

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

In the Matter of)	OAH No. 18-1136-ADQ
)	Division No. 05505720
T E S-S)	Fraud Control Case No. 19-8-44925
_____)	Food Stamp Program

DECISION

I. Introduction

T E S-S is a Food Stamp¹ recipient. On November 5, 2018, the Department of Health and Social Services, Division of Public Assistance (Division), initiated this Administrative Disqualification case against her, alleging she had committed a first time Intentional Program Violation of the Food Stamp program.²

Ms. E S-S’ hearing was held on December 7, 2018. Ms. E S-S appeared in-person. She represented herself and testified. Wynn Jennings, an investigator employed by the Division’s Fraud Control Unit, represented the Division and testified on its behalf. O J, an eligibility technician employed by the Division, testified for the Division.

This decision concludes that Ms. E S-S did not commit an Intentional Program Violation of the Food Stamp program.

II. Facts

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

Ms. E S-S is a Food Stamp recipient who applied to renew those benefits on July 24, 2018. As part of that application, Ms. E S-S did not fill in a response to the question that asked her to list her employment and income if she was working.³ She did check the box marked “No”

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. 8, p. 3, § 7.

to the immediately following question that asked if she expected her “wages or hours of work [to] change soon.”⁴

Ms. E S-S participated in an in-person interview regarding her application on August 28, 2018. During that interview, the Division’s eligibility technician conducting the interview determined that Ms. E S-S was employed.⁵ The eligibility technician testified that he asked Ms. E S-S if she was working and she denied working twice. He further testified that Ms. S admitted working, but that was after he asked a third time.⁶ He subsequently referred this case for a fraud investigation.⁷

Ms. E S-S testified that she did not tell the eligibility technician that she was not working. She testified that eligibility technician asked her if she was working, and that she told him that she was working and that she logged onto her work website on her phone and showed him her employment information.⁸ Ms. E S-S gave the eligibility technician her supervisor’s name and phone number. The eligibility technician spoke to the supervisor and verified Ms. E S-S’s work hours.⁹

The Division initiated a fraud investigation which culminated in this case.¹⁰

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹¹ that Ms. E S-S committed an Intentional Program Violation of the Food Stamp program: that she intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts” by failing to notify the Division of her employment.¹² It must be noted that Food Stamp eligibility and benefits are determined based, in part, on a household’s income.¹³

The evidence is clear is that Ms. E S-S did not list her employment on the application. She did not deny working on the application. She did check the box that said her work situation was not expected to change. The Division’s position at hearing was that the issue in this case was whether Ms. E S-S denied working during her interview. It was not bringing this case based

⁴ Ex. 8, p. 3, § 7.

⁵ Ex. 9, p. 1; Mr. J’s testimony.

⁶ Mr. J’s testimony.

⁷ Exs 2, 9; Mr. J’s testimony.

⁸ Ms. E S-S’s testimony.

⁹ Ex. 9; Mr. J’s testimony.

¹⁰ Ex. 2.

¹¹ 7 C.F.R. § 273.16(e)(6).

¹² 7 C.F.R. § 273.16(c).

¹³ 7 C.F.R. § 273.10(e)(1)(i)(A).

upon the fact that she did not fill out the portion of the application which inquired about her employment and income. This means that the critical issue here is one of whether Ms. E S-S initially misrepresented her employment status during her eligibility interview.

It is undisputed that Ms. E S-S provided the eligibility technician with her employment information, pulling the work website information up on her cellphone, along with the name and phone number of her supervisor. The eligibility technician testified, however, that Ms. E S-S only provided that information after he asked about employment three times, and that she denied working the first two times he asked. Ms. E S-S testified that she did not initially deny working. Ms. E S-S appeared in-person for her hearing. It was therefore possible to observe her while she was testifying. Based upon her visible demeanor when she was speaking, answering questions, and her facial reactions to the eligibility technician's testimony, her testimony was more credible than that of the eligibility technician.

The Division has the burden of proof in this case by clear and convincing evidence. Because Ms. E S-S's testimony was more credible than that of the eligibility technician, it did not meet its burden. As a result, the Division did not establish that Ms. E S-S intentionally misrepresented her employment status during her eligibility interview.

IV. Conclusion

Ms. E S-S did not commit a first time Intentional Program Violation of the Food Stamp program.

Dated this 27th day of December, 2018.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 10th day of January, 2019.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]