

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

In the Matter of)	
)	OAH No. 13-0325-ADQ
T R. Q)	DPA/FCU No.
_____)	Agency No.

DECISION

I. Introduction

In April of 2012, Mr. Q was re-certified to receive Food Stamps benefits. He noted on his application that he was not currently employed but hoped to begin work in May or June. Mr. Q did obtain employment, but did not report that employment to the Division of Public Assistance (division). The division conducted an investigation and determined that Mr. Q committed an intentional program violation by not reporting his employment.

Mr. Q contested that determination, and a hearing was held on April 16, 2013. Mr. Q appeared by telephone.¹ The division was represented by investigator Wynn Jennings. Based on the evidence presented, the division did not meet its burden of proving an intentional program violation.

II. Facts

Mr. Q completed an eligibility review form on April 16, 2012.² In response to the question asking whether his job situation might change soon, he wrote “Should start work sometime in May or June.”³ Mr. Q signed the Statement of Truth, acknowledging that he understood the Rights and Responsibilities section of the application.⁴ The Rights and Responsibilities section includes a section on reporting changes. It says, in part:

¹ Mr. Q stated that he wanted to appear in person to present his evidence, but did not believe that was an option. The first page of the exhibit package sent by the division states the hearing will occur by telephone. *See* Exhibit 1, page 1. Thus, although other documents sent to Mr. Q told him he was allowed to appear in person, his misunderstanding is understandable. *The division may wish to correct its form to avoid confusion in the future.* Mr. Q was given the opportunity to reschedule for a time he could appear in person, but decided to go forward with the hearing.

² Exhibit 7.

³ Exhibit 7, page 2.

⁴ Exhibit 7, page 4.

If you receive Food Stamps and you do not receive benefits from any other program, you only need to report when your household's total gross income goes over the income limit for your household.^[5]

Mr. Q was also sent a notice stating that his recertification was approved, but that he was required to report his income if he earns more than \$3,545 in a month.⁶ Mr. Q did obtain employment in May of 2012. He was paid weekly, and his income for the month of June exceeded \$3,545 with his June 22, 2012 paycheck.⁷

III. Discussion

Federal Food Stamps regulations impose penalties on individuals who have committed an intentional program violation (IPV). The definition of an IPV includes having intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts."⁸ In this case, the division contends that Mr. Q intentionally concealed or withheld from the division the fact that he had obtained employment and that his income exceeded the reportable amount.

An IPV may only be found on clear and convincing evidence that the individual committed and intended to commit an IPV.⁹ In order to meet the clear and convincing evidence burden of proof, the division must show the truth of the facts it is asserting is highly probable.¹⁰ The penalty for a first IPV is a 12 month disqualification.¹¹

Mr. Q concedes that he should have reported his income, and that he received benefits to which he was not entitled. He testified that he is willing to pay back the benefits he improperly received. He denies that his failure to report was an intentional act of misrepresentation or concealment.

Mr. Q testified that he thought recertification was for six months at a time. He testified that he didn't hear or read the warnings contained in the application and in the Rights and Responsibilities. He noted that he is a supervisor for a no name company, and that he often has clients who sign forms acknowledging details about the product that the client likely does not understand. He implied that his situation was similar. He signed documents that he did not pay a lot of attention to. He does not always read his mail, and while he may have received the

⁵ Exhibit 7, page 5.

⁶ Exhibit 9.

⁷ Exhibit 10, page 2 (payroll records from employer).

⁸ 7 CFR §273.16(c)(1).

⁹ 7 CFR §273.16(e)(6).

¹⁰ *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

¹¹ 7 CFR §273.16(b)(1).

notice approving recertification, he might only have read far enough to have seen that he was eligible without reading the last page that would have reminded him of his reporting requirement.

Mr. Q did not deny his failure to report, and did not attempt to place blame on anyone else. He candidly admitted he should have reported his income. It was not possible to physically observe Mr. Q while he testified, but based on his word choice and inflection, there is no basis for finding his testimony was not credible.

Mr. Q was certainly negligent in not paying more attention to the warnings he received concerning the need to report his increased income. However, the division must do more than prove Mr. Q should have known of the reporting requirement. It must prove Mr. Q intentionally withheld or concealed information.

The division must also prove the withholding or concealment of information by a heightened burden of proof. Proving Mr. Q *likely knew* he was withholding or concealing information is not sufficient; the division must prove it was *highly probable* that Mr. Q knew he was withholding or concealing information that he was required to report.¹²

Circumstantial evidence of the recipient's intent to withhold or conceal information will often be sufficient to meet the division's burden, but the circumstantial evidence is not sufficient to overcome Mr. Q's testimony in this case.¹³ Based on the evidence presented, and absent any basis for finding Mr. Q was not a credible witness, the division did not meet its burden of proving that it is highly probable that Mr. Q intentionally failed to report his income after it exceeded the reportable amount.

IV. Conclusion

Based on the evidence presented, the division did not meet its burden of proving an intentional program violation by clear and convincing evidence.

DATED this 24th of April, 2013.

Signed
Jeffrey A. Friedman
Administrative Law Judge

¹² Possibly because the penalty for an IPV is severe, the federal regulations make it difficult to prove an intentional violation.

¹³ The division provides warnings and has recipients acknowledge receipt of those warnings in a way that will often get the person's attention. But a recipient's knowledge of his rights and responsibilities at the time of application will never guarantee that the recipient will think of those rights and responsibilities a month or more later when he or she is obligated to report additional income.

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:

I find it highly probable that Mr. Q. was aware of his responsibility to report changes given the evidence and therefore find he has committed an IPV. With this finding, a twelve month disqualification should be imposed and restitution for overpayments made.

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 June, 2013.

By: Signed _____

Name: Ree Sailors

Title: Deputy Commissioner, DHSS

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