

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

In the Matter of )  
 )  
 Z Q ) OAH No. 19-0462 ADQ  
 ) Fraud Control Unit Case No.  
 )  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

Z Q was a Food Stamp recipient.<sup>1</sup> The Department of Health and Social Services, Division of Public Assistance (Division) initiated this Administrative Disqualification case. It alleged Ms. Q committed a first time Intentional Program Violation (IPV) of the Food Stamps program by claiming to be an Alaska resident when applying to renew her Food Stamps. This decision concludes Ms. Q did not commit an IPV of the Food Stamp Program.

**II. Facts**

The following facts were established by clear and convincing evidence.

Ms. Q was an Alaska Food Stamps recipient. Ms. Q went to another state in August 2018.<sup>2</sup> She was staying with her sister until Ms. Q could obtain medical treatment and return to City A.<sup>3</sup> She last used her Food Stamps in Alaska on August 4, 2018.<sup>4</sup> Following that date, for the time in question, Ms. Q used her Alaska Food Stamps exclusively in Another state.<sup>5</sup>

Ms. Q applied to renew her Alaska Food Stamps on or about November 18, 2019.<sup>6</sup> As part of the renewal application process, Ms. Q filled out the Division’s renewal application. In response to a question asking for her mailing and residence address, she provided a City A address, and signed a statement, under penalty of perjury, that the information she provided on the application was true and correct.<sup>7</sup> At the time she renewed her application, Ms. Q was physically in another state.<sup>8</sup>

---

<sup>1</sup> The Food Stamp program was renamed the Supplemental Nutrition Assistance Program (SNAP) in 2008. It is still commonly referenced as Food Stamps.

<sup>2</sup> Exhibit 11.

<sup>3</sup> *Id.*

<sup>4</sup> Exhibit 10 at 1.

<sup>5</sup> Exhibit 10.

<sup>6</sup> Exhibit 6.

<sup>7</sup> *Id.*

<sup>8</sup> Mr. Schwenke testimony; Exhibit 11.

Ms. Q's Food Stamps recertification application was approved.<sup>9</sup> However, her case came to the attention of the Division because it routinely monitors EBT cards (Food Stamp cards), for use outside the state.<sup>10</sup>

William Schwenke is a Fraud Investigator for the State of Alaska, who was assigned to the investigation. He spoke with Ms. Q in a recorded telephonic interview on December 13, 2018.<sup>11</sup> Ms. Q confirmed she was "in Another state for medical reasons and has no return date," although she still "intend[s] to return to Alaska."<sup>12</sup> Mr. Schwenke concluded that Ms. Q committed an IPV because she was not living in Alaska at the time she applied for Food Stamps, so she was no longer a resident of Alaska.<sup>13</sup> Mr. Schwenke mailed Ms. Q a notice of suspected program violation "via both certified, return-receipt requested UA Mail and standard first-class postage prepaid US mail."<sup>14</sup>

Ms. Q's hearing began June 27, 2019 with Ms. Q not appearing. The hearing was held in her absence.<sup>15</sup> Mr. Schwenke testified and presented the Division's case telephonically. Exhibits 1-12 were admitted without objection.

### III. Discussion

The Food Stamps program is a federal program administered by the state in which an applicant applies for benefits. To administer the program in Alaska, the Alaska Department of Health and Social Services has adopted the federal regulations governing the program.<sup>16</sup> The specific regulation applicable to Ms. Q's case requires that she "shall live in the State in which [she] files an application."<sup>17</sup>

The Division claims Ms. Q committed an IPV of the Food Stamp program.<sup>18</sup> An IPV occurs when a benefits recipient acts "for the purpose of establishing or maintaining a family's eligibility for [Food Stamps]... that intentionally misrepresents, conceals or withholds a material fact."<sup>19</sup> The Division contends Ms. Q was in Another state at the time she reapplied for Food Stamps, so she

---

<sup>9</sup> Exhibit 8.

<sup>10</sup> Exhibit 2; Mr. Schwenke testimony.

<sup>11</sup> Exhibit 11; *See also* Exhibit 1 p. 3, Affidavit of William Schwenke; Mr. Schwenke testimony.

<sup>12</sup> Exhibit 2 at 1; Exhibit 11.

<sup>13</sup> *Id.*

<sup>14</sup> Exhibit 3. *See also* Exhibit 1 at 3, Affidavit of William Schwenke.

<sup>15</sup> The Federal Food Stamps program allow a hearing to be held without the participation of the recipient alleged to have committed an Intentional Program Violation, *see In re M.G.*, (OAH No. 12-0503-ADQ ) (Comm'r Health & Soc. Srvs., August 2012) <https://aws.state.ak.us/OAH/Decision/Display?rec=40> fn 4.

<sup>16</sup> 7 AAC 46.010.

<sup>17</sup> 7 C.F.R. § 273.3. The provisions of 7 AAC 46.021 - 7 AAC 46.990 address elements of the program which have been committed to the discretion of the Division. The only issue is regarding residency.

<sup>18</sup> Exhibit 3.

<sup>19</sup> 7 AAC 45.580 (n).

intentionally mislead the Division by identifying her City A address as where she resides, on her Food Stamps application.

To prove an IPV, the Division must show by clear and convincing evidence that Ms. Q intentionally provided or excluded misleading material facts in her reapplication.<sup>20</sup> Specifically, was the information Ms Q included in her Food Stamps application intended to mislead the Division into erroneously conclude she was still a resident.

This decision does not explore whether Ms. Q's Food Stamps reapplication should have been authorized. Instead, it looks at whether Ms. Q's actions were intended to mislead the Division.

Ms. Q's renewal application consists of 8 pages.<sup>21</sup> The application asks her to list her mailing address and residence address.<sup>22</sup> It does not ask her where she is located at the time of her completing the application.<sup>23</sup> She swore under penalty of perjury that her residence was in City A, Alaska.<sup>24</sup> Nothing other than her address was disputed by the Division as untrue.<sup>25</sup>

When she spoke to Mr. Schwenke by phone after the allegations of IPV, Ms. Q maintained she was in Another state, but intended to return after medical issues were resolved.<sup>26</sup> Ms. Q did not fudge the dates of her use of her EBT card outside Alaska or deny use in another state. She was candid, and consistent, about her situation. She maintained that she intends to return to Alaska.

No evidence was presented that Ms. Q had any knowledge her extended presence in Another state could affect her Alaska residency. And for her to intend to mislead the Division, she would have to know her residency could be in jeopardy for Food Stamps purposes. Instead, her interview with Mr. Schwenke shows that she is only temporarily out of state and intends to return to Alaska. The Division has a high burden of proof, clear and convincing evidence. It therefore had to show that Ms. Q was intentionally misrepresenting her residence. The Division did not meet its burden.

---

<sup>20</sup>

*Id.*

<sup>21</sup>

Exhibit 6.

<sup>22</sup>

Exhibit 6 at 1.

<sup>23</sup>

Exhibit 6.

<sup>24</sup>

Exhibits 6 at 1, 5.

<sup>25</sup>

Mr. Schwenke testimony.

<sup>26</sup>

Exhibit 11.

**IV. Conclusion**

This decision was asked to look at whether Ms. Q’s actions constituted an intentionally misleading act. To be intentionally misleading requires some motivation or purpose behind the actions. And for the Division to prevail, it must show by clear and convincing evidence that Ms. Q committed an intentionally misleading act. This high burden was not met.

Dated July 31, 2019

*Signed* \_\_\_\_\_  
Hanna Sebold  
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 14th day of August, 2019.

By: *Signed* \_\_\_\_\_  
Signature  
Hanna Sebold \_\_\_\_\_  
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.]