

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

In the Matter of)	
)	
J H)	OAH No. 15-0511-ADQ
<hr style="width:40%; margin-left:0;"/>)	Agency No.

DECISION

I. Introduction

The State of Alaska, Department of Health and Social Services, Division of Public Assistance (the “Division”) initiated this Administrative Disqualification case against J H, alleging that Ms. H committed a first-time Intentional Program Violation (IPV) of the Food Stamps program. At a hearing convened pursuant to 7 CFR 273.16(e), the Division proved by clear and convincing evidence that Ms. H committed a first Intentional Program Violation of the Food Stamps program by failing to report certain employment and income to the Division. She is therefore required to pay restitution as to overpaid benefits, and is disqualified from the Food Stamps program for a period of twelve months.

II. Facts

A. Material Facts

On December 23, 2013, J H completed, signed, and submitted an Eligibility Review Form for continued receipt of Food Stamp benefits.¹ As part of this application Ms. H signed a statement that all information contained in the application was true and correct.² Ms. H further certified, through her signature, that she had read and understood the “Rights and Responsibilities” document included with the application paperwork, and that she understood the rights and responsibilities, including fraud penalties, described therein.³

The Eligibility Review Form contains sections asking about an applicant’s household composition, income, and expenses. In the income section, Question 7 directs the applicant to provide certain information “if you or anyone in your household is working.” The specific information requested is: “Person Employed, Employer, Hours Worked per week, Hourly Wage,

¹ Ex. 7, pp. 1-9. Although Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP) in 2008, the program is still most commonly referred to as the “Food Stamps” program. Accordingly, this decision will refer to the program as the “Food Stamps” program.

² Ex. 7, p. 5.

³ Ex. 7, p. 5. That document, titled, “Your Rights and Responsibilities,” was given to Ms. H as part of her application for Food Stamp benefits, and specifically warns applicants against providing false information during the Food Stamp application process. Ex. 7, pp. 6-9, Amanda Holton hearing testimony.

and Frequency of Payments.”⁴ Question 8 then asks, “Will anyone’s job, wages or hours of work change soon?”⁵

On Question 7 – asking about any household wage earners – Ms. H wrote “N/A” (“not applicable”) in large letters across the box provided for identifying “person(s) employed” and their “employer.”⁶ She then checked “No” in response to Question 8 about any anticipated changes to jobs, wages or hours of work.⁷

Several weeks after submitting the Eligibility Review Form, H was interviewed by a DPA Eligibility Technician as part of the eligibility review process.⁸ Records of that January 2014 interview do not reflect that Ms. H disclosed any employment; to the contrary, the only “income” identified in those records is \$100 per month in child support payments.⁹ Records of the interview also reflect that the eligibility technician and Ms. H discussed the “Rights & Responsibilities” documentation, and that Ms. H indicated that she understood this document and had no questions about it.¹⁰

Based on the information provided in her Eligibility Review Form and interview, Ms. H was approved for Food Stamps for the period of February 2014 through July 2014, in the amount of \$415 per month.¹¹ Division records reflect that she was issued and redeemed Food Stamps in that amount for each month during the eligibility period.¹²

Ms. H completed and submitted another Eligibility Review Form on July 9, 2014.¹³ Again, Ms. H signed a statement indicating that the information contained in the application was true and correct, and acknowledging her awareness of the attached “Rights and Responsibilities” document.¹⁴ Again, Ms. H wrote “N/A” in response to Question 7’s inquiry about whether anyone in the household was working, and checked “no” in response to Question 8’s inquiry as to whether anyone’s job, wages or hours of work were expected to change soon.¹⁵

Ms. H was again approved for Food Stamp benefits. For August and September 2014, she was issued and redeemed Food Stamp benefits in the amount of \$415 per month.¹⁶ For

⁴ Ex. 7, p. 3.

⁵ Ex. 7, p. 3.

⁶ Ex. 7, p. 3.

⁷ Ex. 7, p. 3.

⁸ Ex. 8, p. 1; Holton testimony.

⁹ See Ex. 8, p. 2

¹⁰ Ex. 8, p. 1.

¹¹ Ex. 8, p. 2.

¹² Ex. 9, pp. 1-2.

¹³ Ex. 7, pp. 10-14.

¹⁴ Ex. 7, p. 14.

¹⁵ Ex. 7, p. 12.

¹⁶ Ex. 9, p. 1.

October 2014 through January 2015, she was issued and redeemed Food Stamp benefits in the amount of \$417 per month.¹⁷

On March 3, 2015, a DPA Eligibility Technician forwarded a Fraud Complaint Report to the Fraud Control Unit.¹⁸ The Eligibility Technician reported that, while processing Ms. H's March 2015 eligibility recertification, she was notified by the Department of Labor that Ms. H had been employed between October 2013 and December 2014.¹⁹ The Division then initiated a fraud investigation which culminated in this case.²⁰

Department of Labor records reflected that Ms. H had been continuously employed by "No Name LLC" from the fourth quarter of 2013 through December 2014.²¹ The Division's Fraud Control Unit also obtained records from "theworknumber.com," a third-party verification service providing income and employment information to assist agencies in verifying applicants' eligibility for social service benefits.²² Those records likewise reflected that Ms. H had been employed full time from October 14, 2013 through December 18, 2014.²³

Based on the income documentation received, Eligibility Technician Amanda Holton performed a Loss Analysis to determine the amount of overpayment to Ms. H. Ms. Holton prepared a Loss Statement Summary, which was admitted into evidence as Exhibit 13. The April 30, 2015 Loss Statement Summary reflects that, during the time period in question, Ms. H received \$4,090 more in Food Stamps benefits than she would have received had she disclosed the income discovered during the Fraud Investigation.²⁴

B. Procedural History

The Division notified Ms. H of its filing of this case, and of her hearing date, via certified mail delivered on May 2, 2015.²⁵ The Division also sent Ms. H a copy of its evidence to be presented at the hearing, delivered via certified mail on May 22, 2015.²⁶

¹⁷ Ex. 9, p. 1. Ms. H continued to receive Food Stamps benefits after January 2015. However, this Administrative Disqualification action only concerns the period from February 2014 through January 2015.

¹⁸ Ex. 2.

¹⁹ Ex. 2.

²⁰ Ex. 1.

²¹ Ex. 2; Ex. 10; Holton testimony.

²² Ex. 11; Holton testimony. The testimony of Eligibility Technician Amanda Holton established that information contained in Exhibit 11 is of a type reasonably relied upon by the Division in conducting its eligibility reviews and fraud investigations.

²³ Ex. 11. The Department of Labor records identify Ms. H's employer as "No Name, LLC," while the "worknumber.com" records identify her employer as "No Name 2." [Ex. 10, 11]. Judicial notice is taken of the fact that, during the time period in question, "No Name 2" was a business name licensed to "No Name, LLC" pursuant to a Certificate of Business Name Registration issued on August 20, 2010 by the State of Alaska, Department of Commerce, Community and Economic Development.

²⁴ Ex. 13; Holton testimony.

²⁵ Ex. 3, 4. The signature card indicates that it was signed by Ms. H. *See* Ex. 4.

Ms. H's hearing was held on June 5, 2015. Ms. H did not attend or otherwise participate. The Administrative Law Judge made attempts, on the record, to contact Ms. H at both of her known telephone numbers. No one answered the first number, and a recording indicated that voice mail was not set up. The second number was not functional. Pursuant to 7 CFR 273.16(e)(4), and upon a finding that Ms. H had received adequate notice of the hearing, the hearing proceeded in Ms. H's absence.

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, attended the hearing and represented the Division. Eligibility Technician Amanda Holton also attended the hearing and testified on behalf of the Division. All exhibits presented were admitted. The record was closed at the end of the hearing.

III. Discussion

Federal law prohibits a person from obtaining Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.²⁷ In order to prove an Intentional Program Violation of the Food Stamps program, the Division must prove by clear and convincing evidence that Ms. H intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts" on her eligibility review form.²⁸

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are "highly probable."²⁹ This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

A person who is found to have committed a first IVP is disqualified from receiving Food Stamps for 12 months,³⁰ and must repay any benefits wrongfully received.³¹

As noted above, Ms. H received notice of the hearing and did not attend, nor did she submit any written statement or evidence. It appears, from evidence in the Division's exhibits, that Ms. H's initial response to the eligibility technician's concerns was to deny that she had ever been employed at No Name 2.³² However, those unsworn denials are insufficient to overcome the ample evidence in the record that she was so employed.

²⁶ Ex. 5, 6. The signature card again indicates that it was signed by Ms. H. *See* Ex. 6.

²⁷ *See, e.g.*, 7 U.S.C. § 2015(b).

²⁸ 7 C.F.R. § 273.16(c)(1); 7 C.F.R. § 273.16(e)(6).

²⁹ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

³⁰ 7 C.F.R. 273.16(b)(1).

³¹ 7 C.F.R. 273.16(b)(12).

³² *See* Ex. 12, pp. 1, 4.

The Department of Labor records reflecting Ms. H's employment are linked to her unique social security number.³³ Third-party verification records relied on by the Division to verify Ms. H's employment at No Name 2 likewise not only include Ms. H's unique social security number, but also list the same home address as Ms. H listed on her Eligibility Review Forms.³⁴ In short, as a threshold matter, the Division has established by clear and convincing evidence that Ms. H was employed with No Name 2 during the time period in question.

Next, it is clear that Ms. H did not report her employment with or income from No Name 2 on her December 2013 eligibility review form.³⁵ Ms. H likewise did not report her employment with or income on her July 2014 eligibility review form.³⁶ Failure to report this information constitutes misrepresentation by omission, concealment, and/or withholding.

For purposes of proving an IPV, the Division must also prove that Ms. H's misrepresentation or concealment of her income involved a material fact. A fact is deemed material if proof of its existence or non-existence would affect disposition of the case under applicable law.³⁷ Food Stamp eligibility and benefit levels are based in large part on a household's income.³⁸ Ms. H's failure to report the employment income at issue was material because it had the effect of decreasing her reported income, thereby increasing the amount of Food Stamps Program benefits for which her household was eligible. By misrepresenting or concealing her receipt of the employment income at issue, Ms. H prevented that income from being counted for eligibility and benefit level purposes. The Division has therefore shown that the facts misrepresented or concealed by Ms. H were material for purposes of her application for the Food Stamps Program.

The final issue is whether the misrepresentation was intentional. Ms. H did not attend or participate in her hearing, so her state of mind can only be inferred from circumstantial evidence. However, the circumstances of Ms. H's omission do not lend themselves to an appearance of mere negligence. As noted above, Ms. H signed her name directly beneath the "Statement of Truth" provision, advising and reminding her of the obligation to provide accurate information.³⁹

³³ Compare Ex. 3, p. 17 with Ex. 10, p. 2.

³⁴ Compare, Ex. 11, p. 1 with Ex. 7, p. 1.

³⁵ Ex. 7, p. 3.

³⁶ Ex. 7, p. 12.

³⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986).

³⁸ See 7 CFR 273.9.

³⁹ Ex. 7, pp. 4, 14.

Department of Labor records reflect that, at the time Ms. H submitted her December 2013 Eligibility Review Form, she had been employed by No Name 2 for several months.⁴⁰

More specific employment details are provided in the third-party verification documentation relied on by the Division.⁴¹ Those records reflect that, throughout the time that Ms. H completed the December 2013 Eligibility Review Form and interviewed with the Eligibility Review Technician in January 2014, she was working 80 or more hours per pay period.⁴² Likewise, in the pay period immediately prior to her July 2014 recertification application, Ms. H worked a full 80 hours.⁴³ In both instances, however, she nonetheless answered “N/A” to questions about employment and income.⁴⁴ Under these circumstances, it is highly unlikely that Ms. H’s failure to report her income was due to simple inadvertence. Accordingly, the Division has met its burden of proof that Ms. H’s failure to report her employment and income was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Ms. H committed an Intentional Program Violation as defined by the Food Stamps Program regulations.⁴⁵

IV. Conclusion and Order

Ms. H has committed a first-time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from participation in the Food Stamp program for a period of twelve months, beginning on August 1, 2015.⁴⁶ Additionally, if over-issued Food Stamp benefits have not yet been repaid, Ms. H is now required to make restitution.⁴⁷

Dated this 15th day of June, 2015.

Signed
Cheryl Mandala
Administrative Law Judge

⁴⁰ Ex. 10, p. 2.

⁴¹ Ex. 11.

⁴² Ex. 11, p. 3.

⁴³ Ex. 11, p. 3.

⁴⁴ Ex. 7, p. 14.

⁴⁵ 7 CFR § 273.16(c) and (e)(4), (6).

⁴⁶ 7 USC § 2015(b)(1); 7 CFR § 273.16(b)(1). This disqualification applies only to Ms. H, and not to any other individuals who may be included in her household. 7 C.F.R. § 273.16(b)(11). During the period of disqualification, Ms. H’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. 7 C.F.R. § 273.11(c)(1). The Division shall provide written notice to Ms. H and any remaining household members, if any, of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired. 7 C.F.R. § 273.16(e)(9)(ii).

⁴⁷ 7 CFR § 273.16(b)(12). If Ms. H disagrees with the Division’s calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.

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 30th day of June, 2015.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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