

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

In the Matter of)	
)	OAH No. 15-0213-ADQ
F T)	DPA/FCU No.
_____)	Agency No.

DECISION

I. Introduction

F T applied for recertification to the Supplemental Nutrition Assistance Program (SNAP or Food Stamps) benefits in October of 2011. Two and a half years later, on February 25, 2015, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamps program.¹

A hearing convened in this case on March 31, 2015, with Ms. T having been sent advance notice of the hearing by both certified mail and standard First Class mail to her address of record from 2011-2012, which was a general delivery address.² Ms. T 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

DPA was represented at the hearing by William Schwenke, an investigator employed by DPA's Fraud Control Unit. Marlena Hamilton, a DPA Eligibility Technician, testified on behalf of DPA. DPA Exhibits 1-10, 12-14, and two telephone recordings were admitted into evidence without objection and without restriction.

The hearing was held by Administrative Law Judge (ALJ) Kay Howard. However, ALJ Howard subsequently retired, and the undersigned was assigned this case.

This decision concludes that DPA did not prove by clear and convincing evidence that Ms. T committed a first Intentional Program Violation of the Food Stamps program. Although it may be likely that Ms. T received benefits to which she was not entitled, and she may be required to repay those benefits, no IPV penalty can be imposed on the strength of the evidence presented by this case.

¹ Ex. 3.

² Ex. 1, p. 2; Ex. 3; Ex. 4. She did not claim the certified mail.

³ The number was not in service.

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.

II. Facts and Procedural History

This case turns on a single allegation: that Ms. T claimed B J as a household member at a time when he had moved out of her home. DPA presented this allegation by way of unsworn, unsigned statements that had been obtained in 2011 from individuals who might have reason to be hostile to Ms. T.⁵ Administrative Law Judge Howard felt that, in light of the elevated burden of proof in a case of this kind, the central evidence should be presented under oath. She raised this issue at the hearing, and after a discussion with the DPA representative, a schedule was set for DPA to supplement the record. DPA never supplemented the record and never filed any statement indicating why it was not doing so. Although there is no way of telling for sure, it may be that DPA found that the accusers were unwilling to swear to their allegations.

III. Discussion

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.⁶ In this case, DPA seeks to establish an IPV, and to do so DPA must prove the elements of that IPV by clear and convincing evidence.⁷

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.”⁸ Therefore, DPA must show that it is not merely possible, nor even merely likely, that Ms. T set out to deceive the program and submitted false information; it must show such a deceptive plan to be “highly probable.”

In a case whose central allegation is based on the recollections and statements of others, it is difficult to meet this high standard without getting some actual testimony. ALJ Howard raised this issue with DPA at the hearing, and for unknown reasons, DPA did not follow up. Under the circumstances, this ALJ is unwilling to find, on the basis of statements that are unsworn and that are not even signed, that the heightened evidentiary standard has been met in this case.

⁵ These statements are Ex. 12, pp. 1-2, and the two unnumbered recordings. There are also some documents at Ex. 12, pp. 3-9, but they are not probative on the particular fact at issue in this case.

⁶ *See, e.g.*, 7 U.S.C. § 2015(b).

⁷ 7 C.F.R. § 273.16(e)(6).

⁸ *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

IV. Conclusion

No IPV has been established. This decision does not prevent DPA from seeking reimbursement of benefits paid to the T household beyond those to which the household was entitled.

Dated this 2nd day of July, 2015.

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 16th day of July, 2015.

By: *Signed*

Name: Andrew M. Lebo

Title: Administrative Law Judge

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