BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF HEALTH

In the Matter of	)	
	)	
U. T.	)	OAH No. 23-0641-ADQ
	)	

DECISION

I. Introduction

U. T. received Supplemental Nutrition Assistance Program ("SNAP") benefits from February 27, 2017 through January 2018. The Department of Health, Division of Public Assistance ("DPA") initiated this Administrative Disqualification case against Mr. T., claiming a first time intentional program violation for misstating self-employment income and omitting his business's checking account number on a SNAP application. As discussed below, DPA has failed to provide clear and convincing evidence that Mr. T. intended to misstate or omit information or that he indeed had self-employment income in the months at issue.

II. Facts

In 2017, U. T. was sole member and manager of Business A., LLC., which owned a construction contractor business license for doing business as Business B.[1] Mr. T. reported business profit and loss for Business B. as a sole proprietorship on his 2017 federal income taxes.[2] For 2017, Business B. reported a gross income of $210,000 and total expenses of $246,192, resulting in a reported loss of
$36,192.[3]

Mr. T. applied for SNAP benefits on February 27, 2017.[4] On the application, Mr. T. identified Business B. as his employer, but under "wages/tips (before taxes)," he wrote "0."[5] Mr. T. further identified himself as self-employed, identified seasonal construction as his business, and listed "0" for business income the month of the application —

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1 December 8, 2023 Response from U. T. at 1; T Ex. 3; Alaska Department of Commerce, Community, and Economic Development, Division of Corporations, Business & Professional Licensing database records for Business A., LLC and Business B., of which administrative notice is taken.
2 T Ex. A at 3-4 (Form 1040, Schedule C).
3 *Id.* at 3.
4 DPA Ex. 5.
5 *Id.* at 5.

i.e., February 2017 — and "0" anticipated income for the following month — *i.e.*, March 2017.[6] Where the application asked whether "you, or anyone who lives with you, have any of the items" in a list of financial instruments, Mr. T. marked that he had a checking account and listed his personal checking account number.[7] He did not list his business's checking account. Notes from a March 7, 2017 interview state that Mr. T. had not had self-employment income since October 2016 because of the seasonal nature of the construction industry.[8] DPA approved Mr. T. for SNAP benefits through January 2018.[9]

DPA later reviewed statements from Mr. T.'s Business B. checking account. The February 2017 statement shows a starting balance of $355.45, a single deposit of $3600, and $4030.66 in withdrawals, leaving the account with a negative balance of -$75.23 at the end of the month.[10]

Business B.'s March 2017 account statement shows a starting balance of -$75.23, a single deposit of $3700, adjustments and interest adding an additional $112.29 to the account, and $2650.78 in withdrawals, leaving the account with a negative balance of -$139.97 at the end of the month.[11]

Business B.'s November 2017 account statement shows a starting balance of $0.00, two deposits totaling $8615, $0.04 interest, and $2702.44 in withdrawals and checks, leaving an ending balance of $5912.60.[12]

DPA concluded that the deposits Business B. received in February ($3600), March ($3700), and November ($8615) were available household income for those months that exceeded the income limit for SNAP, resulting in overpayments for those months.[13] DPA contends Mr. T. falsely declared no household income on his SNAP application.[14]

A hearing was held December 28, 2023. DPA's representative revealed that she did not review Mr. T.'s exhibits, in particular his tax return, because she did not deem them

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6 *Id.* at 7.
7 *Id.* at 9.
8 DPA Ex. 7 at 2.
9 DPA Ex. 1 at 1.
10 Ex. 11 at 6.
11 *Id.* at 10.
12 *Id.* at 13.
13 DPA Ex. 1 at 6; DPA Ex. 11; DPA Ex. 12.
14 DPA also contends Mr. T. made false statements in a January 2018 recertification, but has not alleged any overpayments in 2018.

relevant.[15] Mr. T. submitted written materials and argument prior to the hearing, but otherwise exercised his right not to testify.

III. Discussion

As an initial matter, Mr. T. argued in his written materials that this matter is barred by the statute of limitations.[16] Actions by the State, including actions before an administrative decision maker, are subject to a six-year statute of limitations.[17] When the action seeks relief for fraud, however, the limitations period does not start to run until the State discovers the facts allegedly constituting fraud.[18] DPA's fraud allegations here are based on deposits DPA discovered when reviewing Business B.'s bank statements in August 2023.[19] DPA initiated this action two months later, on October 17, 2023.[20] This matter is thus well within the six-year statute of limitations.

DPA claims Mr. T. intentionally misstated or omitted income by not informing DPA of his Business B. checking account or the deposits this account received in February, March, and November 2017. A person who intentionally makes false or misleading statements or omits facts on a SNAP application is responsible for paying back any overpayment as restitution and can be disqualified from receiving benefits for one year for a first offense.[21] The Division has the burden of demonstrating these intentional violations by clear and convincing evidence.[22]

DPA has not met its burden to show Mr. T. intentionally omitted the Business B. checking account on his SNAP application. The application asks for the account numbers of checking accounts held by "you, or anyone who lives with you." By referring to accounts held by people, a person could reasonably understand that the application was asking

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[15] Avila testimony.

[16] December 8, 2023 Response from U. T. at 1

[17] AS 09.10.120; *see*, *e.g.*, *Levi v. Department of Labor & Workforce Development*, 433 P.3d 1137, 1145 (Alaska 2018) (administrative notice of unemployment overpayment is state action subject to AS 09.10.120 statute of limitations); *Agen v. State, Department of Revenue, Child Support Enforcement Division*, 945 P.2d 1215, 1219 (Alaska 1997) (AS 09.10.120 statute of limitations applies to administrative action to enforce child support) *Municipality of Anchorage v. Alaska Distributors Co.*, 725 P.2d 692, 693 (Alaska 1986) ("The six year statute of limitations for actions in the name of a political subdivision applies to the taxation of escaped property."); *Alascom, Inc. v. North Slope Borough, Board of Equalization,* 689 P.2d 1175, 1179 (Alaska 1983) (administrative tax assessment subject to AS 09.10.120 statute of limitations).

[18] AS 09.10.120(a).

[19] Avila Affidavit ¶ 3.

[20] DPA Ex. 2.

[21] 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(1), (b)(12), (c)(1).

[22] 7 C.F.R. § 273.16(e) (6).

only for personal accounts, not the accounts of businesses owned by an applicant. The mere fact that Mr. T. did not list Business B.'s account number here thus fails to show clear and convincing evidence that he intended to omit this information.

DPA also failed to meet its burden to show Mr. T. misrepresented his self- employment income as zero. DPA claims the deposits Business B. received in February, March, and November were self-employment income for those months. A DPA representative testified that deposits are *per se* income and that DPA does not consider withdrawals.[23] But determining self-employment income is not nearly so simply. Federal regulation requires state agencies to calculate a SNAP applicant's self-employment income by averaging that income over the period the income is intended to cover.[24] To determine a monthly income, a state agency must add all gross self-employment income and capital gains, exclude the costs of producing the self-employment income, and divide the remaining amount by the number of months over which the income will be averaged.[25] DPA's SNAP manual similarly describes subtracting costs of doing business from the expected income to determine an adjusted gross self-employment income and then prorating it across months, depending on whether it is monthly or seasonal income.[26] For seasonal income, the manual further instructs DPA to compare an applicant's estimated yearly income to a Self-Employment Annualization Standard to determine SNAP eligibility.[27]

DPA did none of this to determine if Mr. T., through ownership of Business B., had income for February, March, or November 2017. Receiving funds in those months is merely a starting point. There is insufficient evidence to determine what, if any, costs should be deducted and over what time period any income should be averaged to determine a monthly income. Nor is there evidence to determine if Mr. T.'s annualized seasonal income exceeds the standard for SNAP eligibility. The negative income reported on his taxes certainly suggests it did not. DPA's evidence of deposits, without evidence of whether and to what extent those deposits constitute income in accordance with federal regulation and its own

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23 Avila testimony.
24 7 C.F.R. § 273.11(a)(1).
25 7 C.F.R. § 273.11(a)(2).
26 DPA SNAP Manual 605-2 D, available at http://dpaweb.hss.state.ak.us/manuals/fs/605/605-2_d.htm#605_2_D_6 Budgeting_Self_Employment_Income, of which administrative notice is taken.
27 *Id.*

SNAP manual, fails to provide clear and convincing evidence that Mr. T. had income in these months that he misstated on his application.

Nor has DPA shown an intent to misstate income. On his application, Mr. T. listed his income for current and following months — February and March 2017 — as zero.[28] At the hearing, a witness for DPA testified that where its SNAP application requests business income for the current and following month it is "implied" that a person should list gross income.[29] But the application merely specifies "income."[30] A reasonable person could understand that to mean a net income. Indeed, by requiring deduction of certain costs, federal regulation uses a form of net income for SNAP eligibility.

Furthermore, at the time Mr. T. signed his SNAP application — February 24, 2023 — Business B. had not yet received any of the deposits at issue here.[31] DPA has offered no evidence that Mr. T. knew on February 24 that Business B. would receive one deposit later that month or one the next, let alone that Mr. T. understood such deposits to be "income," particularly in light of the negative balance Business B. carried on its checking account both those months.

IV. Conclusion

DPA has failed to provide clear and convincing evidence that Mr. T. intentionally omitted or misstated information on his SNAP application. Accordingly, DPA has not shown that Mr. T. committed a first time intentional program violation.

Mr. T.'s counsel made a request for attorney's fees at the hearing. While OAH can entertain an oral motion, a request for sanctions in the form of attorney's fees requires more detail and would need to be made in writing.

Dated: January 8, 2024

By: *Signed*
Signature
Rebecca Kruse
Name
Administrative Law Judge
Title

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28 DPA Ex. 5 at 7.
29 K. testimony.
30 DPA Ex. 5 at 7.
31 DPA Ex. 11 at 6 (earliest deposit received February 26, 2017).

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 23rd day of January, 2024.

By: *Signed*
Signature
Rebecca Kruse
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.]