

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

In the Matter of	)	
	)	
K B	)	OAH No. 17-0024-ADQ
_____	)	Agency No.

**DECISION**

**I. Introduction**

K B is a Food Stamp<sup>1</sup> recipient. On January 11, 2017, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against her, alleging she had committed a first-time Intentional Program Violation of the Food Stamp program by failing to declare her employment.<sup>2</sup>

Ms. B’s hearing was held on February 14, 2017. Ms. B represented herself and testified on her own behalf. Scott Rand, an investigator employed by the Division’s Fraud Control Unit, represented and testified for the Division.

Given the Division’s high burden of proof and the limited evidence of Ms. B’s intent to misrepresent her employment, this decision concludes that the Division did not establish that Ms. B committed a first Intentional Program Violation of the Food Stamp program.

**II. Facts**

On or about June 12, 2015, the Fraud Control Unit within the Department of Health and Social Services, Division of Public Assistance discovered information which it believed showed Ms. B failed to declare that she was employed when she applied for recertification/renewal of her Food Stamp benefits in January 2015.<sup>3</sup> On January 11, 2017, the Division issued notice to Ms. B of her alleged first time Intentional Program Violation (IPV) and her right to a hearing on the allegation.<sup>4</sup> It is undisputed that Ms. B timely received notice of the hearing.<sup>5</sup>

The allegations against Ms. B stem from an Eligibility Review Form Ms. B filed with the Division on January 2, 2015, in order for her to continue to receive Food Stamp benefits.<sup>6</sup> The Division’s eligibility form prompts applicants to report “if you or anyone in your household is

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<sup>1</sup> Congress amended the Food Stamp Act in 2008 to change the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (“SNAP”). The program is still commonly referred to as the Food Stamp program.

<sup>2</sup> Ex. 3 at 2.

<sup>3</sup> Ex. 2.

<sup>4</sup> Ex. 3 at 2-16; *see also* Ex. 4, 5, 6; Rand testimony.

<sup>5</sup> B testimony.

<sup>6</sup> Rand testimony; Ex. 8 at 1-8.

working.”<sup>7</sup> In her January 2, 2015 application, Ms. B responded “N/A” (*i.e.*, not applicable) to this question.<sup>8</sup> Immediately below this question on the application form is a follow up question asking if “anyone’s job, wages or hours of work [will] change soon,” with “Yes” and “No” check boxes for the applicant to complete.<sup>9</sup> Ms. B did not respond to this question on her January 2 application.<sup>10</sup>

Another question on the application form prompts applicants to “[l]ist any other money you or anyone in your household receives.”<sup>11</sup> Ms. B listed \$1,600 a month in child support, but added question marks (“??”) after this figure, and \$600 a month in Unemployment Insurance Benefits (UIB).<sup>12</sup> Next to these figures, Ms. B added a note to “please check on these.”<sup>13</sup> Immediately below this question is a follow up question asking whether she “expect[ed] any changes to your income,” to which Ms. B responded “Yes,” explaining that she expected her UIB “to run out.”<sup>14</sup> At the hearing, Ms. B testified that, while she did not recall exactly given the passage of time, she did not believe she received UIB in February and March 2015; however, she was certain that as of the January 2, 2015 application date, she knew her unemployment benefits were going to run out soon.<sup>15</sup>

The application form also includes a page prompting applicants to list contacts in the community, including “[i]nformation about your employer.”<sup>16</sup> Ms. B did not list an employer. Instead, as with other items on the application form, she scratched this item off with a single line, essentially indicating “none” or “not applicable.”<sup>17</sup>

The Division approved Ms. B’s application on January 16, 2015,<sup>18</sup> and it mailed her a notice of its approval on or about January 20, 2015.<sup>19</sup> Ms. B testified that she received the notice, and she testified as to its content.<sup>20</sup> In addition to noting that she was approved for \$265 a month in Food Stamp benefits through July 2015, the notice states:

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<sup>7</sup> Ex. 8 at 3.  
<sup>8</sup> *Id.*  
<sup>9</sup> *Id.*  
<sup>10</sup> *Id.*; B testimony.  
<sup>11</sup> Ex. 8 at 3.  
<sup>12</sup> *Id.*  
<sup>13</sup> *Id.*  
<sup>14</sup> *Id.*  
<sup>15</sup> B testimony.  
<sup>16</sup> Ex. 8 at 8.  
<sup>17</sup> *Id.*  
<sup>18</sup> Ex. 9 at 1-2.  
<sup>19</sup> Ex. 10 at 1-2.  
<sup>20</sup> B testimony.

You must tell us when the monthly income of all persons receiving food stamp benefits in your case totals *more than \$3,781.00*. You need to report this change within 10 days of when you know of the change. To determine your household's income, use the amount of income received before deductions.[<sup>21</sup>]

At the hearing, Ms. B testified that she interpreted this statement to mean that, unless her income exceeded \$3,781.00, she had nothing to report to the Division. She further testified that her income never exceeded that amount because she did not work that much.<sup>22</sup>

At the hearing, the Division presented evidence indicating that, contrary to Ms. B's statement in her application ("N/A"), Ms. B was in fact employed when she submitted her recertification application.<sup>23</sup> Division case notes reflect that on or about June 12, 2015, the Division learned from the Department of Labor (DOL) that Ms. B received income from Employer A of \$69.57 in the fourth quarter of 2014 and \$4,143.67 in the first quarter of 2015.<sup>24</sup> Based on the information it obtained from DOL, the Division concluded that Ms. B was working for Employer A in January 2015 when she submitted her recertification application, and that she failed to declare that employment in her application. The Division referred her case to the Fraud Control Unit.<sup>25</sup>

The FCU commenced its investigation and sought employment records regarding Ms. B from Employer A. Employer A's Authentication of Business/Organization Records is dated July 21, 2015.<sup>26</sup> The records produced by Employer A report that Ms. B was employed as a tax preparer with a "Hire" date of December 20, 2014, a "Start" date of January 12, 2015, and an "End" date of March 14, 2015.<sup>27</sup> Employer A further reported Ms. B received \$69.54 in wages on December 26, 2014, and a total of \$4,143.67 in wages between January 23 and March 14, 2015.<sup>28</sup>

At the hearing, Ms. B testified regarding her employment with Employer A, which does business as Employer B.<sup>29</sup> She worked earlier in 2014 for Employer B as a tax preparer during the 2013 tax season, but was let go before the end of that tax season. Ms. B returned to Employer B in December 2014 to talk with the owner about returning to work for the 2014 tax season. Ms. B did not go into detail, but she explained that she did not leave Employer B on the best of terms

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<sup>21</sup> Ex. 10 at 1 (emphasis added).

<sup>22</sup> B testimony.

<sup>23</sup> Rand testimony; Ex. 9 at 7; Ex. 11 at 1-3.

<sup>24</sup> Rand testimony; Ex. 9 at 7.

<sup>25</sup> Rand testimony; Ex. 9 at 7.

<sup>26</sup> Ex. 11.

<sup>27</sup> Ex. 11 at 2.

<sup>28</sup> Ex. 11 at 3.

<sup>29</sup> B testimony. This decision uses both terms, Employer A and Employer B, to refer to the employer.

in early 2014, so she was uncertain whether the owner would hire her back. Ms. B explained that a pool of applicants would seek employment with Employer B each tax season, and everyone who sought employment was required to take a two-day training course to keep abreast of developments in tax law. She attended the training course at some point during the pay period ending December 20, 2014. Ms. B testified that trainees are paid for the training, and her wages of \$69.54 in December 2014 were her pay for the training. Ms. B stressed, however, that just because an applicant took the training did not mean the applicant would necessarily get to work that season. Ms. B further stressed that as of the date she submitted her renewal application – January 2, 2015 – she did not know whether Employer B intended to employ her for the 2015 season. She testified that by that date she had not received notice that Employer B intended to hire her, keys to access the business’ premises or a work schedule. Ms. B denied any intention to defraud the Division; to the contrary, she testified that her statement in her application (“N/A”) was accurate because as of her application date she did not consider herself employed at Employer B and did not know whether Employer B would hire her for the season.<sup>30</sup>

Ms. B testified that she started working for Employer B in mid-January.<sup>31</sup> Soon thereafter, Ms. B received notice from the Division approving her Food Stamps renewal application.<sup>32</sup> Additional facts are related in the discussion below.

### **III. Discussion**

The Division alleges Ms. B intentionally violated the Food Stamp Program when she completed, signed and submitted her January 2, 2015, renewal application by failing to report her new employment with Employer A (Employer B).<sup>33</sup> As the party seeking to alter the status quo, the Division has the burden of proof.<sup>34</sup> “Intentional Program violations shall consist of having intentionally . . . [m]ade a false or misleading statement, or misrepresented, concealed or withheld facts.”<sup>35</sup> An IPV must be proved by clear and convincing evidence.<sup>36</sup> Clear and convincing evidence is stronger than a preponderance of the 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.”<sup>37</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*; Ex. 10.

<sup>33</sup> Ex. 3 at 2.

<sup>34</sup> *Alcohol Beverage Control Bd. v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>35</sup> 7 C.F.R. § 273.16(c)(1).

<sup>36</sup> 7 C.F.R. § 273.16(e)(6).

<sup>37</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

The key question in this matter is whether the Division proved, by clear and convincing evidence, that Ms. B intentionally misrepresented or withheld information regarding her employment when she submitted her January 2, 2015, renewal application.<sup>38</sup> The Division relies heavily on the information it received from the Department of Labor and Employer A to establish that Ms. B was employed on January 2, 2015.<sup>39</sup> Standing alone, this information does support an inference that Ms. B was, in fact, employed by Employer A on January 2, 2015. For example, the Employer A reports her date of hire as December 20, 2014.<sup>40</sup> Further, Employer A reported Ms. B earned wages in December 2014 and January 2015.<sup>41</sup> This corroborated the information the Division learned from the DOL.<sup>42</sup> The question regarding anticipated changes in household jobs or wages left unanswered by Ms. B also arguably supports the inference of an intent to withhold information.<sup>43</sup>

At the hearing, however, Ms. B testified that on January 2, 2015, she did not know whether she was employed by Employer A. She testified that as of that date she had only completed the training; that attending the training was not the same as being employed by Employer A; and that she had not received keys to the premises, a schedule or any notice from Employer A that it intended to employ her for the new tax season.<sup>44</sup>

Ms. B's testimony regarding her state of mind when she completed, signed and submitted her renewal application on January 2, 2015, is credited. Ms. B was a credible witness. Her testimony was consistent; she was firm in her beliefs, and her testimony did not reveal any prevarication. Further, her explanations were reasonable and not merely plausible.

Viewed in this light, the Division's evidence regarding Ms. B's employment status on January 2, 2015 is ambiguous and fails to establish that it is highly probable that Ms. B intentionally withheld information from the Division regarding her employment. For example, was the December 20, 2014, reported *hire* date merely the date she signed up for the training? Did Employer A's decision to employ Ms. B for the new season occur on that date or subsequently? When and how did Employer A notify Ms. B of its decision to employ her for the

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<sup>38</sup> Whether Ms. B violated Division regulations when she failed to *report* her post-application income to the Division is a separate, potential issue. However, at the hearing the Division's representative clarified that this is a failure to *declare* case, not a failure to *report* change case. Rand Testimony.

<sup>39</sup> Rand testimony; Ex. 1 at 4-5; Ex. 2 at 1; Ex. 9 at 7; Ex. 11 at 1-3.

<sup>40</sup> Ex. 11 at 2.

<sup>41</sup> Ex. 11 at 3.

<sup>42</sup> Ex. 9 at 7.

<sup>43</sup> This evidence also is arguably equivocal, for the question is simply unanswered.

<sup>44</sup> B testimony.

new season? It is noted that Employer A reported her *start* date as January 12, 2015<sup>45</sup> - ten days after she completed and signed her renewal application.<sup>46</sup>

The Division did not contact Employer A to inquire further about its hiring practices, and no witness from Employer A testified at the hearing, meaning the ambiguities regarding this evidence are unresolved.<sup>47</sup> This is not to fault the Division. This is only to note that the full record adduced at the hearing reveals a more complex landscape than the paper record before the Division.<sup>48</sup> These unresolved ambiguities as to when Ms. B actually knew she had become employed by Employer A mean that the Division did not meet its burden of proving, by clear and convincing evidence, that she intentionally violated the Food Stamp program by misrepresenting or withholding facts from her January 2015 application.<sup>49</sup>

#### **IV. Conclusion**

The Division did not establish that Ms. B committed a first-time Intentional Program Violation of the Food Stamp program.

DATED: April 14, 2017.

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

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<sup>45</sup> Ex. 11 at 2.

<sup>46</sup> Ex. 8 at 5.

<sup>47</sup> The evidence from the DOL similarly does not resolve these questions.

<sup>48</sup> At the hearing, the Division's investigator testified that he did not recall having a reason to inquire further with Employer A regarding its hiring practices. Rand Testimony.

<sup>49</sup> As to the Division's allegation that Ms. B was overpaid Food Stamp benefits in the amount of \$558, the Division should review its calculations to confirm the overpayment amount, in light of Ms. B's testimony that \$27 per month was deducted from her benefits from March 2016 through July 2016, and that Division staff told her these deductions were "for a repayment plan." See Exhibit 12 at 1. In recalculating the overpayment amount, the Division should also take into account Ms. B's testimony that her actual unemployment benefits in February and March 2015 likely did not match the amounts assumed by the Division on page 1 of Exhibit 9.

## 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 2<sup>nd</sup> day of May, 2017.

By: Signed  
Name: Andrew M. Lebo  
Title: Administrative Law Judge/OAH

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