

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

In the Matter of)
)
E P. B)
_____)

OAH No. 17-1314-ADQ
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 E B alleging that he 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 Mr. B committed a first IPV of the Food Stamps Program by failing to report certain employment and income to the Division. He 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 July 27, 2012, Mr. B completed, signed, and submitted an Eligibility Review Form for continued receipt of Food Stamp benefits.¹ As part of this application Mr. B. signed a statement that all information contained in the application was true and correct.² Mr. B further certified, by his signature, that he had read and understood the “Rights and Responsibilities” document included with the application paperwork, and that he 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. 8, pp. 1-4. 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. 8, p. 4.

³ Ex. 8, p. 4. That document, titled “Your Rights and Responsibilities,” was given to Mr. B as part of his application for Food Stamp benefits, and specifically warns applicants against providing false information during the Food Stamp application process. Ex. 7, pp.1-4, Testimony of Amanda Holton.

and Frequency of Payments.”⁴ Question 7 also asks, “Will anyone’s job, wages or hours of work change soon?”⁵

On Question 7 – asking about any household wage earners – Mr. B wrote “N/A” (“not applicable”) in large letters in the box provided for identifying “person(s) employed”⁶ He did not check either the yes or no box in response to the question about any anticipated changes to jobs, wages or hours of work.⁷ As a standard practice, during eligibility interviews, the eligibility technician interviews the applicant and discusses the applicant’s rights and responsibilities.⁸

As part of the eligibility process, Mr. B would have been interviewed by an eligibility technician who would have explained his rights and obligations.⁹

Based on the information provided in his Eligibility Review Form, Mr. B was approved for Food Stamps for the period of September 2012 through December 2012. Division records reflect that he was issued and redeemed Food Stamps in the amount of \$1,307 over that time period.¹⁰

On or about March 8, 2013, a DPA Eligibility Technician forwarded a Fraud Complaint Report to the Fraud Control Unit.¹¹ The Eligibility Technician reported that while processing Mr. B’s August 26, 2012, recertification she noticed that Mr. B had worked with No Name, Inc. in the 3rd and 4th quarters of 2012. Based on a review of the Department of Labor information, she determined that Mr. B made \$21,993.13 in the 3rd quarter, and 20,303.41 in the 4th quarter of 2012.¹² This income would have put him over the limit for Food Stamps. The Eligibility Technician contacted No Name, Inc. and verified that Mr. B had worked for them and that his last day of work was November 26, 2012 and his last paycheck was received on December 7, 2012. The technician scheduled an interview with Mr. B. He did not show up for the interviews or answer her phone call, so she denied his request for recertification.¹³

As part of his investigation, the Division’s investigator obtained certified copies of employment and payroll records from No Name, Inc. The records show that Mr. B began

⁴ Ex .8, p. 2.

⁵ Ex. 8, p. 2.

⁶ Ex. 8, p. 2.

⁷ Ex. 8, p. 2.

⁸ Affidavit of Investigator Angel Romero ¶ 10.

⁹ Testimony of Amanda Holton.

¹⁰ Ex. 10, pp. 1-2.

¹¹ Ex. 2.

¹² Ex. 2.

¹³ Ex. 2.

employment on July 31, 2012. The payroll records show regular payments through December 7, 2012.¹⁴

Based on the income documentation received, the Eligibility Technician Amanda Holton performed a Loss Analysis to determine the amount of overpayment to Mr. B. Ms. Holton prepared a Loss Statement Summary, which was admitted into evidence as Exhibit 10. The April 24, 2013 Loss Statement Summary reflects that, during the time period in question, Mr. B received \$ 1,307 in Food Stamps benefits that he would not have received had he disclosed the income discovered during the Fraud Investigation.¹⁵

B. Procedural History

The Division notified Mr. B of its filing of this case, and of his hearing date, via certified mail dated December 22, 2017.¹⁶ The Division also sent Mr. B a copy of its evidence to be presented at the hearing, delivered via certified mail on January 22, 2018.¹⁷ Mr. B appeared telephonically at the scheduled hearing date of January 26, 2018. At that hearing he stated that he did not have the evidence package with him so the hearing was continued to February 13, 2018. The new date was stated on the record at the January 26 hearing and was provided via reschedule notice served on Mr. B by mail. The Division also sent Mr. B a second copy of the package. It was delivered to City A on February 6, 2018.¹⁸

Mr. B's hearing was held on February 13, 2018. Mr. B did not attend or otherwise participate. The Administrative Law Judge made attempts, on the record, to contact Mr. B at his known telephone number, the number at which he had been reached for the January 26 hearing. No one answered the number, and the Administrative Law Judge left a message on the recorder for Mr. B to call the Office of Administrative Hearings. Mr. B never returned the call. Pursuant to 7 CFR 273.16(e)(4), and upon a finding that Mr. B had received adequate notice of the hearing, the hearing proceeded in Mr. B's absence.

Angel Romero, an investigator employed by the Division's Fraud Control Unit, attended the hearing and testified on behalf of 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.

¹⁴ Ex. 9.

¹⁵ Ex. 10; Holton testimony.

¹⁶ Ex. 3, 4.

¹⁷ Ex. 6. The signature card indicates that it was signed by Mr. B.

¹⁸ Ex. 11. The certified mail receipt does not bear a signature showing whether Mr. B ever picked up the package.

III. Discussion

Federal law prohibits a person from obtaining Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.¹⁹ In order to prove an IPV of the Food Stamps Program, the Division must prove by clear and convincing evidence that Mr. B intentionally made “a false or misleading statement, or misrepresented, concealed or withheld facts” on his eligibility review form.²⁰

Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are “highly probable.”²¹ 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,²² and must repay any benefits wrongfully received.²³

As noted above, Mr. B received notice of the hearing and did not attend, nor did he submit any written statement or evidence. Mr. B has never provided any statements or evidence explaining his receipt of benefits or disputing the Division’s allegations. The Department of Labor records reflecting Mr. B’s employment are linked to his social security number.²⁴ Third-party verification records relied on by the Division verify Mr. B’s employment at No Name, Inc.²⁵ In short, as a threshold matter, the Division has established by clear and convincing evidence that Mr. B was employed by No Name, Inc. during the time period in question.

Next, it is clear that Mr. B did not report his pending employment with No Name, Inc. on his eligibility review form.²⁶ Nor did he ever inform the Division of his employment for the third and fourth quarters of 2012. 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 Mr. B’s misrepresentation or concealment of his 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.²⁷ Food Stamp eligibility and benefit levels are based in large part on a

¹⁹ See, e.g., 7 U.S.C. § 2015(b).

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

²¹ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

²² 7 C.F.R. 273.16(b)(1).

²³ 7 C.F.R. 273.16(b)(12).

²⁴ Compare Ex. 2, p. 17 with Ex. 9, p. 1.

²⁵ Ex. 9, p. 1.

²⁶ Ex. 7, p. 3.

²⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986).

household's income.²⁸ Mr. B's failure to report the employment income at issue was material because it had the effect of decreasing his reported income, thereby causing the Division to issue food stamps for which he was not eligible. By misrepresenting or concealing his receipt of the employment income at issue, Mr. B prevented that income from being counted for eligibility and benefit level purposes. The Division has therefore shown that the facts misrepresented or concealed by Mr. B were material for purposes of his application for the Food Stamps Program.

The final issue is whether the misrepresentation was intentional. Mr. B did not attend or participate in his hearing, so his state of mind can only be inferred from circumstantial evidence. However, the circumstances of Mr. B's omission do not lend themselves to an appearance of mere negligence. As noted above, Mr. B signed his name directly beneath the "Statement of Truth" provision, advising and reminding his of the obligation to provide accurate information on July 27, 2012.²⁹ According to the testimony of Ms. Holton, Mr. B would have been interviewed by an Eligibility Technician to determine his eligibility, and that interview would have included questions about employment. Employer information from No Name, Inc. shows that he was hired on July 31, 2012.³⁰ Question 7 on the Eligibility Review Form asks "will anyone's job, wages or hours of work change soon. Mr. B did not check either the yes or no box on that form."³¹ The Division's "Your Rights and Responsibilities" form provided to Mr. B includes in the section titled "What changes do I need to report" that an applicant who receives Food Stamps and who does not receive benefits from any other program needs, "to report when your household's total gross income goes over the income limit for your household."³²

More specific employment details are provided in the third-party verification documentation relied on by the Division.³³ Those records reflect that Mr. B's first pay period ended on August 4, 2012, and he was receiving wages that put him over the income level for the Food Stamp Program throughout the period of his employment from July 31, 2012 until he received his last paycheck on December 7, 2012. Moreover, Mr. B has never provided any explanation for his application for recertification or his failure to notify the Division of his work. Under these circumstances, and especially noting that he began working within days of signing his application, and before it was processed, it is highly unlikely that Mr. B's failure to report his

²⁸ See 7 CFR 273.9.

²⁹ Ex. 8.

³⁰ Ex. 9, p. 2.

³¹ Ex. 8, p. 2.

³² Ex. 7, p. 1.

³³ Ex 9.

income was due to simple inadvertence. Accordingly, the Division has met its burden of proof that Mr. B's failure to report his employment and income was intentional.

In summary, the Division has demonstrated by clear and convincing evidence that Mr. B committed an IPV as defined by the Food Stamps Program regulations.³⁴

IV. Conclusion and Order

Mr. B has committed a first-time IPV of the Food Stamp Program. He is therefore disqualified from participation in the Food Stamp Program for a period of twelve months, beginning on June 1, 2018.³⁵ Additionally, Mr. B is now required to make restitution of any overpaid amounts.³⁶

Dated March 1, 2018.

Signed

Karen L. Loeffler

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 15th day of March, 2018.

By: *Signed*

Name: Karen L. Loeffler

Title: Administrative Law Judge

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

³⁴ 7 CFR § 273.16(c) and (e)(4), (6).

³⁵ 7 USC § 2015(b)(1); 7 CFR § 273.16(b)(1). This disqualification applies only to Mr. B, and not to any other individuals who may be included in his household. 7 C.F.R. § 273.16(b)(11). During the period of disqualification, Mr. B's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his 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 Mr. B 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).

³⁶ 7 CFR § 273.16(b)(12). If Mr. B 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.