

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Telephone: (907)-334-2239
Fax: (907)-334-2285

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS

In the Matter of)
)
T. C. C.,)
)
Intentional Program Violation) OHA Case No. 12-ADH-15
Food Stamp Program) Division Case No.
_____) Fraud Control Case No.

ADMINISTRATIVE DISQUALIFICATION HEARING

STATEMENT OF THE CASE

The Division of Public Assistance (Division) initiated this Administrative Disqualification case on March 23, 2012 against Ms. T. C. C., (Recipient), alleging she committed a first Intentional Program Violation of the Food Stamp Program (Program).¹ (Ex. 2, p. 1; Ex. 1, p. 1)

The Division specifically alleges Recipient failed to declare she was employed and receiving employment income on her Application for Services dated and submitted September 12, 2011. (Ex. 1, p. 1; Ex. 2, p. 1) The Division alleges that by doing these acts, Recipient committed a first Intentional Program Violation of the Food Stamp Program. (Ex. 1; Ex. 2, p. 1)

On March 23, 2012, the Division sent Recipient an “Advance Notice of Your Disqualification Hearing” (Notice).² (Ex. 2, p. 1) This Notice informed Recipient that a hearing was scheduled for April 26, 2012. (Ex. 1, p. 1; Ex. 2, p. 2) This Notice was sent by standard, first-class postage prepaid U.S. mail and by certified mail, return receipt requested. (Ex. 1, p. 3; Ex. 2)

On April 24, 2012, the certified mailing of the Notice was received by the Division marked “unclaimed” by the post office. (Ex. 3, p. 2) The Notice sent by standard, first-class postage prepaid

¹ On October 1, 2008, the Food Stamp Program (FSP) was renamed the Supplemental Nutrition Assistance Program (SNAP). See, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The SNAP program is still commonly called the Food Stamp Program and will be referred to as the Food Stamp Program in this decision.

² The Division’s Hearing Representative sent the Notice to Recipient’s most current mailing address based on where Recipient was receiving public assistance benefits at the time of the mailing. The Division does not know of any other way of contacting Recipient. (Hearing Representative’s testimony)

U.S. mail also was returned to the Division, which received it on April 23, 2012. (Ex. 3, p. 3; Hearing Representative's testimony)

On or about April 16, 2012, the Division sent Recipient, by certified mail, return receipt requested, and by standard, first-class mail, a letter and copies of the documentary evidence on which it intended to rely at the Administrative Disqualification Hearing. (Ex. 1, p. 3; Ex. 4) On April 17, 2012, the United States Post Office forwarded this mail. (Ex. 5) Neither the certified mail nor the mail sent by standard, first-class service had been returned to the Division as of April 26, 2012. (Hearing Representative's testimony)

Food Stamp regulation 7 C.F.R. § 273.16(e)(3) requires the mailing of notification of the Administrative Disqualification Hearing at least 30 days in advance of the hearing to the recipient alleged to have committed an Intentional Program Violation. This mailing can be by first-class mail or certified mail, return-receipt requested. 7 C.F.R. § 273.16(e)(3). The period between March 23, 2012 and April 26, 2012 is greater than 30 days. Therefore, based upon the admitted evidence and the law, the Division has complied with the notice requirements of the Food Stamp Program at 7 C.F.R. § 273.16(e)(3).

The hearing began on April 26, 2012 as scheduled. At the hearing, the Division was represented by Ms. Linette Lacy, Investigator with the Department of Health and Social Services, Fraud Control Unit, who participated in person and testified on behalf of the Division as the Division's Hearing Representative (Hearing Representative). Ms. Luann Dudley, an Eligibility Technician employed by the Division of Public Assistance, participated by telephone and testified on behalf of the Division. Recipient did not participate.

ISSUE

Did Recipient commit an Intentional Program Violation of the Food Stamp Program by intentionally concealing or withholding the fact that she was employed and earning income on an application for Food Stamps she submitted to the Division of Public Assistance on September 12, 2011?

FINDINGS OF FACT

The following facts have been established by clear and convincing evidence:

1. Recipient, completed, signed, and dated an Application for Services for Food Stamp benefits on September 12, 2011 (Application). (Ex. 10, pp. 1-8) The Division date stamped this application as received on September 12, 2011. (Ex. 10, p. 1) The application disclosed that Recipient was the only adult member of the household consisting of five persons. (Ex. 10, p. 2)
2. On the September 12, 2011 Application, Recipient wrote that her sole income consisted of unemployment benefits in the amount of \$600 per month.³ (Ex. 10, p. 4)
3. Recipient signed her September 12, 2011 Application below a "STATEMENT OF TRUTH." (Ex. 10, p. 8) By signing, Recipient certified "all information contained in this application, ... is true and correct to the best of my knowledge." (Ex. 10, p. 8) Recipient also acknowledged, by signing,

³ Recipient also wrote that this monthly amount was received "every other [illegible]." (Ex. 10, p. 4)

that she “read or had read to me the ‘Rights and Responsibilities’ section of the application and I understand my rights and responsibilities, including fraud penalties, as described in this application.” (Ex. 10, p. 8)

4. On September 12, 2011, the Eligibility Technician processed the application and verified during a face-to-face eligibility interview that Recipient understood, and was able to explain, her Rights and Responsibilities that were attached to the Application. (Ex. 8, p. 5)

5. Also during the September 12, 2011 eligibility interview, the Eligibility Technician discussed Recipient’s income. (Ex. 8, p. 5) Recipient was receiving unemployment insurance benefits of \$731 per month. (Ex. 8, p. 5) The Eligibility Technician conducting additional processing of Recipient’s Application noticed that Recipient had disclosed part time employment on her prior application of March 2011, but on the September 12, 2011 Application Recipient asserted she had not ended a job in the last 60 days. (Ex. 8, p. 7) The Eligibility Technician telephoned Recipient’s employer to inquire about Recipient’s employment status and learned Recipient was still working with the same employer for whom she was working in March 2011. (Ex. 8, p. 7) The Eligibility Technician asked Recipient about her work situation and Recipient stated she worked “when they call me” and that she worked about 20 hours per week. (Ex. 8, p. 7)

6. The Eligibility Technician required Recipient to submit recent pay stubs. (Ex. 8, p. 7) Recipient supplied two most recent pay stubs showing she worked more than 20 hours per week. (Ex. 8, p. 7) The Division’s Hearing Representative obtained authenticated “Employer Verification of Wages and Statement of Earnings” from Recipient’s employer documenting her employment and employment income from March 11, 2011 through and including September 13, 2011. (Ex. 13; Hearing Representative’s testimony)

7. The Eligibility Technician made an Early Fraud Detection Referral on September 12, 2011. (Ex. 6, p. 1)

8. The Eligibility Technician calculated Recipient’s eligibility and amount of Food Stamp benefits after including her employment income and therefore Recipient did not receive excess Food Stamp benefits. (Hearing Representative’s testimony)

9. Recipient intentionally omitted disclosing her employment and employment income on her September 12, 2011 Application for Services. This finding of fact is based on the following:

a. Recipient knew she was employed on September 12, 2011 when she completed, signed and submitted the Application because she had been earning income from regular employment since March 11, 2011. (Ex. 13, pp. 2-3) In fact, Recipient was paid \$1,018.13 for work completed during the two week period ending August 31, 2011. (Ex. 13, p. 3)

b. About six months earlier, Recipient submitted an Eligibility Review Form (ERF) application seeking continued Food Stamps. Recipient first signed and submitted this ERF application on March 21, 2011. While completing the eligibility review processing of this application, Recipient experienced the following:

1. During the eligibility interview on March 29, 2011, the Eligibility Technician questioned Recipient’s submission of the March 21, 2011 application showing no employment income. (Eligibility Technician’s

testimony; Ex. 8, p. 1) The Division had received a work verification report documenting Recipient's employment since March 11th. (Eligibility Technician's testimony; Ex. 8, p. 1) When confronted, Recipient stated she was working on a "trial basis" but was expecting to be paid for her work. (Ex. 8, p. 2) The Eligibility Technician telephoned the employer and learned Recipient had been hired and not working on a trial basis. (Ex. 8, p. 2; Eligibility Technician's testimony)

2. During the eligibility interview on March 29, 2011, Recipient was informed that the Division relied on the truthfulness and completeness of the information disclosed by Recipient to determine her eligibility and amount of public assistance benefits. (Eligibility Technician's testimony; Ex. 8, p. 2)

3. During the eligibility interview on March 29, 2011, Recipient changed her application to disclose her employment and income. (Ex. 8, pp. 2-3; Ex. 9, p. 2) Recipient also changed her application by adding information disclosing unemployment insurance income. (Ex. 8, p. 3; Ex. 9, p. 3) In addition, Recipient changed her application by adding an infant household member to the list of members of her household. (Ex. 8, p. 2; Ex. 9, p. 1) Finally, Recipient re-signed her March 21, 2011 application on March 29, 2011 while in the presence of the Eligibility Technician conducting the eligibility interview. (Ex. 9, p. 4; Eligibility Technician's testimony) Consequently, Recipient knew her application needed to be complete and truthful.

c. As a part of every eligibility interview, the Eligibility Technician reviews the Rights and Responsibilities and confirms that the applicant understands them, including the penalties that may be imposed for fraud in the application process. (Eligibility Technician's testimony) During the March 29, 2011 eligibility interview, this was done for Recipient. (Eligibility Technician's testimony; Ex. 8, p. 2) Recipient voluntarily made changes to her March 21, 2011 application when she was asked to ensure her application was truthful. (Eligibility Technician's testimony)

10. If found to have committed an Intentional Program Violation, it will be Recipient's first Intentional Program Violation of the Food Stamp Program. (Ex. 1, p. 8; Hearing Representative's testimony)

PRINCIPLES OF LAW

I. Burden of Proof

Ordinarily the party seeking a change in the status quo has the burden of proof. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The Division has the burden of proof as it is the party seeking to change the status quo by attempting to impose an Intentional Program Violation penalty on Recipient.

II. Standard of Proof

An Intentional Program Violation of the Food Stamp Program must be proven by clear and convincing evidence. 7 C.F.R. §§ 273.16(e)(4) and (6). Clear and convincing evidence is stronger

than a preponderance of 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.” *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

III. Food Stamp Program

Eligibility and the amount of Food Stamp benefits a household receives are based upon the countable income of all the household members. 7 C.F.R. § 273.10(e)(1)(i)(A).

An applying household shall report all changes related to its food stamp eligibility and benefits at the certification interview. 7 C.F.R. § 273.12(a)(3)

The Food Stamp regulations define an Intentional Program Violation as follows:

(c) *Definition of intentional Program violation.* Intentional Program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts;....

7 C.F.R. § 273.16(c)(1) (italics in original).

Individuals found to have committed an Intentional Program Violation for the first time are disqualified from participation in the Food Stamp Program for 12 months. 7 C.F.R. § 273.16(b)(1)(i).

ANALYSIS

I. Issue and Burden of Proof

The Division alleges Recipient committed a single Intentional Program Violation of the Food Stamp Program by failing to disclose she was employed and receiving income on her September 12, 2011 Application for Services. Therefore, the Division has the burden of proving the violation by clear and convincing evidence. 7 CFR §§273.16(e)(4) and (6); 7 AAC 45.585(d).

II. Intentional Program Violation of Food Stamp Program

To prove an Intentional Program Violation of the Food Stamp Program, the Division must prove that Recipient intentionally made a false or misleading statement, or misrepresented, concealed or withheld a fact. 7 C.F.R. § 273.16(c)(1).

A. Misrepresentation, Concealment or Withholding of a Fact

The Division provided documentation of Recipient’s employment and employment income from March 11, 2011 through and including September 13, 2011 from her employer. The undisputed fact is that Recipient was employed on September 12, 2011, the day she signed, and submitted her Application for Services (Application), seeking Food Stamp benefits. It is undisputed that Recipient did not disclose her employment or employment income on her Application. Thus, the Division proved by clear and convincing evidence that Recipient applied for Food Stamp benefits on September 12, 2011 and did not disclose her employment or employment income.

The Division has proved Recipient misrepresented, concealed or withheld the fact that she was employed and earning income when she applied for Food Stamps.

B. Intentional Act

To prove an Intentional Program Violation, the Division also must prove that Recipient acted intentionally in making the alleged misrepresentation, concealment or withholding of a fact.

The Division proved by clear and convincing evidence that Recipient knew she was required to disclose the fact of her employment and of her employment income when she completed her September 12, 2011 Application for Food Stamps. The Division proved Recipient intended to conceal, withhold or misrepresent her income by providing evidence that:

- a) Recipient knew the Division relied on her statements concerning income to determine her eligibility for and amount of benefits.
- b) The Division reviewed with Recipient that it was relying on her making truthful statements during the application process. The Division did this by and through its review of the “Your Rights and Responsibilities” to the extent that Recipient could express what her rights and responsibilities were.
- c) The Recipient had been advised she had to tell the truth during the application process when Recipient completed the application process in March 2011, six months prior. At that time Recipient also had failed to disclose her employment and employment income, among other facts. In response to the Division’s advice to be truthful and complete, Recipient corrected her March 2011 application, disclosing her employment and employment income, and re-signed it when it was corrected.

Recipient’s clear pattern of failing to disclose employment as required to the Division supports the conclusion that she intentionally did not disclose her employment and employment income on her September 12, 2011 Application, and therefore intentionally concealed, misrepresented or withheld facts concerning her employment and income.

Therefore, the Division proved by clear and convincing evidence that Recipient intentionally concealed, or withheld facts, or made false or misleading statements on her September 12, 2011 Food Stamp application, thereby committing an Intentional Program Violation of the Food Stamp Program. It is not disputed that the Division has proved that this is Recipient’s first Intentional Program Violation of the Food Stamp Program.

CONCLUSIONS OF LAW

The Division has met its burden of proof by clear and convincing evidence that:

- a. Recipient knew she was required to complete her application for Food Stamp benefits truthfully and to be truthful in her statements made to the Eligibility Technician during the eligibility interview.

b. Recipient intentionally misrepresented, concealed or withheld the fact of her employment and employment income because she did not disclose her employment and income on her September 12, 2011 Application for Services.

DECISION

The Division proved Recipient committed a first Intentional Program Violation of the Food Stamp Program by intentionally making a false or misleading statement or misrepresenting, concealing or withholding facts on her September 12, 2011 Application for Services seeking Food Stamp benefits. 7 C.F.R. § 273.16(c).

IT IS HEREBY ORDERED because this is Recipient's first Intentional Program Violation, Recipient is penalized as follows:

Food Stamp Program

Recipient shall be disqualified from participation in the Food Stamp Program for a period of twelve months for a first Intentional Program Violation. The Food Stamp Program disqualification period shall begin on the first day of the second month after the date of this Decision, i.e., on July 1, 2012. 7 USC 2015(b)(1); 7 CFR §273.16(b)(1) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995). This disqualification applies only to Recipient, and not to any other individuals who may be included in Recipient's household. 7 CFR §273.16(b)(11). For the duration of the disqualification period, Recipient's needs will not be considered when determining Food Stamp eligibility and benefit amounts for Recipient's household. However, Recipient must report Recipient's income and resources as they may be used in these determinations. 7 CFR §273.11(c)(1).

The Division shall provide written notice to Recipient and any remaining household members of the benefits, if any, they will receive during the period of disqualification, or that they must reapply because the certification period has expired. 7 CFR §273.16(e)(9)(ii).

APPEAL RIGHTS

This decision is the final order in this proceeding. No further administrative appeal procedure exists after this decision. **However, Recipient may appeal to the Superior Court for the State of Alaska within thirty (30) days of the date this decision was mailed.** 7 CFR §273.16(e)(8)(ii). See Alaska Rules of Appellate Procedure 601 and 602.

Dated May 3, 2012.

/Signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on May 3, 2012, true and correct copies of the foregoing were sent (via U.S.P.S.) to:

Recipient, Certified Mail, Return Receipt Requested;

and to other listed persons (via secure, encrypted e-mail) as follows:

Linette Lacy, Hearing Representative, DPA Fraud Investigator
Trish Cole, Program Integrity
Chris Lauer, Fraud Control Unit
Kari Lindsey, Administrative Assistant
Mary Riggen, Public Assistance Program
Erin Walker-Tolls, Policy & Program Development
Courtney Wendel, Admin. Asst., Policy

/Signed/
J. Albert Levitre, Jr., Law Office Assistant I