

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

In the Matter of	)	
	)	OAH No. 12-0721-ADQ
V T	)	DPA/FCU No.
_____	)	Agency No.

**DECISION AND ORDER**

**I. Introduction**

The Division of Public Assistance’s Fraud Control Unit (division) conducted an investigation and determined that V T committed an intentional program violation of the Food Stamp (Supplemental Nutrition Assistance) Program by failing to report an increase in household income above the household limit. Ms. T did not appear for the November 13, 2012 hearing, which had been postponed to that date at her request. The hearing was conducted in her absence. She was unable to show good cause for missing the hearing and thus was not given a new hearing prior to this decision. That does not prevent Ms. T from requesting a new or supplemental hearing if she disagrees with the findings and conclusions in this decision.

Based on the hearing testimony and other evidence in the record, the division has met its burden of proving an intentional program violation by clear and convincing evidence. Ms. T failed to make a required report of change after initial approval of benefits and she did so intentionally, as indicated by her misrepresentation of household income during the related recertification. Since this is a first violation, she must be disqualified from receiving food stamp benefits for 12 months and must repay the overpaid benefits.

**II. Facts**

Ms. T applied for food stamp benefits on April 1, 2009.<sup>1</sup> The application lists four household members: herself, her two children and the children’s father, N X.<sup>2</sup> Ms. T’s application listed Mr. X as the lone household member working at the time, indicating that he was working 37 hours per week at \$14.25 per hour (\$527.25 per week) for No-Name.<sup>3</sup>

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<sup>1</sup> Exhibit 7, page 7.

<sup>2</sup> Exhibit 7, page 9; November 13, 2012 Testimony of K F (“F Testimony”) (confirming that Mr. X is recorded as the father of the two children but considered not related to Ms. T); *also* Exhibit 14, page 1.

<sup>3</sup> Exhibit 7, page 10; F Testimony (indicating that the employer referred to as “T+H” on the application was confirmed through payroll information to be No-Name).

The normal procedure for the eligibility technician during the applicant interview is to explain the rights and responsibilities, reading them to the applicant if necessary, and to answer all questions until the applicant has no further ones, and then to ask whether the applicant understands those rights and responsibilities.<sup>4</sup> Immediately above Ms. T's signature on the application is the following the statement:

I have 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.<sup>[5]</sup>

The rights and responsibilities section of the application tells applicants for food stamp benefits that they need to report to the division a change in the household's gross income if it goes over the income limit for the household, and that the change must be reported within ten days of when the household members know of it.<sup>6</sup> The Notice History for approval of Ms. T's April 2009 application indicates that the approval notice informed her that a report of change in the household's income would be required if the monthly income (before deductions) were to increase to more than \$2,871, and that the report would be due within ten days of when she knew of the change.<sup>7</sup>

In an Eligibility Review Form dated September 21, 2009, Ms. T again listed the members of her household as consisting of herself, Mr. X, and the two children.<sup>8</sup> Ms. T left blank the section titled "Money Received Information," which asks for information on whether any household members are working and, if so, where, how much and for what wages.<sup>9</sup> With the countable income reduced to zero, Ms. T's food stamp benefits were increased beginning October 2009.<sup>10</sup>

Between the April application and the September eligibility review, Mr. X began working for No Name Youth Services, Inc.<sup>11</sup> He started on May 22, 2009, less than two months after Ms. T signed the April application, and his employment continued to January 4, 2010, well after Ms. T signed the eligibility review form.<sup>12</sup> The employer's verification of

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<sup>4</sup> F Testimony.  
<sup>5</sup> Exhibit 7, page 15.  
<sup>6</sup> Exhibit 7, page 3.  
<sup>7</sup> Exhibit 11, page 1.  
<sup>8</sup> Exhibit 8, page 1.  
<sup>9</sup> Exhibit 8, page 2.  
<sup>10</sup> Exhibit 11, page 2.  
<sup>11</sup> Exhibit 12.  
<sup>12</sup> Exhibit 12, page 2.

wages shows that Mr. X earned gross wages of a little over \$1,000 per month for the first three months, with an increase to about \$1,900 in September, which grew to more than \$2,000 per month before his employment ended.<sup>13</sup>

There is no evidence in the record that Mr. X left the job with No-Name, or that his wages for that job were reduced, before he started working for No Name Youth Services.<sup>14</sup> Ms. T did not report Mr. X' job at No Name Youth Services or the increase in household income attributable to that job. Because of her failure to report, Ms. T's household received \$3,401 more in food stamp benefits than it was entitled to.<sup>15</sup>

After investigating a complaint about her failure to report the No Name Youth Services job, the division's Fraud Control Unit served on Ms. T a 30-day advance notification scheduling an administrative disqualification hearing for November 6, 2012.<sup>16</sup> At Ms. T's request, the hearing was postponed one week and rescheduled for November 13, 2012.<sup>17</sup>

On November 13, Ms. T did not appear at the time set for the hearing and she was not available at her telephone number of record. A voicemail message was left for her and the hearing went forward in her absence. Testimony was taken from two witnesses (K F and Investigator William Schwenke). The following exhibits were admitted immediately: 1-4, 6-9, and 11-14. Exhibit 10 was withdrawn and a related paragraph of the investigator's affidavit (para. 17 on page 5 of Exhibit 1) was stricken. Exhibit 5 was admitted conditionally; shortly after the hearing the condition was satisfied.

Within ten days after the hearing, Ms. T inquired about having missed it. A status conference was held for the purpose of determining whether Ms. T had good cause for missing the hearing such that a new or supplemental hearing should be allowed. In an oral ruling on the record, the reasons Ms. T gave for missing the hearing were determined to be insufficient to constitute good cause.<sup>18</sup>

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<sup>13</sup> Exhibit 12, page 3.

<sup>14</sup> The Fraud Complainant Report (Exhibit 6) indicates that the family's caseworker verified that the No-Name job ended August 27, 2009. The caseworker was not called as a witness and no other documentation of the end date for the job was provided. The note in the complaint is insufficient to prove that August 27 was in fact the end date, but the note is sufficient to call into question whether Mr. X' employment with No-Name continued into September 2009 or beyond.

<sup>15</sup> Exhibit 13.

<sup>16</sup> Exhibits 2 & 3.

<sup>17</sup> November 6, 2012 Notice of Rescheduled Hearing.

<sup>18</sup> November 27, 2012 Recording of Status Conference.

### III. Discussion

Under the federal the Food Stamp Program requirements, the state must investigate allegations that benefits recipients have committed intentional program violations.<sup>19</sup> When an investigation leads to proof of the violation through an administrative disqualification hearing, the benefits recipient faces a penalty.<sup>20</sup> For a first violation, the usual penalty is a 12-month disqualification period during which the violator is ineligible to receive food stamp benefits.<sup>21</sup> Only the individual found to have committed the violation is disqualified from receiving benefits during the period, but the household is responsible for repayment of the amount of any overpayment of benefits that occurred because of the violation.<sup>22</sup>

An alleged intentional program violation must be proven by clear and convincing evidence.<sup>23</sup> To meet this standard, the evidence must show that the household member suspected of the violation “committed, and intended to commit” the act that constitutes an intentional program violation.<sup>24</sup> One type of intentional program violation is making a false or misleading statement, or misrepresenting, concealing or withholding facts.<sup>25</sup> This is the type of violation the division has alleged Ms. T committed when she did not report Mr. X’ income from the No Name Youth Services job.

The division bears the burden of proof. To meet the clear and convincing evidence standard, the division’s evidence must “induce a belief that the truth of the asserted facts is highly probable.”<sup>26</sup> Here, that means the division must prove that it is highly probable that Ms. T knew she was supposed to report the increase in household income resulting from the new job, and that she intentionally concealed or withheld that information from the division.

Ms. T was informed orally and in writing during the application process that she would need to report within ten days an increase in household income taking the household

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<sup>19</sup> 7 C.F.R. § 273.16(a).

<sup>20</sup> 7 C.F.R. § 273.16(b)

<sup>21</sup> 7 C.F.R. § 273.16(b)(i). The penalty period can be higher for a first violation, for instance, when food stamp benefits were used in a drug or firearms transaction, but usually a first violation is penalized by a 12-month disqualification period.

<sup>22</sup> 7 C.F.R. § 273.16(b)(11)&(12).

<sup>23</sup> 7 C.F.R. § 273.16(e)(6); *also* 7 C.F.R. § 273.16(e)(4) (indicating that the evidence must be carefully considered and a determine made as to whether, based on clear and convincing evidence, an intentional program violation was committed).

<sup>24</sup> 7 C.F.R. § 273.16(e)(6).

<sup>25</sup> 7 C.F.R. § 273.16(c)(1).

<sup>26</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003); *see also Bigley v. Alaska Psychiatric Institute*, 208 P.3d 168, 187 (Alaska 2009) (explaining that clear and convincing evidence is the amount of evidence that produces a firm belief about the existence of a fact).

over its limit, and that failure to report could lead to a penalty. She was informed through the April 30, 2009 approval that a report of income in excess of the household limit would be required when the gross (before deductions) income went over \$2,871. Three weeks later, on May 22, Mr. X began working for No Name Youth Services. In June, his gross wages for that job totaled \$1,053.01, as of the June 26 payday.<sup>27</sup> With gross wages from the No-Name job, which exceeded \$2,000 per month, this put the household income over the \$2,871 reporting trigger.

Though Ms. T might not have known before the June 26 payday that the wages from the new job would put the household over the limit, it is highly probable that shortly after the June 26 payday, she knew that the household limit was being exceeded and that she needed to report within ten days—that is, by July 6 or very soon thereafter. She did not report the change at all, not even during the recertification process three months later.

In September, Mr. X was still working for No Name Youth Services, and his wages from that job had nearly doubled compared to June, July and August.<sup>28</sup> The note in the fraud complainant's report to the effect that the family's caseworker had verified that the No-Name job ended in August makes it questionable whether Mr. X continued working both jobs in September. There was no testimony or other documentation about the end date for the No-Name job, but the fact that Mr. X' wages from No Name Youth Services nearly doubled in September—that he could devote more hours to that job after August—tends to support a conclusion that he had stopped working for No-Name before September. Thus, it is not highly probable that the household income remained above \$2,871 after August.

But that does not excuse Ms. T's failure to report the change when the report was due. It is highly probable that Ms. T's failure to report was intentional. She did not list the No Name Youth Services job and the income from it in the September 21, 2009 eligibility review form submitted for the recertification, even when faced with a direct question about household employment and responding under penalty of perjury. This is a strong indicator that she was deliberately concealing the information.

The division has met its burden of proving that Ms. T did not report when required, and intended not to report, the income change resulting from Mr. X' job at No Name Youth

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<sup>27</sup> Exhibit 12, page 3.

<sup>28</sup> Exhibit 12, page 3.

Services. The division has asserted that this is a first intentional program violation by Ms. T, and there is nothing in the record to the contrary. The appropriate penalty, therefore, is a 12-month disqualification period.

#### **IV. Conclusion and Order**

The division alleged that Ms. T committed an intentional program violation by not reporting household income from Mr. X' job at No Name Youth Services. The division has proven by clear and convincing evidence that she intentionally withheld or concealed information. Since this is a first violation, the appropriate penalty is a 12-month period of disqualification from eligibility for food stamp benefits.

The 12-month disqualification period shall begin February 1, 2013. This disqualification applies only to Ms. T and not to any other individuals who may be included in her household. During the disqualification period, Ms. T's individual needs will not be considered when determining food stamp eligibility and benefit amounts for her household, but her income and resources must be reported for use in those determinations.

Ms. T and the household members are required to repay the overpayment of benefits resulting from her failure to report the income increase. The division has calculated that amount to be \$3,401. If Ms. T disagrees with the division's calculation, she may request a separate hearing limited to that issue.

Dated this 4<sup>th</sup> day of December, 2012.

*Signed* \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

## Adoption

The undersigned, by delegation from of 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 21<sup>st</sup> day of December, 2012.

By: Signed \_\_\_\_\_  
Name: Terry L. Thurbon  
Title: Chief Administrative Law Judge

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