

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

In the Matter of)	OAH No. 13-1367-ADQ
)	Division No.
O N)	Fraud Control Case No.
_____)	Food Stamp Program

DECISION

I. Introduction

O N is a former Food Stamp¹ recipient. On October 4, 2013, 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. N's hearing was held on December 9, 2013. Ms. N represented herself and testified on her own behalf.

Dean Rogers, an investigator employed by the Division's Fraud Control Unit, represented and testified for the Division. Amanda Holton, an eligibility technician employed by the Fraud Control Unit, testified for the Division.

This decision concludes that Ms. N did not commit a first 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. N was receiving Food Stamp benefits in January 2011. She applied to renew those benefits on January 11, 2011.³ The renewal application contained a question asking whether anyone in her household was employed and earning wages. Ms. N crossed out the answer section to that question, indicating that no one in the household was employed.⁴ Ms. N signed

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. 7.

⁴ Ex. 7, p. 2.

the application, certifying that the information contained in it was correct.⁵ Ms. N, however, was working and earning income at the time of her January 11, 2011 Food Stamp application.

Department of Labor records show that Ms. N began working for No Name, LLC sometime during the third quarter of 2010 and was employed with it through the second quarter of 2011, a period which included her January 11, 2011 application.⁶ During the first quarter of 2011, Ms. N earned a total of \$1,719.00, which made her average monthly earnings \$573 during that quarter.⁷

Ms. N testified that she did not intend to misrepresent her income. She is originally from Guatemala. English is her second language. She said that in the beginning of 2011, her English language skills were not as good as they currently are. She had a friend translate for her. She knew that the Food Stamp program had a requirement that you had to report income if it went over the limit for her household size. The income for her household consisted of her children's Social Security income (total of \$1,392) and her wages. Because she did not make very much money at her job, which combined with her children's income did not exceed the limit, her understanding was that she did not have to report her employment income. Based on what her friend/translator told her, she also thought the same was true for the application process.⁸ Ms. N, as observed at hearing, was capable of understanding and participating in the hearing. However, it was obvious that she was not fully conversant with the English language.

The Division initiated a fraud investigation which culminated in this case.⁹ The Division calculated Ms. N received \$1,887 in Food Stamp benefits that she was not entitled to receive during the period from January 2011 through June 2011.¹⁰

III. Discussion

In order to prevail, the Division must prove by clear and convincing evidence¹¹ that Ms. N 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" with regard to her January 2011 application.¹² Clear and convincing evidence is stronger than a preponderance of evidence but weaker than evidence beyond a reasonable doubt. "If clear

⁵ Ex. 7, p. 4.

⁶ Ex. 11.

⁷ Ex. 11, p. 2.

⁸ N testimony.

⁹ Ex. 2.

¹⁰ Holton testimony; Ex. 12.

¹¹ 7 C.F.R. § 273.16(e)(6).

¹² 7 C.F.R. § 273.16(c).

and convincing proof is required, there must be induced a belief that the truth of the asserted facts is highly probable.”¹³

The evidence is clear that Ms. N did not list her employment income on the Food Stamp application, despite there being an explicit question regarding it. Food Stamp eligibility and benefits are determined based, in part, on a household’s income.¹⁴ The question then arises as to whether this was an intentional misrepresentation. The only overt evidence of a misrepresentation is the fact that Ms. N’s application has the employment question answer area crossed off. However, Ms. N’s testimony presented a plausible explanation for her not listing her employment income – she thought because her employment income did not cause her to exceed the Food Stamp program income limit, she did not need to list it on the application form. Her lack of full English competency, combined with the use of a friend to help translate, corroborates the plausibility of her explanation. In contrast, the Division, which has the burden of proof, presented no evidence showing an actual intent by Ms. N to conceal her employment income, other than the crossing out of the answer to the employment income question.

The Division’s burden of proof is a high one: clear and convincing evidence. Given the limited evidence showing an actual intent to misrepresent the income and Ms. N’s plausible explanation, the Division failed to meet its burden of proof. Consequently, the Division has not proven that Ms. N made an intentional misrepresentation on her January 11, 2011 Food Stamp application.

IV. Conclusion

Ms. N did not commit a first time Intentional Program Violation of the Food Stamp program. This decision does not address the issue of whether Ms. N received Food Stamp benefits to which she was not entitled. If the Division maintains that Ms. N received Food Stamp benefits which she should not have, it may initiate a separate action to pursue its claim.

Dated this 3rd day of January, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹³ *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

¹⁴ 7 C.F.R. § 273.10(e)(1)(i)(A).

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 17th day of January, 2014.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, DOA/OAH

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