

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

In the Matter of)	OAH No. 14-1885-ADQ
)	Division No.
B U)	Fraud Control Case No.
_____)	Food Stamp Program

DECISION AND ORDER

I. Introduction

B U is a former Food Stamp¹ recipient. On November 10, 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 first time Intentional Program Violation of the Food Stamp program.²

Mr. U's hearing was held on January 8, 2015. Mr. U appeared telephonically for his hearing and represented himself.

Kenneth Cramer, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Fraud Control Unit, testified for the Division.

This decision concludes that Mr. U committed a first Intentional Program Violation of the Food Stamp program.

II. Facts

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

Mr. U applied for Food Stamp benefits for a one-person household (himself only) on October 28, 2013. He was unemployed at the time. He signed the application stating that he understood the "Rights and Responsibilities" section of the application.³ The "Rights and Responsibilities" section of the application notifies Food Stamp recipients that they are required to notify the Division within ten days of the date their total household income exceeds the

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. 8, pp. 11 – 20.

income limit for their household size.⁴ Mr. U participated in a telephonic interview on October 29, 2013, where his “Rights and Responsibilities” were explained to him.⁵ He was then sent a notice on October 30, 2014 which informed him that his Food Stamp application was approved and that he had to notify the Division, within ten days, if his household income, before deductions, exceeded \$1,555.⁶

Mr. U started working in March 2014. His income exceeded \$1,555 per month in April, May, June, July, August, and September 2014.⁷ He did not notify the Division that he was employed.⁸ When he applied to renew his Food Stamp benefits at the end of August 2014, he told the Division, on his application, that he wasn’t working.⁹ The Division Eligibility Technician, who interviewed him for that renewal, reviewed a Department of Labor database and determined he was working. She asked him about his job, and he denied working and told the Eligibility Technician that he quit his job in March 2014. The Eligibility Technician contacted his employer of record and was told that he was still working.¹⁰

The Division initiated a fraud investigation which culminated in this case.¹¹ The Division calculated Mr. U received \$904 in Food Stamp benefits that he was not entitled to receive during the period from June 2014 through September 2014.¹²

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹³ that Mr. U committed an Intentional Program Violation of the Food Stamp program: that he intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to his employment.¹⁴ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.¹⁵

The Division’s evidence shows that Mr. U did not inform the Division that he was employed and earning income that exceeded \$1,555 within ten days. He would have been aware

⁴ Ex. 7, p. 1.
⁵ Ex. 9, p. 1; Ms. Holton’s testimony.
⁶ Ex. 9, p. 5.
⁷ Ex. 10.
⁸ Ms. Holton’s testimony.
⁹ Ex. 8, p. 3.
¹⁰ Ex. 9, p. 2.
¹¹ Ex. 2.
¹² Ms. Holton’s testimony; Ex. 11.
¹³ 7 C.F.R. § 273.16(e)(6).
¹⁴ 7 C.F.R. § 273.16(c).
¹⁵ 7 C.F.R. § 273.10(e)(1)(i)(A).

of this income level no later than the end of April 2014, because his income exceeded \$1,555 in April. He would have therefore had to notify the Division of his income sometime during the first part of May, 2014, which he did not.

The Division's evidence also shows that Mr. U did not inform the Division that he was employed on his August 2014 Food Stamp renewal application. He then denied being employed during his renewal interview. It is undisputed that he was employed at the time.

Mr. U did not present any testimony or other evidence disputing the Division's evidence.

The question then arises as to whether Mr. U's failure to timely notify the Division within ten days after he began earning over \$1,555 per month was an intentional concealment of facts regarding his income and employment. Similarly, the question arises as to whether Mr. U's denial of employment with regard to his August 2014 renewal application was an intentional misrepresentation of his income and employment.

Ordinarily, the only direct evidence of a person's intent is testimony from that person on that subject. However, while Mr. U appeared for his hearing, he did not testify at his hearing, nor did he present any explanation. Accordingly, there is no direct evidence of his intent in the record.

Intent can, however, also be deduced from circumstantial evidence.¹⁶ Mr. U was notified in writing, and orally at his interview, of his reporting requirements. He was given an approval notice that again told him of his reporting requirements. Given these advisements, he would have been aware that he had to notify the Division when he obtained a job that paid him more than \$1,555 per month. Absent any explanation or contrary testimony, which he did not present, the weight of the evidence leads to the conclusion, by clear and convincing evidence, that Mr. U intentionally concealed the fact of his employment income by failing to report it in a timely manner. Similarly, the weight of the evidence leads to the conclusion, by clear and convincing evidence, that Mr. U intentionally misrepresented that he was unemployed on his August 2014 Food Stamp renewal application and its associated interview.

The Division has therefore met its burden of proof and demonstrated, by clear and convincing evidence, that Mr. U (1) intentionally concealed his employment income by not reporting it in a timely manner, and (2) intentionally misrepresented that he was unemployed on

¹⁶ 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"

his August 2014 Food Stamp renewal application. Consequently, Mr. U has committed a first Intentional Program Violation of the Food Stamp program.

IV. Conclusion and Order

Mr. U has committed a first time Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and is required to reimburse the Division for benefits that were overpaid as a result of the Intentional Program Violation.¹⁷ The Food Stamp program disqualification period shall begin April 1, 2015.¹⁸ This disqualification applies only to Mr. U, and not to any other individuals who may be included in his household.¹⁹ For the duration of the disqualification period, Mr. U'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.²⁰

The Division shall provide written notice to Mr. U 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.²¹

If over-issued Food Stamp benefits have not been repaid, Mr. U or any remaining household members are now required to make restitution.²² If Mr. U disagrees with the Division's calculation of the amount of overissuance to be repaid, he may request a separate hearing on that limited issue.²³

Dated this 30th day of January 2015.

Signed

Lawrence A. Pederson
Administrative Law Judge

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

¹⁸ 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).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

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

²³ 7 C.F.R. § 273.15.

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 February, 2015.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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