

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

In the Matter of )  
 ) OAH No. 15-1156-ADQ  
 J J ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

J J received Food Stamp benefits under the Supplemental Nutrition Assistance Program. The Division of Public Assistance (Division) initiated this Administrative Disqualification action against her, alleging that she had committed an Intentional Program Violation (IPV) of the Food Stamp program.

A hearing was held on October 2, 2015. Ms. J represented herself. The Division was represented by Investigator Kenneth Cramer. Eligibility Technician Amanda Holton testified for the Division. Based on the evidence presented, the Division did not prove an IPV by clear and convincing evidence.

**II. Facts**

Ms. J completed an Eligibility Review Form on February 1, 2012.<sup>1</sup> She stated that she was employed by No Name 1, earning \$9.90 per hour.<sup>2</sup> She was approved for Food Stamp benefits as of March 1, 2012.<sup>3</sup> She was told she had to inform the Division if her monthly gross income totaled \$1,474 or more.<sup>4</sup>

Ms. J's employment and payroll information can be found in an online system called The Work Number.<sup>5</sup> Large employers report payroll information to this system, which is then used by the Division and other public assistance agencies to verify income.<sup>6</sup>

Ms. J has worked at No Name 1 for several years. In April of 2012, she obtained a second job at No Name 2.<sup>7</sup> She reported her second job by filling out a form and leaving it in the

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<sup>1</sup> Exhibit 8, page 1.

<sup>2</sup> Exhibit 8, page 2.

<sup>3</sup> Exhibit 9, page 1; Holton testimony.

<sup>4</sup> Exhibit 9, page 3; Holton testimony. A copy of the actual notice sent to Ms. J is not in the record, but she did not dispute receiving this notice.

<sup>5</sup> Holton testimony.

<sup>6</sup> Holton testimony.

<sup>7</sup> J testimony; Exhibit 10, page 12.

Division's drop box.<sup>8</sup> On May 11, she was issued a paycheck from No Name 2 in the amount of \$458.30.<sup>9</sup> She also received paychecks from No Name 1 of \$633.82 on May 10 and \$657.11 on May 24, 2012. Thus, on May 24, her monthly income was well in excess of the reportable limit of \$1,474. She received another check from No Name 2 on May 25, 2012 in the amount of \$652.90.

On August 15, 2012, Ms. J submitted another Eligibility Review Form.<sup>10</sup> She again stated she was working at No Name 1, but did not disclose any employment with No Name 2.<sup>11</sup> This time, her recertification was denied. The Division determined that her income was over the income limit for this program, and that she had failed to report her employment with No Name 2, and failed to report when her income exceeded \$1,474.<sup>12</sup>

### III. Discussion

#### A. Division's Allegations

The Division claims that Ms. J committed an IPV by failing to report when her monthly income exceeded \$1,474 and failing to disclose her employment with No Name 2. For Food Stamp recipients, an IPV is defined to include "having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts[.]"<sup>13</sup> A person who is found to have committed an IPV is disqualified from receiving Food Stamps for 12 months for a first time violation, and must repay any benefits wrongfully received.<sup>14</sup> In order to prevail, the Division must prove this violation by clear and convincing evidence.<sup>15</sup> Proof by clear and convincing evidence means that the facts asserted are *highly probable*.<sup>16</sup> 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.

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<sup>8</sup> J testimony. Ms. J also recalled submitting a form reporting her No Name 2 rate of pay by leaving it in the Division's drop box. The Division has no record of receiving these forms, but Ms. J's testimony was credible, and it is possible the forms were lost or misfiled.

<sup>9</sup> Exhibit 10, page 12.

<sup>10</sup> Exhibit 8, page 5.

<sup>11</sup> Exhibit 8, page 6.

<sup>12</sup> Exhibit 9, page 2.

<sup>13</sup> 7 C.F.R. 273.16(c)(1).

<sup>14</sup> 7 C.F.R. 273.16(b)(1) and (b)(12).

<sup>15</sup> 7 C.F.R. 273.16(e)(6).

<sup>16</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n.3 (Alaska 2003).

**B. Failure to Report Income Over \$1,474**

There is no dispute that Ms. J failed to report when her income exceeded \$1,474. Instead, the dispute is over whether this was an intentional failure.

Ms. J read and understood the Rights and Responsibilities statement given to her when she submitted her Eligibility Review Form.<sup>17</sup> This statement says “if you receive Food Stamps and do not receive benefits from any other program, you only need to report when your household’s total gross income goes over the income limit for your household.”<sup>18</sup>

Ms. J credibly testified that because she had told the Division of her second job, she thought they were keeping track of her income and would cut off her benefits if she exceeded the income limit. She also testified that she was not keeping track of how much she earned each month. Based on the Rights and Responsibilities statement, she should have known that it was her responsibility to keep track, and she acknowledged during the hearing that she should have done so. However, the Division must prove that it is *highly probable* that Ms. J was aware that her income exceeded the limit because if she was not aware of it, she could not have *intentionally* failed to report it. The Division has not met this standard of proof. The Division has not shown by clear and convincing evidence that Ms. J committed an IPV by failing to report her income.

**C. Reporting Employment at No Name 2**

Although she had been working at both No Name 1 and No Name 2, Ms. J only reported working for No Name 1 when she submitted her August Eligibility Review Form. This form was completed on August 15, 2012.<sup>19</sup> Ms. J explained that she had given No Name 2 her two-week notice shortly before completing this form. Then, within just a few days, No Name 2 called and asked her to come back. They were having trouble hiring sufficient staff and needed her to help train new employees.

At the time she completed the Eligibility Review Form, Ms. J did not report being employed by No Name 2 because she no longer considered herself employed there. She had resigned and No Name 2 had reduced her work schedule to zero hours a week.<sup>20</sup> Again, the

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<sup>17</sup> J testimony.

<sup>18</sup> Exhibit 7, page 1.

<sup>19</sup> The context for her completion of this form was that she believed she had previously reported her employment with No Name 2 shortly after she was first hired there, by submitting a report form in the Division drop box in late April or early May, 2015.

<sup>20</sup> J testimony.

Division must prove that it is *highly probable* that she intentionally concealed her employment with No Name 2. Ms. J's understanding of her employment status is understandable, and her testimony on this subject was credible. The Division has not shown by clear and convincing evidence that Ms. J committed an IPV by failing to list No Name 2 as an employer on her August Eligibility Review Form.

**IV. Conclusion**

Given the circumstances known to the Division at the time, it was reasonable to suspect that Ms. J had intentionally failed to report her income and her employment with No Name 2. However, Ms. J has now provided a consistent and credible explanation for her conduct. Based on all of the evidence presented, the Division has not proven an Intentional Program Violation by clear and convincing evidence. The Division's determination is REVERSED.

Dated this 1<sup>st</sup> day of November, 2015.

*Signed* \_\_\_\_\_  
Andrew M. Lebo  
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 18<sup>th</sup> day of November, 2015.

By: *Signed* \_\_\_\_\_  
Name: Andrew M. Lebo  
Title: Administrative Law Judge

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