

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

In the Matter of )  
 )  
G G ) OAH No. 13-1162-ADQ  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

G G applied for and was receiving Food Stamp benefits. The Division of Public Assistance (division) determined that he had not reported his wife’s income on the application. The division scheduled a hearing at which he could contest the division’s determination that this was an Intentional Program Violation (IPV), and notified Mr. G of the time and date of the hearing.

Mr. G did not appear at that hearing, and could not be reached at either of the telephone numbers available for him. Mr. G has not contacted the Office of Administrative Hearings since that date to show good cause for failing to appear.

The division presented evidence at the hearing, and has met its burden of proving an IPV by clear and convincing evidence.

**II. Facts**

The division received an Eligibility Review Form for continued receipt of Food Stamp benefits on January 29, 2013.<sup>1</sup> This form was signed by Mr. G.<sup>2</sup> The listed members of the household were Mr. G, his wife N X, and their daughter M<sup>3</sup>. Question 7 of this form asks whether anyone in the household is working. Mr. G only listed his own unemployment income.<sup>4</sup>

The division found that Ms. X was in fact employed. She worked for No Name, LLC in the last quarter of 2012, and during the first three quarters of 2013.<sup>5</sup> Between January 1, 2013 and July 30, 2013, the household received \$3,822 in Food Stamp benefits.<sup>6</sup> Had Ms.

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<sup>1</sup> Exhibit 7, page 1.  
<sup>2</sup> Exhibit 7, page 4. It is also signed by N X.  
<sup>3</sup> Exhibit 7, page 1.  
<sup>4</sup> Exhibit 7, page 2.  
<sup>5</sup> Exhibit 12, page 2 (Department of Labor records). Exhibit 13 (records showing payments to Ms. X through No Name).  
<sup>6</sup> Exhibit 14, page 1; Testimony of Amanda Holton.

X's income been reported, the household would have been eligible for only \$528 in benefits, resulting in an overpayment of \$3,294.<sup>7</sup>

### III. Discussion

The division claims that Mr. G intentionally failed to disclose Ms. X's income on his application. For Food Stamp recipients, an Intentional Program Violation is defined to include having intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts[.]"<sup>8</sup> A person who is found to have committed an IPV is disqualified from receiving food stamps for 12 months for a first time violation,<sup>9</sup> and must repay any benefits wrongfully received.<sup>10</sup>

In order to prevail, the division must prove this violation by clear and convincing evidence.<sup>11</sup> Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.<sup>12</sup> This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases.

Ms. X had earned \$1,740.64 from No Name in the fourth quarter of 2012. She earned \$7,672.17 from No Name in the first quarter of 2013.<sup>13</sup> The application was received in late January, and Mr. G participated in a telephonic interview on February 11, 2013.<sup>14</sup> Based on the amount of income earned in the first quarter of 2013, and based on Ms. X's having earned some income from No Name in 2012, it is highly probable that Ms. X was in fact employed when the application was submitted, when the interview was conducted, or both. Mr. G and Ms. X failed to disclose this income.

Mr. G's failure to report the income is not an IPV, however, unless this failure was intentional. If he was not aware of his wife's income, he cannot be held responsible for failing to report it. Mr. G did not appear at the hearing to explain why the income was not reported or to dispute that Ms. X did have unreported income. Given the amount of income

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<sup>7</sup>

*Id.*

<sup>8</sup>

7 C.F.R. 273.16(c)(1).

<sup>9</sup>

7 C.F.R. 273.16(b)(1).

<sup>10</sup>

7 C.F.R. 273.16(b)(12).

<sup>11</sup>

7 C.F.R. § 273.16(e)(6).

<sup>12</sup>

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

<sup>13</sup>

Exhibit 12, page 2.

<sup>14</sup>

Exhibit 9, page 1.

involved, and given that Ms. X would have been leaving the home to perform this work,<sup>15</sup> it is highly probable that Mr. G was aware that his wife was employed. Thus, his failure to include this work on the household application, or to disclose it during a subsequent interview, is an Intentional Program Violation.

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

The division met its burden of proving a first time Intentional Program Violation of the Food Stamp program. Mr. G is therefore disqualified from receiving Food Stamp benefits for a 12 month period, and required to reimburse the division for benefits that were overpaid as a result of the Intentional Program Violation.<sup>16</sup> The Food Stamp disqualification period shall begin November 1, 2013.<sup>17</sup> This disqualification applies only to Mr. G, and not to any other individuals who may be included in his household.<sup>18</sup> For the duration of the disqualification period, Mr. G's needs will not be considered when determining Food Stamp eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in these determinations.<sup>19</sup>

The division shall provide written notice to Mr. G and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired.<sup>20</sup>

If over-issued Food Stamp benefits have not been repaid, Mr. G or any remaining household members are now required to make restitution.<sup>21</sup> If Mr. G disagrees with the

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<sup>15</sup> She was providing personal care assistance to disabled individuals through the Department of Health and Social Services Aid to the Permanently Disabled program. Exhibit 13.

<sup>16</sup> 7 C.F.R. § 273.16(b)(1); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>17</sup> See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9<sup>th</sup> Cir. 1995). Insofar as 7 C.F.R. § 273.16(e)(9)(ii) is inconsistent with this result, it must be disregarded as contrary to statute, as discussed in *Garcia* and in *Devi v. Senior and Disabled Serv. Div.*, 905 P.2d 846 (Or. App. 1995).

<sup>18</sup> 7 C.F.R. § 273.16(b)(11).

<sup>19</sup> 7 C.F.R. § 273.11(c)(1).

<sup>20</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>21</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

division's calculation of the amount of over issuance to be repaid, he may request a separate hearing on that limited issue.<sup>22</sup>

Dated this 9<sup>th</sup> day of October, 2013.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
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 23<sup>rd</sup> day of October, 2013.

By: *Signed* \_\_\_\_\_  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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

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<sup>22</sup> 7 C.F.R. § 273.15.