

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

In the Matter of)	OAH No. 14-0352-ADQ
)	Agency No.
X R. J)	Fraud Control Case No.
_____)	Food Stamp Program

DECISION

I. Introduction

X R. J, also known as L J, unsuccessfully applied for Food Stamp¹ benefits. On March 7, 2014, the Department of Health and Social Services, Division of Public Assistance (DPA) initiated this Administrative Disqualification case against him, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp Program.²

A hearing convened in this case on April 11, 2014. Mr. J was not present, and no telephone number was available at which he could be called. The hearing went forward in his absence.³

DPA was represented by Dean Rogers, an investigator employed by DPA’s Fraud Control Unit. Mr. Rogers and Amanda Holton, a DPA Eligibility Technician, testified on behalf of DPA. Exhibits 1 - 5 and 7 - 9 were admitted into evidence without objection and without restriction.

In this case, DPA showed that Mr. J should not be receiving Food Stamps, but it presented a relatively weak case for assessing an IPV. IPV’s must be proved to a “clear and convincing” level of certainty. Ms. J’s application did contain an inaccurate answer to one of the questions. However, factors specific to this case leave uncertainty as to whether he intended any deception, and the uncertainty is substantial enough that the case for an IPV has not been established.

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 If a person “cannot be located or fails to appear . . . without good cause,” the SNAP regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4). The same regulation sets out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

II. Facts

X J is a gentleman in his fifties who has lived in Alaska all his life.⁴ In the winter of 2013-14 he was apparently in Anchorage and was homeless.⁵ He has a little income from Native corporation dividends and soapstone carving, and he is a co-owner of two fish camps.⁶ There is no evidence in this case that he has ever received public assistance before.

In January of 2014, DPA conducted a homeless outreach, going to a location where homeless people are commonly found.⁷ DPA took in a Food Stamp application from Mr. J and conducted an intake interview with him on the spot.⁸ DPA knew that many of the people it would encounter at the homeless outreach would be ineligible for Food Stamps on account of felony records; indeed, it was sufficiently concerned about this that all applications received at the event were channeled directly to the fraud unit for investigation prior to approval.⁹ Nonetheless, DPA did not make any effort during the on-site interviews to hone in specifically on the areas that were likely to cause problems for the homeless clientele.¹⁰

From the handwriting on the application, it is unclear whether the application was completed by Mr. X himself or by a DPA representative working with Mr. X. It appears to have been hastily prepared, with a number of required questions left unanswered.¹¹ It is also incomplete in another respect, in that as an Alaska Native applicant Mr. J was supposed to complete Appendix B,¹² but no Appendix B seems to have been collected from him. There was no information at the hearing about why DPA accepted an application in this condition.

Question 120, on the tenth page of the application, asked, “Is any adult in your household fleeing from prosecution, custody, confinement for a felony or class A misdemeanor from any state?”¹³ The “no” box next to this question is checked on Mr. J’s application. Mr. J signed the application.

⁴ Ex. 8, p. 1.

⁵ Ex. 7, 8.

⁶ Ex. 7, pp. 7, 9; Ex. 8.

⁷ Testimony of Amanda Holton.

⁸ *Id.*

⁹ Testimony of Dean Rogers.

¹⁰ Testimony of Rogers.

¹¹ *E.g.*, questions 24-a; question 95 (left blank, not consistent with information supplied by Mr. J in interview recorded in Ex. 8); question 113, questions 115 – 118.

¹² *See* Ex. 7, p. 8, Step 4 (“please complete Appendix B”). Exhibit 7, which was offered by DPA as a true copy of Mr. J’s complete application, does not include an Appendix B.

¹³ Ex. 7, p. 10.

Mr. J apparently had a conviction at some time in his past that requires him to register as a sex offender. On December 4, 2013 (the month before his Food Stamp application), he was indicted for the Class C felony of failure to register: Specifically, it was alleged that in October of 2013 he “failed to register, file the written notice of change of address, or file the annual or quarterly written verification, or supply all the information required” by the registration law. A summons was apparently issued in connection with the indictment.¹⁴ There is no direct information in the record to show that Mr. J was located and served with the summons, but it seems likely that he was, because an arraignment was held on December 10, 2013. Mr. J did not appear at the arraignment, and a bench warrant was issued for his arrest.¹⁵ The warrant has not been returned.

Mr. J’s Food Stamp application was denied, because DPA’s fraud unit ran a pre-approval check on the homeless outreach applications and learned of Mr. J’s outstanding felony warrant.¹⁶

III. Discussion

A. Adequacy of Notice

The Code of Federal Regulations contains requirements for mailing notice to a recipient of a Food Stamps administrative disqualification hearing.¹⁷ DPA appears to have complied with these requirements, sending a complete notice to Mr. J’s address of record as provided on his Food Stamps application. This address was a “day shelter” “that works with homeless people,” where homeless individuals are allowed to receive mail and where Mr. J would have received benefit checks had his application been approved.¹⁸ The notice was signed for by an employee. It is unknown whether Mr. J picked it up.

B. Whether an IPV Has Been Proven by Clear and Convincing Evidence

Federal Food Stamp law provides that a period of disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁹ Except in special circumstances that do not apply here, the period of disqualification for a person’s first

¹⁴ Testimony of Rogers.

¹⁵ Ex. 9.

¹⁶ Testimony of Rogers.

¹⁷ 7 C.F.R. § 273.16(e)(3).

¹⁸ Testimony of Holton.

¹⁹ 7 C.F.R. §§ 273.16(b)(1); 273.16(c)(1).

IPV is 12 months.²⁰ DPA must prove the elements of the IPV by clear and convincing evidence.²¹

A person who is “fleeing to avoid . . . custody for a [felony] crime” or who is “violating a condition of probation . . . under . . . State law” is ineligible for participation in the Food Stamp Program.²² It seems likely that Mr. J was in the first category at the time of his Food Stamps application. He was certainly subject to arrest at that time for failure to appear at a felony arraignment, and he probably knew that there was an arraignment he had failed to attend.

To establish an IPV, however, the agency must show by clear and convincing evidence that Mr. J *intended* to misrepresent, conceal, or withhold this fact when he submitted his application, which is the only action he has ever taken in connection with the Food Stamps program. Clear and convincing 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.”²³ Therefore, DPA must show that it is not merely possible, nor even merely likely, that Mr. J intended to deceive; it must show such a deceptive intent to be “highly probable.”

In this case, there is reason to suspect a deceptive intent, but the factual circumstances do not rise to the level of “clear and convincing” on that issue. Several circumstances leave significant room for doubt.

Mr. J did not go to a public assistance office and pursue Food Stamps; instead, DPA went to him through an outreach event. DPA knew that people in this location might well be ineligible for the program due to problems with the law, but it made no extra effort to highlight or screen for those issues when interviewing the homeless people it encountered. Thus, it is unlikely that Mr. J was asked specifically about his criminal history. At the homeless event, DPA took in a hastily filled out, incomplete application from Mr. J. There is no information in the record as to who physically marked the answers on the application. There is one (1) box on that application, next to question 120, where the “no” box is checked and the “yes” box should have been checked. Question 120 is printed in very small type on the tenth page of a 16-page application.

²⁰ 7 C.F.R. §§ 273.16(b)(1)(i).

²¹ 7 C.F.R. § 273.16(e)(6).

²² 7 C.F.R. § 273.11(n).

²³ *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). *See also Buster v. Gale*, 866 P.2d 837, 844 (Alaska 1994) (to be clear and convincing, evidence has to yield a “firm belief or conviction”).

DPA's case against Mr. J requires one to assume that a homeless man in his fifties, encountered at a location where homeless people congregate, was sober enough, literate enough, and meticulous enough to read, understand, and think about a single question (the hundred-and-twentieth one) in small print in the middle of a long application. This assumption requires a leap of faith that is too ambitious for a factfinder to make in a case requiring an elevated burden of proof. In these circumstances, DPA has not shown it to be "highly probable" that Mr. J intended to misrepresent when he, or a DPA employee assisting him, checked the "no" box for Question 120. To put it another way, it is more than remotely possible that the "no" box was checked without Mr. J specifically realizing that he was giving a wrong answer. Accordingly, the division has failed to meet its elevated burden of proof to establish an Intentional Program Violation.

IV. Conclusion and Order

The Division of Public Assistance did not meet its burden of proving by clear and convincing evidence that an Intentional Program Violation occurred.

Dated this 15th day of April, 2014.

Signed _____
Christopher Kennedy
Administrative Law Judge

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 29th day of April, 2014.

By: Signed _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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