

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

In the Matter of )  
 )  
 B L. T )  
\_\_\_\_\_ )

OAH No. 14-0447-ADQ  
Agency No.

**DECISION AND ORDER**

**I. Introduction**

The Division of Public Assistance (DPA) initiated this Administrative Disqualification case against B L. T, alleging he had committed a first Intentional Program Violation (IPV) of the Food Stamp program by claiming he was living with his mother when he was incarcerated.<sup>1</sup> A telephonic hearing was held on April 24, 2014. Mr. T received notice and participated in the hearing. Exhibits 1 - 18 were admitted into evidence without objection or restriction. Exhibit 19 was submitted post hearing at the undersigned's request and is admitted.

The DPA did not prove by clear and convincing evidence that Mr. T committed a first IVP of Food Stamps.

**II. Facts**

The following facts were established by clear and convincing evidence except where otherwise noted.

Mr. T began receiving Food Stamps in 2006. Food Stamps are received via an allotment on a recipient's Alaska Quest Card, a type of debit card. The benefit is accessed through a recipient's PIN (personal identification number).

Mr. T was arrested on June 6, 2007 and remained incarcerated through September 1, 2009. Mr. T did not inform the DPA that he was incarcerated and no longer living with his mother. Food Stamp recipients must reapply (re-certify) every six months if they wish to have their benefits continue. On August 3, 2007, the DPA received a recertification request form in Mr. T's name and allegedly signed by him.<sup>2</sup> The request is dated August 1, 2007 and gives as his home address the address of his mother.

On August 14, 2007, DPA Eligibility Technician Karen Bertrand called the number written on the August 2007 re-certification request to conduct a telephonic eligibility interview. She spoke with a man who identified himself as B T.<sup>3</sup> Ms. Bertrand testified that other than

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<sup>1</sup> Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

<sup>2</sup> Exhibit 7.

<sup>3</sup> Exhibit 11, Testimony of Karen Bertrand.

asking for Mr. T, she made no additional effort to ensure the person she was talking to actually was Mr. T.<sup>4</sup>

The DPA received two more re-certification requests in Mr. T's name and allegedly signed by him.<sup>5</sup> The additional applications were received January 30, 2008 and July 20, 2008. As with the August 2007 application, each application indicates Mr. T is living with his mother, although he was still incarcerated at the time.<sup>6</sup>

The DPA approved all three re-certifications, and as a result his Alaska Quest Card was e-credited with a monthly Food Stamp benefit that was accessed using Mr. T's PIN. The total amount as calculated by the DPA is \$2,868.<sup>7</sup>

Mr. T testified that he did not apply for recertification in August 2007, January or July 2008. He stated that he did not know what happened to his Alaska Quest Card after he went to jail or why someone would have his PIN. Mr. T emphasized that he could not have participated in the telephone interview because he was incarcerated at the time. As proof that he was not the one applying for Food Stamps, he asked that his signature be compared with the signature on the applications he is alleged to have signed. The DPA provided an application containing a signature for B T dated September 14, 2006, a date on which he was not incarcerated, for comparison.<sup>8</sup>

### **III. Discussion**

It is prohibited by federal law for a person to obtain Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.<sup>9</sup> The DPA has the burden of proving the IPV by clear and convincing evidence.<sup>10</sup> Proof by clear and convincing evidence means the party with the burden of proof has shown that the facts asserted are highly probable.<sup>11</sup> This is a higher standard of proof than the preponderance of the evidence standard, but less than the beyond a reasonable doubt standard used in criminal cases. A person who is found to have

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<sup>4</sup> 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

<sup>5</sup> Exhibits 12, 13.

<sup>6</sup> Exhibit 13.

<sup>7</sup> Exhibit 17 p. 2.

<sup>8</sup> Exhibits 13, 19.

<sup>9</sup> *See, e.g.*, 7 U.S.C. § 2015(b).

<sup>10</sup> 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

<sup>11</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

committed a first IVP is disqualified from receiving Food Stamps for 12 months,<sup>12</sup> and must repay any benefits wrongfully received.<sup>13</sup>

Mr. T agrees that any applications submitted while he was incarcerated are false. He was not living with his mother from August 2007– July 2008. He denies having signed the applications, so he could not have committed an IVP.

In support of its allegation, the DPA offers the signed recertification applications, the theory that it is possible to have an individual who is incarcerated sign an application, and that someone was using Mr. T's PIN to access the monthly benefits placed on his Food Stamp card. When asked how Mr. T could have signed the applications while incarcerated, the DPA theorized that he could have had someone bring the application with them when they visited and he would have signed it then. Mr. T could therefore sign the application and return it.

This is all circumstantial evidence and speculation. While circumstantial evidence is sufficient in some circumstances to prove intent, here, when weighed against the record in its entirety, it fails to establish an IVP by clear and convincing evidence.

First, Mr. T's signature contained on the application that he undisputedly signed and submitted as an example of his writing is not the same as the signature on the recertification applications which the DPA received while he was incarcerated.<sup>14</sup> The difference between the signatures is apparent when the capital "S" in T is compared. However, the most compelling evidence presented is that the DPA called Mr. T's home on the home number in the application and proceeded to conduct an eligibility interview with a man who claimed to be B T, while Mr. T was, in fact, incarcerated.

When the evidence is viewed as a whole and weighed, the DPA has failed to prove by clear and convincing evidence that Mr. T signed the August 2007, January 2008 and July 2008 recertification applications.

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

The DPA has not proven that B L. T committed an Intentional Program Violation.

DATED this 10<sup>th</sup> day of July, 2014.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

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<sup>12</sup> 7 C.F.R. 273.16(b)(1).

<sup>13</sup> 7 C.F.R. 273.16(b)(12).

<sup>14</sup> Compare Exhibit 19 p. 5 with Exhibit 7 p. 4, Exhibit 8 p. 4, Exhibit 9 p. 4, and Exhibit 18 p. 4.

## 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 24<sup>th</sup> day of July, 2014.

By: Signed  
Name: Rebecca L. Pauli  
Title: Administrative Law Judge

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