

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

In the Matter of	)	
	)	
L. E. J.	)	OAH No. 23-0143-ADQ
_____	)	

DECISION AND ORDER

I. Introduction

On 21 February 2023 the Alaska Division of Public Assistance (Division) initiated an Administrative Disqualification case against L. J. alleging that she had committed a first Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program (commonly referred to as food stamps) by intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding facts.¹ Specifically, the Division asserted that she had failed to declare her bingo winnings on two separate eligibility review forms, as well as during two interviews with the Division.

This decision concludes that the Division failed to prove by clear and convincing evidence that Ms. J. intentionally misrepresented her bingo prizes to the Division, or that her bingo winnings even resulted in overall profits that augmented her household income, impacting her eligibility for food stamps. Therefore, Division’s request for an imposition of an IVP penalty is DENIED.

II. Facts

The following facts were established by clear and convincing evidence.²

The application for the Division’s food stamp program is comprehensive. It solicits a significant amount of information to enable the Division to accurately evaluate an applicant’s eligibility for food stamps.³ The form contains sections asking about an applicant’s household composition, income, and expenses.

On December 21, 2016, Ms. J. signed and submitted an application for food stamps for her household, which included herself and her four children.⁴ Following the sections addressing income from wages and shares in Native corporations, Question 8 directs the applicant to “List any other money you or anyone in your household receives. *Include Social Security, SSI, BIA, VA, retirement, unemployment insurance, Worker’s Compensation, Native assistance, child*

¹ Exhibit (“Ex.”) 1; 7 C.F.R. § 273.16(c).

² The facts are based on the exhibits referenced, as well as testimony given under oath by Will Schwenke, current Investigator II/former Eligibility Technician, Department of Public Assistance.

³ Ex. 7.

⁴ Ex. 7.

support, cash gifts, annuities, etc.”⁵ In response to Question 8, Ms. J. listed “Child support,” and for the amount she reported “varies.”⁶ She did not list any other sources of income.

During an eligibility interview with the Division on March 9, 2017, Ms. J. provided proof of rent payments through Alaska Housing, discussed the value of her vehicle (\$500), her average monthly child support payment (\$105), and her average weekly wages at Employer A (\$108). She also provided information about her family’s shares in Native corporations. Based on the information she provided, Ms. J. was determined eligible to receive benefits through June 2017.⁷

On the second signed eligibility review form submitted on January 3, 2018, in response to the section regarding other sources of household income Ms. J. listed “UI Ben” in the amount of \$212.00.⁸

During the eligibility interview with the Division on January 26, 2018, Ms. J. represented that as she had been laid off as it was the slow season, so her sources of income were now unemployment benefits and child support.⁹ There were no dividends paid on her family’s Native corporation shares.¹⁰ Based on the information she provided, Ms. J. was determined eligible to receive benefits through June 2018.¹¹

In 2015 the Division received an anonymous phone call that two individuals, Ms. J. and “N.,” were earning weekly winnings from bingo games or pull tabs offered at the local Bingo Center.¹² The Division did not follow up on the tip until 2017, when it requested all of Ms. J.’s prize receipts from the Bingo Center in City A. dating back to 2013.¹³ The business complied, but the Division did not take immediate action. The following year the Division amended its request for Ms. J.’s receipts to include the year 2018.¹⁴ The Bingo Center complied.

In February 2023, eight years after receiving the initial anonymous tip regarding Ms. J. and her unreported bingo winnings, the Division initiated an Administrative Disqualification case against Ms. J. alleging that she had intentionally concealed or withheld facts by not disclosing to the Division her bingo winnings. At the hearing, the Division submitted authenticated, notarized

⁵ Ex. 7, p. 3.

⁶ *Id.*

⁷ Ex. 11.

⁸ Ex. 8.

⁹ Ex. 10.

¹⁰ Ex. 10.

¹¹ Ex. 12.

¹² Ex. 2.

¹³ Ex. 13.

¹⁴ *Id.*

records of prize receipts signed by Ms. J. from February 2017 through June 2018.¹⁵ During two specific time periods, February 2017 to June 2017, and from January 2018 to June 2018, Ms. J. received bingo winnings.¹⁶ During those periods Ms. J. was receiving food stamps.¹⁷

The Division argues that because Ms. J. did not list these winnings on her eligibility review forms, nor mention them during her interviews with the Division, she was issued benefits for which she did not qualify.¹⁸ The Division calculated that Ms. J. received \$4,315 in overpaid food stamp benefits for the months of February 2017 to June 2017, and from January 2018 to June 2018, both of which fall within the six year statute of limitations under AS 09.10.120(a). The Division asserts that Ms. J. should be required to repay the benefits to which she was not entitled.

III. Procedural History

In February 2023 the Division requested an Administrative Disqualification Hearing to ask that Ms. J. be temporarily disqualified from the food stamp program, and that she be required repay the full amount of overpaid benefits.¹⁹

The Division sent Ms. J. a packet including the information forming the basis of this case by both certified, return receipt mail and standard, first class postage prepaid mail on February 21, 2023.²⁰ The packet included a notice that advised Ms. J. of the date, time and place of the hearing, the allegations against her, a summary of the Division's evidence, a listing of her rights under 7 C.F.R. § 273.15(p), a warning of the consequences of failure to appear, and a statement that she would have ten days from the date of the hearing to present good cause for failure to appear.²¹ The United States Postal Service (USPS) tracking system showed the certified package delivered and ready for pickup at the post office on March 4, 2023.²² The Division sent a duplicate packet to Ms. J. on March 21, 2023.²³ The USPS tracking system showed it was delivered, held for the requisite number of days, then returned as unclaimed on April 10, 2023.²⁴

¹⁵ Ex. 13.

¹⁶ Ex. 14, 15.

¹⁷ Ex. 11, 12.

¹⁸ Ex. 16.

¹⁹ Ex. 3.

²⁰ *Id.*

²¹ *Id.*

²² Ex. 4.

²³ Ex. 6.

²⁴ *Id.*

It was established that Ms. J., therefore, received adequate notice of the basis of the allegations brought by the Division, as well as notice of the scheduled hearing before the Office of Administrative Hearings.

The hearing in this matter convened at the scheduled hour on March 30, 2023. Ms. J. was contacted at the number she provided the Division, but the call passed directly to a message stating she was unavailable. The hearing was reset for April 17, 2023, and the rescheduling order issued to the parties warned Ms. J. that if she failed to participate in the hearing a decision could issue without her participation.

On April 17, 2023, the hearing reconvened. Ms. J. was contacted at her number on record but was not able to be reached. Accordingly, the hearing proceeded in Ms. J.'s absence as permitted by 7 C.F.R. § 273.16(e)(4) and 7 AAC 45.585(b)(1). The Division was represented by Will Schwenke, Investigator II with the Division's Fraud Control Unit, who was also qualified to testify as an Eligibility Technician. The hearing was recorded. All submitted documents were admitted to the record.

III. Discussion

Federal law prohibits a person from obtaining Food Stamp benefits by making false or misleading statements, or by concealing or withholding facts.²⁵ In order to prove an IPV of the food stamps program, the Division must prove by clear and convincing evidence that Ms. J. intentionally made "a false or misleading statement, or misrepresented, concealed or withheld facts" on her eligibility review form or during her interviews.²⁶

The Division failed to meet its burden in this case.

The notarized records provided by the Bingo Center to Investigator Schwenke in 2017 and 2018 verify the dates and amounts of Ms. J.'s dates and amounts of bingo winnings.²⁷ But the signed receipts only represent Ms. J.'s net earnings from bingo, which may not be indicative of any actual income gains. Games of chance such as bingo relying on luck, not skill or strategy, so the outcomes are necessarily random.²⁸ A prize receipt, therefore, could represent a financial loss many times greater than the prize, as the player potentially had to pay to play in multiple bingo games before winning a single prize. It is due to these low odds of winning that bingo halls are

²⁵ See, e.g. 7 U.S.C. § 2015(b).

²⁶ 7 C.F.R. § 273.16(c)(1); 7 C.F.R. § 273.16(e)(6).

²⁷ Ex. 12.

²⁸ "Game of chance." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/game%20of%20chance>.

able to remain financially solvent, and that in Alaska qualified organizations are legally permitted to operate games of chance to raise money to support certain activities.²⁹

On the food stamp application, the only applicable place to list bingo winnings is in response to Question 8, which solicits a list of “any other money you or anyone in your household receives.”³⁰ If Ms. J. was spending as much or more money to play bingo than she was winning in prize money, it is reasonable to conclude she would not have listed her bingo winnings under “money she receives.” More likely she would have categorized it as “money she loses,” which she would not have mentioned during the Division interviews.

The notarized prize receipts from the Bingo Center, therefore, fall short of providing clear and convincing evidence that the prizes necessarily represented additional income in Ms. J.’s household impacting her food stamp eligibility, or that she intentionally misled or deceived the Division on her 2016 and 2018 eligibility forms or in her 2017 or 2018 interviews by not mentioning the winnings.

IV. Conclusion

The Division has failed to prove by clear and convincing evidence that Ms. J. committed an IPV by intentionally misrepresenting her bingo winnings to the Division on her 2016 and 2018 food stamp eligibility forms or during her 2017 and 2018 Division interviews. Accordingly, the Division’s request to impose an IPV penalty is DENIED.

DATED: April 26, 2023.

By: SIGNED
Danika B. Swanson
Administrative Law Judge

²⁹ 15 AAC 160. *See also* AS 05.15.010-.690. In this matter, for example, the Bingo Center was apparently operating to raise money for the the local baseball team.

³⁰ Ex. 7.

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 12th day of May, 2023.

By: SIGNED

Name: Danika Swanson

Title: Administrative Law Judge

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