¹¹ See 7 U.S.C. § 2015(b).
¹² 7 C.F.R. § 273.16(e)(6).
¹³ 7 C.F.R. § 273.16(e)(8)(i).

Federal Food Stamp law provides that a lifetime disqualification must be imposed on any individual found to have committed a third IPV.¹⁴ An intentional program violation is defined as “having intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁵

It is clear that Ms. M used a false Alaska address when she applied for Food Stamps in January of 2014, and that at least five of the six children she listed as Alaska household members had moved to Kentucky and enrolled in school there several months before she reapplied. Listing herself and her children as residing at the Alaska address 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 not plausible that Ms. M could have applied for benefits in Alaska and overlooked the fact that she and the children had long since moved out of the home she claimed in this state. The evidence is clear and convincing that Ms. M's misrepresentation was intentional. She has therefore committed a third IPV.

IV. Conclusion and Order

Ms. M has committed a third Intentional Program Violation of the Food Stamp program. She is disqualified permanently from receiving Food Stamp benefits.¹⁶ This disqualification applies only to Ms. M, and not to any other individuals who may be included in her household.¹⁷ In the future, 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.¹⁸

DPA shall provide written notice to Ms. M regarding the disqualification.¹⁹ It shall provide written notice to any remaining household members of the benefits they will receive following the disqualification, or that they must reapply because the certification period has expired.²⁰

Dated this 29th day of April, 2014.

¹⁴ 7 C.F.R. § 273.16(b)(1)(iii).

¹⁵ 7 C.F.R. § 273.16(c)(1).

¹⁶ 7 C.F.R. § 273.16(b)(1)(iii).

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 *Id.*

Signed _____
Christopher Kennedy
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 13th day of May, 2014.

By: *Signed* _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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