

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

In the Matter of)	
)	OAH No. 12-0894-SNA
U N)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

On August 22, 2012, the Division of Public Assistance (Division) sent U N written notice it was imposing a first time job quit penalty which made her ineligible to receive Supplemental Nutrition Assistance Program benefits, commonly referred to as Food Stamp¹ benefits, for a thirty day period.² Ms. N requested a hearing for the sole purpose of challenging the assessment of the penalty.³

Ms. N’s hearing was held on December 11, 2012. Ms. N represented herself and testified on her own behalf. Terry Gagne, Public Assistance Analyst with the Division, represented the Division. The hearing was recorded.

The evidence shows that Ms. N did not quit her job, but was instead fired. As a result, the Division’s decision to impose a first time job quit penalty against her is REVERSED.

II. Facts

The following facts were established by a preponderance of the evidence.

Ms. N testified she was working at a job she had held for a number of years, without any disciplinary or attendance issues. Her boyfriend worked with her. When her boyfriend was terminated from his job on August 10, 2012, she threw her keys on the counter and walked off the job. Her employer called her as she was walking home and told her that he did not want her to quit and she agreed to return to work the next day. She returned to work the next day and was

¹ Congress renamed the Food Stamp program to the Supplemental Nutrition Assistance Program in 2008. Food, Conservation, and Energy Act of 2008, Public Law No. 110-246, §4001. The term “Food Stamp” is still used in regulations, manuals, and forms.

² Exs. 2.16, 2.16A.

³ This case arises because Ms. N filed an application for Food Stamp benefits which was denied. The Division provided two separate reasons for the denial. The first was that she had quit her job, which made her ineligible for Food Stamp benefits for a thirty day period. The second was that she was financially not eligible, due to excess income, at the time she applied. Ms. N is not challenging the denial of her Food Stamp application. The purpose of her hearing request was instead to contest the imposition of the job quit penalty, because of the cumulative effective of multiple job quit penalties: a first time job quit penalty makes a person ineligible for benefits for one month, whereas a second penalty makes a person ineligible for three months, and a third (or subsequent) penalty makes a person ineligible for a six month period. 7 C.F.R. § 273.7(e)(2); *Alaska Food Stamp Manual* § 602-11(2)(c).

told she was fired because she was untrustworthy. What precipitated the firing was a facebook posting by her boyfriend.⁴ No one testified to rebut her testimony.

Ms. N's former employer completed an employment statement that said her last day of work was August 10, 2012 that she quit "[a]fter having to terminate her boyfriend (whom she worked with) she threw her keys on the counter stated she was done and walked out of the store."⁵

Ms. N applied for Food Stamp benefits on August 13, 2012. After the Division received the employer's statement, it imposed a first time penalty against Ms. N because she had quit her job.⁶

III. Discussion

Food Stamps is a federal program administered by the State.⁷ The Food Stamp program has a work requirement. A person receiving or applying for Food Stamp benefits is required to be employed, looking for employment, or training for employment, unless that person is exempt from the work requirement.⁸ As part of the work requirement, a person may "not voluntarily and without good cause quit a job of 30 or more hours a week."⁹ A person who voluntarily and without good cause quits a job of 30 or more hours a week (or the weekly wage equivalent of 30 hours at the federal minimum wage rate of \$7.25 per hour), during the 60 day time period immediately preceding a Food Stamp application, is subject to a penalty that makes him or her not eligible to receive Food Stamp benefits for a specified period of time.¹⁰ That ineligibility period varies depending on whether the applicant has had prior penalties imposed.¹¹

Based upon Ms. N's testimony, it is more likely than not true that she initially quit her job, but that her employer talked her into reconsidering and returning to work. When she went back to work, her employer fired her.¹²

⁴ N testimony.

⁵ Ex. 2.12.

⁶ Exs. 2.11, 2.13, 2.15 – 2.16.

⁷ 7 C.F.R. § 271.4(a).

⁸ 7 C.F.R. § 273.7(a)(1).

⁹ 7 C.F.R. § 273.7(a)(1)(vii).

¹⁰ 7 C.F.R. § 273.7(j)(2)(i); 7 C.F.R. § 273.7(j)(3)(ii); *Alaska Food Stamp Manual* §602-1I(2)(a).

¹¹ 7 C.F.R. § 273.7(e)(2); *Alaska Food Stamp Manual* § 602-1I(2)(c).

¹² The only evidence to controvert Ms. N's testimony is the unsworn hearsay statement of her former employer that she quit, and which does not mention her coming back into work the next day and being fired. (Ex. 2.12) Because this statement is unsworn hearsay, not subject to cross-examination, it is given less probative value than Ms. N's sworn hearing testimony.

The Food Stamp program penalizes a person for quitting a job. It does not penalize them for being fired. For example, a person who resigns from a job after being asked to by the employer is not subject to a job quit penalty.¹³ By way of contrast, the Alaska Temporary Assistance program provides for the imposition of a penalty when a person is fired for cause.¹⁴

The evidence in this case shows that it is more likely than not true that Ms. N was fired from her job and did not quit it. As a result, the Division was not justified in imposing a first time job quit penalty against her.

IV. Conclusion

The Division's decision to impose a first time job quit penalty against Ms. N is REVERSED.

DATED this 17th day of December, 2012.

Signed

Lawrence A. Pederson
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 27th day of December, 2012.

By: *Signed*

Name: Lawrence A. Pederson
Title: Administrative Law Judge

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

¹³ 7 C.F.R. § 273.7(j)(3)(ii).

¹⁴ A Temporary Assistance recipient is subject to a penalty if they quit their job, without good cause, or if they are fired from their job due to misconduct. 7 AAC 45.970; 7 AAC 45.990(b).