

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

In the Matter of)	OAH No. 12-0441-ADQ
)	Division No.
H Z)	Fraud Control Case No.
)	Food Stamp and Temporary Assistance
_____)	Programs

DECISION AFTER RETURN

I. Introduction

H Z is an adult member of a Food Stamp¹ household, who co-signed a renewal application for Food Stamp benefits and co-signed an application for Temporary Assistance benefits. On September 21, 2012, the Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case against him, alleging he had committed a first-time Intentional Program Violation of the Food Stamp and Temporary Assistance programs.²

Mr. Z's hearing was scheduled for October 25, 2012. He was provided advance notice of the hearing.³ He was not available for his October 25 hearing due to illness and the hearing was continued until November 5, 2012. He did not appear for the November 5 hearing and it was held in his absence.⁴

Wynn Jennings, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Division, testified for the Division. The hearing was recorded.

A proposed decision was issued finding that Mr. Z did not commit a first Intentional Program Violation of either the Food Stamp or Temporary Assistance programs. The basis for that decision was that the Division failed to prove, by clear and convincing evidence, that Mr. Z

¹ 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.

² Ex. 3.

³ Ex. 1, p. 3; Ex. 6.

⁴ The federal Food Stamp program regulations and the Alaska Temporary Assistance regulations allow a hearing to be held without the participation of the household member alleged to have committed an Intentional Program Violation. 7 C.F.R. § 273.16(e)(4) (Food Stamp program); 7 AAC 45.585(c) (Temporary Assistance program). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

signed either the August 4, 2010 Food Stamp renewal application or the September 16, 2010 Temporary Assistance application intending to misrepresent that Ms. M was unemployed, when she was actually employed.

The Division filed a proposal for action arguing that the proposed decision erroneously concluded that the Division did not meet its burden of proving that Mr. Z intentionally misrepresented Ms. M's employment status. The Division cited to a Department of Health and Social Services (DHSS) Office of Hearings and Appeals' decision, OHA Case No. 11-ADH-39, in support of its argument. The DHSS Deputy Commissioner for Family, Community & Integrated Services declined to adopt the proposed decision and returned the case to the administrative law judge for consideration of the Division's proposal for action and review of the case cited by the Division.

Mr. Z was provided an opportunity to submit a response to the Division's proposal for action. He did not submit a response.

After consideration of the Division's proposal for action, including taking the decision in OHA Case No. 11-ADH-39 into account, the evidence shows that the Division did not prove by clear and convincing evidence that Mr. Z committed an intentional misrepresentation. He therefore did not commit a first Intentional Program Violation of either the Food Stamp or Temporary Assistance programs.

II. Facts

The following facts were established by clear and convincing evidence except where otherwise noted.

Mr. Z is an adult who received Food Stamp benefits starting in March 2010 as a member of Cindy M's Food Stamp household (at the time, Ms. M went by the surname Z).⁵ He is Ms. M's adoptive father.⁶ Ms. M applied to renew those benefits for her household, which included Mr. Z, on August 4, 2010.⁷ The application contained a question asking whether anyone in her household was working and what that person's wages were. Ms. M answered that question "N/A" (not applicable), indicating no one in the household had income from working.⁸ Ms. M and Mr. Z both signed the application, certifying that the information contained in the application

⁵ Ex. 17, pp. 1 - 2.

⁶ Ex. 2, p. 1; Ex. 9, p. 1.

⁷ Ex. 9.

⁸ Ex. 9, p. 2.

was correct.⁹ Ms. M was interviewed on August 13, 2010 as part of the renewal application process. During that interview, she stated that her household's income consisted only of social security and adult public assistance benefits, which were received by other household members. Mr. Z did not participate in the interview.¹⁰ However, Ms. M was working at the time of her renewal application; she started a job on July 4, 2010 and had already received one paycheck before she submitted her application.¹¹ Ms. M's Food Stamp renewal application was approved,¹² and benefits were paid through February of 2011.¹³

Ms. M applied for Temporary Assistance benefits for her household, which included Mr. Z, on September 16, 2010.¹⁴ That application also contained a question asking whether anyone in her household was working for wages. Ms. M answered that question "N/A" (not applicable) indicating no one in the household was working.¹⁵ Ms. M and Mr. Z both signed the application, certifying that the information contained in the application was correct.¹⁶ However, Ms. M was working at the time of her application; as noted above, she had started a job on July 4, 2010, and she had already received four paychecks before she submitted her Temporary Assistance application.¹⁷ Ms. M participated in an interview on September 16, 2010, the same date she applied. Mr. Z did not participate in the interview.¹⁸ Ms. M's Temporary Assistance application was denied for reasons unrelated to her income.¹⁹

The Division initiated a fraud investigation which culminated in this case.²⁰ The Division calculated that during the period from September 2010 through February 2011, Ms. M's household, which included Mr. Z, received \$3,213 in Food Stamp benefits that it was not entitled to receive.²¹

⁹ Ex. 9, p. 4.
¹⁰ Ex. 11, p. 1.
¹¹ Ex. 16, p. 4.
¹² Ex. 9, pp. 1, 3.
¹³ Ex. 17.
¹⁴ Ex. 13.
¹⁵ Ex. 13, p. 3.
¹⁶ Ex. 13, p. 8.
¹⁷ Ex. 16, p. 4.
¹⁸ Ex. 14.
¹⁹ Ex. 15.
²⁰ Ex. 2.
²¹ Ex. 17, p. 3; Holton testimony.

III. Discussion

A. Food Stamp Program

In order to prevail, the Division must prove by clear and convincing evidence²² that Mr. Z committed an Intentional Program Violation of the Food Stamp program: that he intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” with regard to the August 4, 2010 renewal application.²³ It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.²⁴

The evidence is clear that Ms. M did not list her employment income on her renewal application, despite there being an explicit question regarding it. The evidence is also clear that Mr. Z signed the application certifying that the information contained within it was true. The question then arises as to whether Mr. Z intentionally misrepresented that Ms. M was not employed. Ordinarily, the only direct evidence of a person’s intent is testimony from that person on that subject. However, Mr. Z failed to appear for or testify at his hearing. Accordingly, there is no direct evidence of his intent in the record.

Intent can, however, also be deduced from circumstantial evidence.²⁵ The only circumstantial evidence showing possible intent on Mr. Z’s part is his signature certifying the information contained in the application was correct. The application was completed in Ms. M’s name. She was the one who participated in the interview. All Mr. Z did was sign the application. No evidence was presented showing that he reviewed the application before signing it.

The Division has a high burden of proof, that of clear and convincing evidence. 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.”²⁶ The Division has cited to a decision from the former DHSS in-house hearing unit (the Office of Hearings and Appeals), OHA Case No. 11-ADH-39, as persuasive authority for the proposition that if a party signs a public assistance application certifying that the information contained therein is correct when it

²² 7 C.F.R. § 273.16(e)(6).

²³ 7 C.F.R. § 273.16(c).

²⁴ 7 C.F.R. § 273.10(e)(1)(i)(A).

²⁵ In the criminal case of *Sivertsen v. State*, 981 P.2d 564 (Alaska 1999), the Alaska Supreme Court stated that “in the case of a specific-intent crime, the jury is permitted to infer intent from circumstantial evidence such as conduct”

²⁶ *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

is false, then the signing party has committed an intentional program violation, even when the signer did not prepare the application and there is no evidence presented that the signer reviewed the application prior to signing.

OHA Case No. 11-ADH-39 is factually distinguishable from Mr. Z's case. That case involved two separate allegations of conduct constituting an intentional program violation. One allegation, which is not relevant to this case, was that the benefit recipient failed to timely report that his fiancée became employed. The other allegation, which is relevant to this case, was that the benefit recipient did not disclose his fiancée's employment on a public assistance application. The hearing examiner made specific factual findings that the benefit recipient completed and signed the application which omitted his fiancée's employment.²⁷ Further, that benefit recipient participated in an eligibility interview wherein he informed the Division that he was the only employed person in his household and his fiancée was looking for a job.²⁸ The hearing examiner specifically concluded that recipient was not credible and that "he knew that his fiancée's employment was not disclosed on the application and that this was untruthful."²⁹ In contrast, Mr. Z did not complete the application and he did not participate in the eligibility interview. Further, Mr. Z did not attend his hearing, which meant that there was no opportunity to determine whether he was credible.

Whether a person intends to commit misrepresentation is a case specific factual question. It cannot be reduced to a bright line test, as urged by the Division, that intent can be showed by the undisputed fact that a person signs an application that contains misrepresentations, without any further evidence of intent, such as the person drafted or assisted in drafting the application, or participated in an interview, such as the facts in OHA Case No. 11-ADH-39 provide.³⁰ The

²⁷ The benefit recipient and his fiancée both testified that the fiancée completed the application and just presented it to him to sign. OHA Case No. 11-ADH-39 January 6, 2012 Decision Finding of Fact 11(f) at p. 5; Finding of Fact 12(a) at p. 5. However, the hearing examiner found that the benefit recipient completed and signed the application. *Id.*, Finding of Fact 5 at p. 4.

²⁸ *Id.*, Finding of Fact 7 at p. 4.

²⁹ *Id.* at p. 9.

³⁰ A review of prior DHSS OHA Intentional Program Violation cases shows there is a set of companion cases, OHA cases 07-ADH-059 and 07-ADH-060, where both signers to one application were found to have committed intentional program violations. However, the findings of fact in both of those cases are cursory and do not contain enough information to determine if those cases are directly analogous to Mr. Z's case. The factual findings do not identify who completed the application in question, and whether there was an eligibility interview associated with the application and, if so, who participated in the interview. There was also a set of companion cases where one signer was found to have committed an intentional program violation (decision vacated after issuance by agreement) and the other signer was found not to have committed an intentional program violation due

facts of this case, given the dearth of evidence showing anything more than the fact that Mr. Z was a member of Ms. M's Food Stamp household and that he signed the application, are insufficient to draw an inference, by clear and convincing evidence, that Mr. Z signed the application intending to misrepresent that Ms. Z was not employed, when she was actually employed.

The Division has therefore not met its burden of proof. It did not establish that Mr. Z made an intentional misrepresentation on Ms. M's August 4, 2010 Food Stamp renewal application. Consequently, Mr. Z has not committed a first Intentional Program Violation of the Food Stamp program.

B. Temporary Assistance Program

In order to establish an Intentional Program Violation of the Temporary Assistance program, the Division must likewise prove by clear and convincing evidence³¹ that Mr. Z intentionally misrepresented, concealed or withheld a material fact on Ms. M's September 16, 2010 application "for the purpose of establishing or maintaining a family's eligibility for Temporary Assistance benefits."³² As we have seen, there is clear and convincing evidence of an incorrect answer on the application regarding Ms. M's employment, with Mr. Z signing a certification that the information was true. The question then arises as to whether Mr. Z intentionally misrepresented that Ms. M was not employed.

As noted above, the facts of this case, given the dearth of evidence showing anything more than the fact that Mr. Z was a member of Ms. M's household and that he signed the application, are insufficient to draw an inference, by clear and convincing evidence, that Mr. Z signed the application intending to misrepresent that Ms. Z was not employed, when she was actually employed.

The Division has therefore not met its burden of proof. It did not establish that Mr. Z made an intentional misrepresentation on Ms. M's September 16, 2010 Temporary Assistance application. Consequently, Mr. Z has not committed a first Intentional Program Violation of the Temporary Assistance program.

to his apparent cognitive impairments, despite his having completed the applications and participated in eligibility interviews. See OHA cases 08-ADH-40 and 08-ADH-41.

³¹ 7 AAC 45.585(e).

³² 7 AAC 45.580(n).

IV. Conclusion

The Division had a high burden of proof in this case, clear and convincing evidence. It did not meet its burden of proof and failed to establish that Mr. Z co-signed Ms. M's August 4, 2010 Food Stamp renewal application and her September 16, 2010 Temporary Assistance application with the intent to misrepresent her employment status. As a result, Mr. Z has not committed either a Food Stamp program or a Temporary Assistance program Intentional Program Violation.

Dated this 28th day of January, 2013.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

Non-Adoption Options

D. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Mr. Z confirmed that he read "Rights & Responsibilities" and signed certifying the veracity of the information.

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 5th day of February, 2013.

By: *Signed* _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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