

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

In the Matter of:	)	OAH No. 13-1640-ADQ
	)	Division No.
B J	)	Fraud Control Case No.
_____	)	Food Stamp Program

**DECISION AND ORDER**

**I. Introduction**

B J is a former Food Stamp<sup>1</sup> recipient. On November 15, 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.<sup>2</sup>

Ms. J’s hearing was held on December 20, 2013. She was provided advance notice of the hearing.<sup>3</sup> Ms. J represented herself and testified on her own behalf. Wynn Jennings, an investigator employed by the Division’s Fraud Control Unit, represented the Division. Amanda Holton, an eligibility technician employed by the Division, testified for the Division.

This decision concludes that Ms. J committed a first Intentional Program Violation of the Food Stamp program.

**II. Facts**

The following facts were established by clear and convincing evidence. Ms. J applied and was approved for Food Stamp benefits on May 21, 2010.<sup>4</sup> That application contained a question asking whether anyone in her household was employed and earning wages. Her answer to that question was no.<sup>5</sup> The application also contained a question whether anyone in her household receives money from any source other than working. Ms. J’s answer to that question was also no.<sup>6</sup> Ms. J signed the application, certifying that the information contained in it was correct.<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> Ex. 3.

<sup>3</sup> Ex. 1, p. 1; Ex. 4.

<sup>4</sup> Ex. 8.

<sup>5</sup> Ex. 8, p. 3.

<sup>6</sup> Ex. 8, p. 4.

<sup>7</sup> Ex. 8, p. 8.

On November 1, 2010, Ms. J submitted an Eligibility Review Form to renew her Food Stamp benefits. The form contained a question that asked whether anyone in her household was working, and if so, to provide proof of that income. Ms. J left the answer to that question blank.<sup>8</sup> The next question directed the applicant to list any other money that her household received, and listed possible examples, such as Social Security, retirement, Worker’s Compensation, and unemployment insurance. Ms. J also left the answer to that question blank.<sup>9</sup> Ms. J signed the review form, certifying that the information contained in it was correct.<sup>10</sup>

Contrary to the information she gave in both her May 21, 2010 and November 1, 2010 applications, Ms. J was receiving unemployment insurance benefits (UIB) in the amount of \$179 per week at the time she applied for Food Stamps.<sup>11</sup> When asked about this by the eligibility technician prior to her renewal interview on November 5, 2010, Ms. J acknowledged she was receiving UIB, but said she didn’t put it on her renewal application because she didn’t think about it.<sup>12</sup> Ms. J testified that she was told in an earlier interview that she only had to report income over a certain amount, but she couldn’t remember what that figure was. She also acknowledged she didn’t really know why she didn’t report her UIB.

The Division initiated a fraud investigation which culminated in this case.<sup>13</sup> The Division calculated that Ms. J received \$1,279 in Food Stamp benefits during May 2010 through November 2010; but, had Ms. J reported her unemployment benefits, she would have been entitled to \$480 in food stamps.<sup>14</sup> She thus received \$799 in Food Stamp benefits that she was not entitled to receive.<sup>15</sup>

### **III. Discussion**

In order to prevail, the Division must prove by clear and convincing evidence<sup>16</sup> that Ms. J 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 May 21, 2010 and November 1, 2010 applications.<sup>17</sup> Clear and convincing

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<sup>8</sup> Ex. 8, p. 10.

<sup>9</sup> Ex. 8, p. 11.

<sup>10</sup> Ex. 8, p. 12.

<sup>11</sup> Ex. 11, p. 3.

<sup>12</sup> Ex. 9, p. 3.

<sup>13</sup> Ex. 2.

<sup>14</sup> Ex. 12, p. 2.

<sup>15</sup> \$1,279 - \$480 = \$799.

<sup>16</sup> 7 C.F.R. § 273.16(e)(6).

<sup>17</sup> 7 C.F.R. § 273.16(c).

evidence is stronger than a preponderance of evidence but weaker than evidence beyond a reasonable doubt. “If clear and convincing proof is required, there must be induced a belief that the truth of the asserted facts is highly probable.”<sup>18</sup>

Food Stamp eligibility and benefits are determined based, in part, on a household’s income.<sup>19</sup> The evidence is clear that Ms. J did not list her unemployment benefits on her Food Stamp applications, despite there being an explicit question regarding it. The issue then arises as to whether this was an intentional misrepresentation. Ms. J testified that someone at the Division told her in an earlier interview she only had to report income over a certain amount, but she could not recall what that number might have been. Yet, she told the eligibility technician on November 5, 2010 that she didn’t list her UIB because she didn’t think about it.

Ms. J’s primary reason for not reporting her unemployment benefits – that she thought she only had to report income over a certain amount – is not corroborated by the application questions because they ask the applicant to report income from *any* source other than working, and to indicate the amount.<sup>20</sup> There is nothing on either application that suggests amounts below a minimum figure do not have to be reported.

Given the fact that Ms. J did not list her unemployment benefits, coupled with her testimony that did not explain that omission, the overall weight of the evidence creates a clear and convincing picture of a person who knew exactly what she was doing. Ms. J was required to report her unemployment benefits, and one must infer she was consciously aware that she was omitting important information as to her eligibility. The evidence is clear and convincing that Ms. J’s misrepresentation was intentional.

The Division has therefore met its burden of proof and established that Ms. J made intentional misrepresentations on her May 21, 2010 and November 1, 2010 Food Stamp applications. Consequently, Ms. J has committed a first Intentional Program Violation of the Food Stamp program.

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

Ms. J has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a 12-month period, and is required to reimburse the Division for benefits that were overpaid as a result of the

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<sup>18</sup> *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>19</sup> 7 C.F.R. § 273.10(e)(1)(i)(A).

<sup>20</sup> *See Ex. 8*, pp. 4, 11.

Intentional Program Violation.<sup>21</sup> The Food Stamp program disqualification period shall begin B 1, 2014.<sup>22</sup> This disqualification applies only to Ms. J, and not to any other individuals who may be included in her household.<sup>23</sup> For the duration of the disqualification period, Ms. J's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources as they may be used in these determinations.<sup>24</sup>

The Division shall provide written notice to Ms. J 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>25</sup>

If over-issued Food Stamp benefits have not been repaid, Ms. J or any remaining household members are now required to make restitution.<sup>26</sup> If Ms. J disagrees with the Division's calculation of the amount of overissuance to be repaid, she may request a separate hearing on that limited issue.<sup>27</sup>

Dated this 21<sup>st</sup> day of January, 2014.

Signed

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Kay L. Howard  
Administrative Law Judge

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<sup>21</sup> 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>22</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>23</sup> 7 C.F.R. § 273.16(b)(11).

<sup>24</sup> 7 C.F.R. § 273.11(c)(1).

<sup>25</sup> 7 C.F.R. § 273.16(e)(9)(ii).

<sup>26</sup> 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

<sup>27</sup> 7 C.F.R. § 273.15.

## 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 3<sup>rd</sup> day of February, 2014.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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