

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

In the Matter of)	
)	
N E. D)	OAH No. 16-1425-ADQ
_____)	Agency No.

DECISION AND ORDER

I. Introduction

In this administrative disqualification case, the Division of Public Assistance (Division) alleges that N E. D committed a first known Intentional Program Violation of the Food Stamp program by falsely declaring that he had lost his job and that he had no income, thereby receiving Food Stamp benefits to which he was not entitled.¹

This decision concludes that Mr. D intentionally made a false declaration that he had lost his job and that he had no income, when in fact he continued to work and earn wages from the same employer. This was his first known Intentional Program Violation. As a result, Mr. D 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:

From December 24, 2012 to July 6, 2014, Mr. D worked part-time bussing tables at No Name (No Name) in No Name.²

On April 29, 2013, Mr. D signed and submitted an application for Food Stamp benefits.³ The application asked whether anyone in Mr. D's household was working and receiving income from employment.⁴ Mr. D indicated that he worked part-time.⁵ The application included a four-page informational statement entitled "Your Rights and Responsibilities."⁶ The "Rights & Responsibilities" statement explained matters such as reporting requirements, penalties for intentional program violations, and general program information.

On May 15, 2013, Mr. D participated in a telephone interview with Debra Howard, an Eligibility Technician with the Division.⁷ During the interview, Ms. Howard specifically

¹ Exhibit 3.
² Exhibit 10.
³ Exhibit 8.
⁴ *Id.*, p. 3.
⁵ *Id.*
⁶ Exhibit 7; Testimony of Amanda Holton.
⁷ Exhibit 9.

reviewed the “Rights and Responsibilities” information with Mr. D.⁸ Mr. D indicated that he understood the information, and he had no questions.⁹ When asked about his employment status and income, Mr. D stated that he had been working part-time at No Name. However, he stated that he had been fired two days earlier, on May 13, 2013.¹⁰ He indicated that he had no other sources of income, and he needed Food Stamps to eat. During the interview, Ms. Howard contacted No Name. Someone named “K” answered the telephone, and he stated that Mr. D no longer worked there.¹¹

Based on the information before it, the Division approved Mr. D’s application for Food Stamp benefits, effective for the months of April through September 2013.¹² It subsequently issued Food Stamp benefits appropriate for the household that Mr. D had described, a household with no income after mid-May 2013. Mr. D received and redeemed those benefits for each month, from April 2013 through September 2013.¹³

As part of its quality control process, the Division reviewed the case on August 5, 2013. It found Department of Labor records showing that Mr. D continued to earn wages from No Name. On August 5, 2013, Eligibility Technician Howard spoke with the restaurant manager, who confirmed that Mr. D was employed and earning wages at No Name.¹⁴ The manager indicated that Mr. D had been continuously employed at No Name during 2013; he was unaware of any separation during this time.¹⁵ He provided Mr. D’s April and May 2013 wage information, which did not show a significant reduction in Mr. D’s work hours in May 2013.¹⁶

The Division also reviewed certified copies of No Name business records, which more fully document Mr. D’s employment status and wage information.¹⁷ The records show that Mr. D’s employment with No Name began on December 24, 2012 and continued until July 6, 2014. They also show that Mr. D received bi-weekly paychecks from No Name in every pay period from the one ending April 1, 2013 through the pay period ending September 15, 2013.¹⁸ The

⁸ Exhibit 9, p. 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Exhibit 9, p. 5.

¹³ Exhibit 9, p. 4.

¹⁴ Exhibit 9, p. 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Exhibit 10.

¹⁸ Exhibit 10, p. 4. The pay period for each paycheck ended eight days before the date the paycheck was issued. Exhibit 10, p. 3.

paychecks do not reflect any noteworthy changes in Mr. D's pay in May 2013. His gross wages totaled \$546.38 on the paycheck dated May 20, 2013. They were \$451.44 on the paycheck dated June 3, 2013, and \$484.38 on the paycheck dated June 17, 2013.¹⁹

With one variation in July 2013, Mr. D earned relatively consistent wages throughout the summer and early fall of 2013. His gross wages dipped slightly for the two paychecks issued in July 2013, to \$337.13 and \$202.47. These would pertain to the pay periods ending June 23, 2013 and July 7, 2013, which are both well after Mr. D's May 15th eligibility interview. Mr. D's paychecks from July 29, 2013 through September 23, 2013, show that he then returned to his more typical schedule, earning gross wages in each pay period of \$549.30, \$464.04, \$534.76, \$601.61 and \$574.50.²⁰

Contrary to Mr. D's claim of terminated employment, his wage history indicates that he continued to work a significant number of hours in each pay period from April through September 2013. His gross wages during this time totaled \$6,110.03.

In December 2016, the Division initiated this action, alleging that Mr. D committed a first known Intentional Program Violation of the Food Stamp program. The Division requests that Mr. D be temporarily disqualified from receiving Food Stamp benefits. It further requests that he repay the full amount of overpaid benefits.²¹ The Division calculated that Mr. D received \$883 in overpaid Food Stamp benefits, from April 2013 through August 2013.²²

The Division sent Mr. D notice of this case, including notice of the hearing date and time, by certified mail and first-class mail on December 7, 2016.²³ The first-class envelope was not returned to the Division, and it is presumed delivered. The return receipt on the certified letter shows that delivery was accepted on December 19, 2016 by B D.²⁴ On December 30, 2016, the Division also sent Mr. D copies of its evidence in this matter, along with Investigator Kenneth

¹⁹ *Id.*

²⁰ Exhibit 10, p. 4.

²¹ Exhibit 1, p. 6.

²² Exhibit 11; Exhibit 3, p. 17.

²³ Exhibit 1, p. 3; Exhibits 3, 4. The postal service left Mr. D notice of the certified mail packet on August 6, 2016. Exhibit 4, p. 1.

²⁴ Exhibit 4. The signature is difficult to read, but it appears to be B D. Although this case pertains to events in 2013, Division records show that N D received and redeemed Food Stamp benefits issued for September through December 2016. Exhibit 9, p. 4. Therefore, Division records regarding Mr. D's current mailing address are likely to be accurate.

Cramer's affidavit supporting administrative disqualification.²⁵ That envelope was sent by certified mail, and it was available for pick-up at Mr. D's post office box on January 3, 2017.²⁶

Mr. D's hearing took place as scheduled on January 10, 2017. Mr. D did not attend the hearing, and he could not be reached by telephone. Accordingly, the hearing proceeded in Mr. D's absence as required by 7 C.F.R. § 273.16(e)(4). Kenneth Cramer, an investigator employed by the Division's Fraud Control Unit, participated by telephone and represented the Division. Mr. Cramer, Eligibility Technician Amanda Holton and Eligibility Technician Debra Howard 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.²⁷ To do so, the Division must show that Mr. D intentionally "made a false or misleading statement, or misrepresented, concealed, or withheld facts."²⁸

The Division met its burden in this case. Mr. D was employed by No Name at the time he applied for Food Stamps on April 29, 2013. He continued to be employed by No Name at the time of his eligibility interview on May 15, 2013, and during the four months following that interview. This is shown by Mr. D's employment records, his ongoing and consistent pay history, and the statements of the business manager in a telephone discussion with Eligibility Technician Howard on August 5, 2013.

The only evidence supporting Mr. D's claim that he was fired on May 13, 2013 comes from someone named "K," who answered the telephone at No Name on May 15, 2013. It is not clear who "K" is, what position he occupied at No Name, or what reasons he may have had for supporting Mr. D's claim. His statement lended credibility to Mr. D's termination claim. However, based on the totality of all the other evidence in the record, it is apparent that "K's" statement was not accurate.²⁹ The evidence is clear and convincing that Mr. D remained continuously employed by No Name from April through September 2013, the time period relevant to this case.

²⁵ Exhibit 1, p. 3; Exhibit 5.

²⁶ Exhibit 6.

²⁷ 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).

²⁸ 7 C.F.R. § 273.16(c).

²⁹ There is no evidence explaining whether this inaccuracy was part of an intentional plan to mislead the Division, or whether it was merely inadvertent error.

This evidence supports the Division's contention that Mr. D falsely and intentionally reported that he had lost his job just before his eligibility interview. When asked during his eligibility interview about income earned by anyone in his household, Mr. D incorrectly stated that he had been terminated and he had no income of any kind. In fact, however, Mr. D was employed and earning wages.

This misrepresentation was intentional, as Mr. D clearly was aware of his employment. He also was aware that he received regular, bi-weekly paychecks, both at the time of his May 2013 eligibility interview and for the relevant months thereafter. During the interview, Mr. D responded to specific and direct questions about his employment and income. He also indicated that he understood his responsibility to inform the Division of changes in his employment or income, yet he did not correct his misstatement at any time after his May 15, 2013 interview. The most reasonable inference to be drawn from his failure to provide accurate information is that Mr. D consciously misled the Division, so that he would receive Food Stamp benefits to which he was not entitled. Under the circumstances, his misrepresentation was not merely inadvertent.

Mr. D had experience with the Food Stamp program before his April 2013 application, as he had received Food Stamp benefits for at least six months in 2012.³⁰ Due to his prior experience, he would have previously discussed with the Division his responsibility to provide accurate and updated income information. This experience further supports the conclusion that Mr. D consciously and intentionally misled the Division when he stated that he had been terminated from his job, and he had no income.

The Division has met its burden to show clear and convincing evidence that Mr. D committed an Intentional Program Violation as defined by the Food Stamp program regulations. This is Mr. D's first known Food Stamp Intentional Program Violation.³¹

IV. Conclusion and Order

Mr. D has committed a first known Intentional Program Violation of the Food Stamp program. He is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and he is required to reimburse the Division for benefits that were overpaid to him as a result of his Intentional Program Violation.³² The Food Stamp disqualification period shall begin on

³⁰ Exhibit 9, p. 4.

³¹ Exhibit 1 pp. 1, 7.

³² 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).

March 1, 2017.³³ This disqualification applies only to Mr. D and not to any other individuals who may be included in his household.³⁴ For the duration of the disqualification period, Mr. D's needs will not be considered when determining eligibility and benefit amounts for his household. However, Mr. D must report his income and resources as they may be used in these determinations.³⁵

The Division shall provide written notice to Mr. D 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.³⁶

If over-issued Food Stamp benefits have not been repaid, Mr. D or any remaining household members are now required to make restitution.³⁷ If Mr. D disagrees with the Division's calculation of the amount of over-issuance to be repaid, he may request a separate hearing on that limited issue.³⁸

DATED: January 17, 2017.

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 2nd day of February, 2017.

By: Signed
Name: Kathryn A. Swiderski
Title: Administrative Law Judge

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

³³ 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 (9th Cir. 1995).

³⁴ 7 C.F.R. § 273.16(b)(11).

³⁵ 7 C.F.R. § 273.11(c)(1).

³⁶ 7 C.F.R. § 273.16(e)(9)(ii).

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

³⁸ 7 C.F.R. § 273.15.