

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

In the Matter of)	OAH No. 14-0583-ADQ
)	Division No.
Q X. G)	Fraud Control Case No.
_____)	

DECISION

I. Introduction

Q G applied and was approved for Food Stamp¹ benefits. On April 18, 2014, the Department of Health and Social Services, Division of Public Assistance Fraud Control Unit (Division) initiated this Administrative Disqualification case against him, alleging he had committed an Intentional Program Violation (IPV) of the Food Stamp program.²

Mr. G's hearing was held on May 22, 2014. Mr. G represented himself. Wynn Jennings, an investigator employed by the Division, represented the Division.

This decision concludes that Mr. G did not commit an IPV of the Food Stamp program.

II. Facts

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

Mr. G applied for Food Stamp benefits on July 29, 2013.³ In his application, he stated that he had never been convicted of a drug-related felony for an offense that occurred after August 22, 1996.⁴ Mr. G signed the application, certifying that the information contained in it was correct.⁵

Mr. G was convicted of a drug felony on July 25, 2013, for an offense that occurred on April 29, 2013. Mr. G received a suspended imposition of sentence for a 36 month period for that conviction.⁶ Mr. G testified he understood that because he received a suspended imposition of sentence, he would not have a conviction on his record. Mr. G then applied for Food Stamp

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. 7.

⁴ Ex. 7, p. 2.

⁵ Ex. 7, p. 8.

⁶ Ex. 10, pp. 3 - 8.

benefits believing he did not have a felony drug conviction.⁷ Mr. G subsequently missed a probation visit, was reincarcerated in August 2013, and he ended up being reconvicted on the felony drug charge, without a suspended imposition of sentence, in early 2014.⁸

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, the Division must prove by clear and convincing evidence⁹ that Mr. G *intentionally* “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”¹⁰ To meet this standard, the division must show that it is *highly probable* that Mr. G intended to provide or knowingly provided incorrect information.¹¹

A review of the facts demonstrates that Mr. G had a conviction for a drug felony, but represented that he did not. The question then arises as to whether this was an intentional misrepresentation. The crux of Mr. G’s testimony was that he did not believe he had a felony drug conviction when he applied for Food Stamp benefits because he had a suspended imposition of sentence for his felony drug charge. If Mr. G’s testimony is deemed credible, then he did not make an intentional misrepresentation, and the Division will not have proven its case.

It should be noted that even when a person has a suspended imposition of sentence in a criminal case, and the person has complied with the court’s conditions, and the court has set the conviction aside, that person still technically has a criminal conviction:

Further, we have held that setting aside a conviction does not expunge the conviction from an offender's criminal record. Both the conviction and the judgment setting it aside consequently remain in the public record. Members of the public, such as potential employers inquiring into a job applicant's criminal record, can learn of the existence of a conviction that has been set aside. They can do this by researching court records or by requiring a person applying for employment or housing to divulge the fact of a prior conviction even if it has been set aside.^[12]

⁷ Q G testimony.

⁸ Mr. G testified that he was reincarcerated sometime in August 2013 and that he was reconvicted of the original charge in early 2014.

⁹ 7 C.F.R. § 273.16(e)(6).

¹⁰ 7 C.F.R. § 273.16(c).

¹¹ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003) (defining clear and convincing standard).

¹² *Doe v. State, Dept. of Public Safety*, 92 P.3d 398, 407 (Alaska 2004) (citations omitted). *Also see State, Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*, 169 P.3d 595, 599 – 600 (Alaska 2007) (regardless of the setting aside of the conviction, the applicant remained a “person who ‘has been convicted’ of a criminal offense.”).

However, it is not an uncommon occurrence for persons to have a misunderstanding about the nature of a suspended imposition of sentence. This is shown by the case of *Journey v. State* where Mr. Journey tried to have his conviction expunged after he had it set aside, pursuant to a suspended imposition of sentence. In that case, the district court denied the expunction stating he was aware that defendants who received suspended impositions of sentences were routinely and wrongly informed, that if they completed their probation and had their conviction set aside, they could “‘honestly say that you don’t have a conviction’” because the conviction “‘only goes away in the sort of a narrow technical sense.’”¹³

Mr. G’s testimony established that he misunderstood the nature of a suspended imposition of sentence and believed that it meant he had not been convicted of the underlying offense. Accordingly, although he made a misrepresentation on his Food Stamp application when he stated he had not been convicted of a drug-related felony, that misrepresentation was not intentional. The Division has therefore not met its burden of proof; it failed to establish that Mr. G made an intentional misrepresentation on his July 29, 2013 application for benefits.

IV. Conclusion

Mr. G did not commit an IPV of the Food Stamp program.

Dated this 29th day of May, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

Non-Adoption Options

B. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set forth below, and adopts the proposed decision as revised:

The division has not met the burden of proof as to whether Mr. G committed an Intentional Program Violation. There was no showing by the Department of what Mr. G was told by the court at the time his Sentence was suspended. However, it is proven that Mr. G has been convicted of a drug related felony Conviction and received a suspension of sentencing for 3 years. The period of suspended sentence has not expired and therefore the conviction is in effect. This conviction, in and of itself, under current law, constitutes a lifelong bar to receive Food Stamps thereby disqualifying him from benefits he received after his drug conviction.

¹³ *Journey v. State*, 895 P.2d 955, 962 (Alaska 1995).

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 7th day of July, 2014.

By: Signed
Ree Sailors, Deputy Commissioner
Department of Health and Social Services

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