

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

In the Matter of	)	OAH No. 13-1661-ADQ
	)	Division No.
	)	Fraud Control Case No.
J K. Q	)	Food Stamp Program
_____	)	

**DECISION AND ORDER**

**I. Introduction**

J Q applied for Food Stamp<sup>1</sup> benefits in August of 2013, notwithstanding that she had a felony drug conviction in her past that made her ineligible. The Department of Health and Social Services, Division of Public Assistance (DPA) paid her benefits for three months before realizing that she should not have received them. DPA then initiated this Administrative Disqualification case against her, alleging she had committed a third Intentional Program Violation (IPV) of the Food Stamp program, requesting a lifetime disqualification, and requesting that she be ordered to repay the benefits.

Ms. Q's hearing took place on December 23, 2013. She participated telephonically and testified on her own behalf. Dean Rogers, an investigator employed by the DPA's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Division, also testified for DPA. Exhibits 1-12 were admitted without objection. The hearing was recorded.

This decision concludes that Ms. Q cannot be found to have committed a third Intentional Program Violation on the basis of the evidence supplied. Nonetheless, Ms. Q is in fact ineligible for Alaska Food Stamps for the rest of her life (unless the law changes, or her conviction is expunged in the future), and she must repay the benefits erroneously paid to her.

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<sup>1</sup> 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.

## II. Facts

On August 9, 2013, J Q visited a public assistance office, filling out and turning in an application for Food Stamps and another benefit program.<sup>2</sup> She received her eligibility interview the same day.<sup>3</sup>

Ms. Q's written application left a number of questions blank. She did not respond to questions 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 27, 28, and 31.<sup>4</sup> Nonetheless, after an eligibility interview, DPA approved her for Food Stamps.<sup>5</sup>

One of the questions Ms. Q did not answer was a question about drug felony convictions. Had she answered that question, she would have had to disclose a conviction for third degree misconduct involving a controlled substance, which is a Class B felony.<sup>6</sup> Ms. Q's sentence called for five days of incarceration for the offense, of which she served three days.<sup>7</sup>

Ms. Q attributes the unanswered questions on her application to being rushed. She says she did not know her conviction had bearing on her eligibility.

Ms. Q's eligibility interview covered one of the 19 questions she skipped on her application: the eligibility technician obtained and noted information called for in question 10, relating to non-work income.<sup>8</sup> However, there is no record that the technician inquired about convictions, nor of what answer she received if she did. The DPA technician who testified at the hearing—not the one who conducted the interview—says she “assume[s]” the subject was discussed.<sup>9</sup> Ms. Q testified that it was not discussed.

Ms. Q's Food Stamps were approved, and she received benefits for August, September, and October of 2013.<sup>10</sup> However, her conviction made her ineligible for these benefits. DPA calculates that Ms. Q received \$491 in Food Stamp benefits that she was not entitled to receive.<sup>11</sup>

Ms. Q has previously been found to have committed two IPV's, one in 1989 and one in 2002.<sup>12</sup> The details of these violations are not in the record.

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<sup>2</sup> Ex. 6; testimony of Ms. Q. Although the application was dated August 8, this seems to have been an error.

<sup>3</sup> Ex. 8.

<sup>4</sup> Ex. 6.

<sup>5</sup> Ex. 8.

<sup>6</sup> *See* Ex. 10.

<sup>7</sup> Ex. 10; testimony of Ms. Q.

<sup>8</sup> Ex. 8; *see also* Ex. 6, p. 4.

<sup>9</sup> Testimony of Ms. Holton.

<sup>10</sup> Ex. 9.

<sup>11</sup> Ex. 11; Holton testimony.

<sup>12</sup> Ex. 12; testimony of Ms. Q.

### III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, DPA must show that Ms. Q *intentionally* “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to her eligibility.<sup>13</sup> The Division must prove these elements by clear and convincing evidence.<sup>14</sup> Clear and convincing evidence is stronger than a preponderance of evidence but weaker than evidence beyond a reasonable doubt. “If clear and convincing proof is required, there must be induced a belief that the truth of the asserted facts is highly probable.”<sup>15</sup> Intent can be deduced from circumstantial evidence.<sup>16</sup>

In this case, there is no evidence at all that Ms. Q made an affirmative misrepresentation. All of the actual answers on her sworn application seem to have been true. Instead, DPA’s theory is that Ms. Q fraudulently “withheld” facts regarding her eligibility by not answering the question about drug convictions. Ms. Q did fail to answer this question, among numerous others. The only material question is whether the Division has offered enough evidence to constitute clear and convincing proof that Ms. Q’s omission of this particular item of information was intentional.

It is certainly possible, and maybe even probable, that Ms. Q deliberately concealed her conviction. But the record is too sparse to make this version of events “clear and convincing.” Ms. Q’s version is also plausible: a rushed application with many mandatory questions left blank, followed by a hasty interview in which, to judge by the written record, little of the omitted information seems to have been pursued. Because the Division has not proved the element of intentionality to the required level of certainty, it has not met its burden of proof to establish an IPV.

Nonetheless, the Division has established—through Ms. Q’s frank admission, among other proof—that Ms. Q has a drug felony conviction. This leads to largely the same result as establishing a third IPV: in Alaska, Ms. Q will be ineligible for Food Stamps for the rest of her life, barring a change of law or a change in her conviction status.<sup>17</sup> Because the conviction

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<sup>13</sup> 7 C.F.R. § 273.16(c).

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

<sup>15</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>16</sup> 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 . . . .”

<sup>17</sup> See 7 C.F.R. § 273.11(m). Alaska has adopted no time limit or exception regarding this exclusion.

predated the Food Stamp benefits she received in 2013, she was ineligible for those benefits and, in the absence of exceptional circumstances, she will have to repay them.

#### **IV. Conclusion and Order**

Ms. Q has not been proven to have committed a third Intentional Program Violation of the Food Stamp program. Nonetheless, it has been established that she has a drug felony conviction that, under current law, creates a life-long bar to receiving Food Stamps in Alaska in the future. The same conviction disqualified her from the benefits she received in August, September, and October of 2013.

DPA may seek to require Ms. Q to make restitution of incorrectly issued benefits.<sup>18</sup> If Ms. Q disagrees with the Division's restitution demand, she may request a separate hearing on that issue.<sup>19</sup>

Dated this 24<sup>th</sup> day of December, 2013.

*Signed*  
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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 9<sup>th</sup> day of January, 2014.

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

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

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<sup>18</sup> 7 C.F.R. § 273.18(a).

<sup>19</sup> 7 C.F.R. § 273.15.