

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

In the Matter of	)	
	)	
E W	)	OAH No. 16-0897-ADQ
	)	Agency No.

**DECISION AND ORDER**

**I. Introduction**

In this administrative disqualification case, the Alaska Division of Public Assistance (Division) alleges that E W committed a first known Intentional Program Violation of the Food Stamp program by failing to declare certain employment and income.<sup>1</sup>

This decision concludes that Ms. W intentionally failed to declare her employment and income on both her Food Stamp application and during her eligibility interview. This was a first time Intentional Program Violation. As a result, she is disqualified from receiving Food Stamp program benefits for a period of 12 months.

**II. Facts**

The following facts were established by clear and convincing evidence:

E W worked as a sales associate for Employer A from July 30, 2011 to May 2, 2012.<sup>2</sup> She worked on an hourly basis, earning \$10.25 per hour, and she received paychecks every two weeks.<sup>3</sup> For most of this time, Ms. W worked between twenty six and sixty six hours per pay period.<sup>4</sup>

Ms. W's household received and redeemed Food Stamp benefits from August 2011 through May 2012.<sup>5</sup> On November 15, 2011, Ms. W completed, signed, and submitted an Eligibility Review Form so that her household could continue to receive Food Stamp benefits.<sup>6</sup> This recertification application contained a question asking whether anyone in Ms. W's household was working and receiving income from employment or self-employment.<sup>7</sup> Ms. W responded that her husband worked at Employer B about 35 hours per week, and he earned \$13.00 per hour. She did not disclose any other employment or earned income by anyone else in the household.<sup>8</sup>

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<sup>1</sup> Exhibit 3.  
<sup>2</sup> Exhibit 11.  
<sup>3</sup> Exhibit 11, p. 2.  
<sup>4</sup> *Id.*  
<sup>5</sup> Exhibit 12, p. 1.  
<sup>6</sup> Exhibit 8.  
<sup>7</sup> Exhibit 8, p. 2.  
<sup>8</sup> *Id.*

At the end of the recertification application, Ms. W signed her name below the application's "Statement of Truth." In this statement, she certified under penalty of perjury that all of the information contained in the application was true and correct to the best of her knowledge.<sup>9</sup> The recertification application that Ms. W signed and submitted also included a four-page informational statement entitled "Your Rights and Responsibilities."<sup>10</sup> The "Rights & Responsibilities" statement explains matters such as reporting requirements, penalties for intentional program violations, and general program information. It states that applicants must report certain changes in the household within 10 days, including situations in which the household's total gross income had gone over the household's income limit for benefits.<sup>11</sup>

On December 6, 2011, Ms. W participated in a telephonic interview with one of the Division's Eligibility Technicians to discuss her November 15<sup>th</sup> recertification application.<sup>12</sup> During the interview, the Division asked Ms. W to confirm the employment status and income earned by anyone in her household. Ms. W confirmed her husband's employment. She also indicated that the household received income from native corporation dividends and the Alaska permanent fund dividend. She did not disclose any other employment or earned income.<sup>13</sup>

During the interview, the Eligibility Technician also reviewed with Ms. W the information on the "Rights and Responsibilities" form that Ms. W had previously received. Ms. W indicated that she understood that information, and she had no questions about it.<sup>14</sup>

Based on the information that Ms. W provided on her recertification application and in her eligibility interview, the Division approved her household for Food Stamp benefits.<sup>15</sup> It subsequently issued Food Stamp benefits appropriate for the household that Ms. W had described. Those benefits were received and redeemed each month from December 2011 through May 2012.<sup>16</sup>

The Division initiated a fraud investigation after it became aware of Ms. W's unreported employment and income from Employer A.<sup>17</sup> In August 2016, it initiated this action, alleging that

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<sup>9</sup> Exhibit 8, p. 4.

<sup>10</sup> Exhibit 7, pp. 1-4; Testimony of Amanda Holton.

<sup>11</sup> Exhibit 7, p. 1.

<sup>12</sup> Exhibit 9.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ("R & R reviewed, understands, no questions.").

<sup>15</sup> Exhibit 10.

<sup>16</sup> Exhibit 12, p. 1.

<sup>17</sup> The Division first became aware of Ms. W's unreported income around June 14, 2012. Exhibit 2 (fraud complaint report dated 6/14/12). Regardless of the precise date in 2012 that the Division discovered Ms. W's alleged fraud, it initiated this action within the applicable 6 year statute of limitations. See AS 09.10.120(a); *Agen v. State, Child Support Enforcement Div.*, 945 P.2d 1215 (Alaska 1997).

Ms. W committed a first known Intentional Program Violation of the Food Stamp program. The Division requests that Ms. W be temporarily disqualified from receiving Food Stamp benefits. It further requests that she repay the full amount of overpaid benefits.<sup>18</sup> The Division calculated that Ms. W's household received \$2,182 in overpaid Food Stamp benefits, from December 2011 through May 2012.<sup>19</sup>

The Division sent Ms. W notice of this case, including notice of the hearing date and time, by certified mail and first-class mail on August 5, 2016.<sup>20</sup> Neither envelope was returned to the Division, and both are presumed delivered. On August 18, 2016, the Division sent Ms. W an amended version of certain documents from the first mailing.<sup>21</sup> That letter was delivered by certified mail on August 19, 2016, and signed for by L W.<sup>22</sup> On August 26, 2016, the Division sent Ms. W another copy of its evidence packet, which included the notice of hearing date and time.<sup>23</sup> Those documents were delivered by certified mail on August 26, 2016, and again signed for by L W.<sup>24</sup>

Ms. W's hearing took place as scheduled on September 8, 2016. Ms. W did not attend the hearing, and she could not be reached by telephone. Accordingly, the hearing proceeded in Ms. W's absence as required by 7 C.F.R. § 273.16(e)(4). Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, participated by telephone and represented the Division. Mr. Jennings and Eligibility Technician Amanda Holton testified on behalf of the Division. The hearing was recorded. All submitted documents were admitted into the record. The record closed at the end of the hearing.

### **III. Discussion**

The Division must prove an Intentional Program Violation of the Food Stamp program by clear and convincing evidence.<sup>25</sup> To do so, the Division must show that Ms. W intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."<sup>26</sup>

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<sup>18</sup> Exhibit 1, p. 6.

<sup>19</sup> Exhibit 12.

<sup>20</sup> Exhibit 1, p. 2; Exhibits 3, 4. The postal service left Ms. W notice of the certified mail packet on August 6, 2016. Exhibit 4, p. 1.

<sup>21</sup> Exhibit 3, pp. 19-24. At Exhibit 1, p. 2, paragraph 6, Mr. Jennings mistakenly indicated that this envelope was sent on August 23, 2016, rather than August 18<sup>th</sup>.

<sup>22</sup> Exhibit 4, pp. 2-3.

<sup>23</sup> See Exhibit 1, p. 1 (attached to Division materials sent with Exhibit 5 on 8/26/16).

<sup>24</sup> Exhibit 6.

<sup>25</sup> 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is established if the truth of the asserted facts is highly probable. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>26</sup> 7 C.F.R. § 273.16(c).

The Division met its burden in this case. Ms. W was employed by Employer A at the time she reapplied for Food Stamps on November 15, 2011. By that time, Ms. W had been working for Employer A for approximately three and a half months.

Ms. W did not report her employment or income from Employer A on her November 15th recertification application. When asked about income earned by anyone in the household, she only reported her husband's employment. She again failed to disclose her employment and income during her December 6, 2011 interview with the Division. These circumstances show that Ms. W misrepresented that she had no employment income, when she was in fact employed.

Further, Ms. W's misrepresentation was intentional. She had been receiving regular, bi-weekly paychecks from Employer A for more than three months by the time she signed and submitted her November 15, 2011 recertification application. She had been working for more than four months when she interviewed with the Division on December 6, 2011. At both times, Ms. W responded to specific and direct questions about her employment and income. The only reasonable inference to be drawn from her repeated failure to accurately respond to these questions is that Ms. W consciously withheld this information. Under the circumstances, this omission was not merely inadvertent. Therefore, Ms. W falsely certified that she had provided true and correct information on her November 15, 2011 application.

Ms. W has had prior experience with the Food Stamp program. She had been receiving Food Stamp benefits prior to November 2011. Therefore, she had gone through the application and interview process before, and she had been made aware of her rights and responsibilities even before she submitted her November 15, 2011 recertification application. This is further evidence that Ms. W consciously and intentionally withheld information about her employment with Employer A.

Accordingly, the Division has met its burden to show clear and convincing evidence that Ms. W committed an Intentional Program Violation as defined by the Food Stamp program regulations. This is Ms. W's first known Food Stamp Intentional Program Violation.<sup>27</sup>

#### **IV. Conclusion and Order**

Ms. W has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and she is required to reimburse the Division for benefits that were overpaid to her as a result of

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<sup>27</sup> Exhibit 1 pp. 1, 7.

her Intentional Program Violation.<sup>28</sup> The Food Stamp disqualification period shall begin on November 1, 2016.<sup>29</sup> This disqualification applies only to Ms. W and not to any other individuals who may be included in her household.<sup>30</sup> For the duration of the disqualification period, Ms. W's needs will not be considered when determining eligibility and benefit amounts for her household. However, Ms. W must report her income and resources as they may be used in these determinations.<sup>31</sup>

The Division shall provide written notice to Ms. W 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.<sup>32</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. W or any remaining household members are now required to make restitution.<sup>33</sup> If Ms. W 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.<sup>34</sup>

DATED: September 13, 2016.

By: Signed  
Kathryn Swiderski  
Administrative Law Judge

### **Adoption**

The undersigned 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 15<sup>th</sup> day of November, 2016.

By: Signed  
Signature  
Douglas Jones  
Name  
Medicaid Program Integrity Manager  
Title

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

<sup>28</sup> 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).

<sup>29</sup> 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995).

<sup>30</sup> 7 C.F.R. § 273.16(b)(11).

<sup>31</sup> 7 C.F.R. § 273.11(c)(1).

<sup>32</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>33</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>34</sup> 7 C.F.R. § 273.15.