

**NOT FOR PUBLICATION**

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NO. 25171

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

JOCELYN K. POOUAHI, Appellant-Appellant, v.  
SUSAN M. CHANDLER, DIRECTOR, STATE OF HAWAI'I,  
DEPARTMENT OF HUMAN SERVICES, Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 01-1-1797)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Lim, JJ.)

This is a secondary appeal by Appellant-Appellant Jocelyn K. Poouahi (Poouahi) from the May 23, 2002 Judgment entered in the Circuit Court of the First Circuit (circuit court) by Judge Eden Elizabeth Hifo. The May 23, 2002 Judgment was based on the circuit court's November 28, 2001 "Order Denying in Part and Remanding in Part the Appeal Filed on June 13, 2001" affirming the May 14, 2001 Decision From Food Stamp Disqualification Hearing entered by Hearing Officer Malcolm E. Hong (Hearing Officer). We reverse.

STANDARD OF REVIEW

"Review of a decision made by a court upon its review of an administrative decision is a secondary appeal. The standard of review is one in which this court must determine whether the court under review was right or wrong in its decision." Gray v. Admin. Dir. of the Court, 84 Hawai'i 138, 144, 931 P.2d 580, 586 (1997) (internal quotation marks and brackets omitted).

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In reviewing the circuit court's decision under the right/wrong standard, this Court must determine that the circuit court correctly applied the standards set forth in Hawaii Revised Statutes (HRS) § 91-14(g) (1993) to the agency's decision. Korean Buddhist Dae Won Sa Temple of Hawaii v. Sullivan, 87 Hawai'i 217, 229, 953 P.2d 1315, 1327 (1998). HRS § 91-14(g) provides as follows:

Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

An agency's "conclusions of law are reviewable under subsections (1), (2), and (4) . . . findings of fact are reviewable under subsection (5)[.]" Korean Buddhist, 87 Hawai'i at 229. A conclusion of law "that presents mixed questions of fact and law is reviewed under the clearly erroneous standard because the conclusion is dependent upon the facts and circumstances of the particular case." Price v. Zoning Bd. of Appeals, 77 Hawai'i 168, 172, 883 P.2d 629, 633 (1994). A presumption of validity is

accorded to decisions of administrative bodies acting within their sphere of expertise and one seeking to upset the order bears the heavy burden of making a convincing showing that it is unjust and unreasonable in its consequences. In re Hawaii Elec. Light Co., Inc., 60 Haw. 625, 630, 594 P.2d 612, 617 (1979). An agency's findings, if supported by reliable, probative and substantial evidence, will be upheld. Id.

POINT ON APPEAL AND DECISION

Poouahi asserts the circuit court was wrong when it affirmed the decision of the Hearing Officer, which disqualified her from the Food Stamp Program ("FSP") for twelve months, because Appellee-Appellee Susan M. Chandler, Director, State of Hawai'i, Department of Human Services ("DHS") did not establish Poouahi's intent to commit a food stamp program (as distinguished from a financial assistance program) violation by clear and convincing evidence<sup>1</sup> as required by Hawai'i Administrative Rules (HAR) § 17-604.1-19(a).<sup>2</sup> We agree.

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<sup>1</sup> "Clear and convincing evidence" is an intermediate standard of proof greater than a preponderance of the evidence, but less than proof beyond a reasonable doubt required in criminal cases. Iddings v. Mee-Lee, 82 Hawai'i 1, 13, 919 P.2d 263, 275 (1996). The Hawai'i Supreme Court has stated, "'clear and convincing' evidence may be defined as . . . that degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established, and requires the existence of a fact be highly probable." Masaki v. Gen. Motors Corp., 71 Haw. 1, 15, 780 P.2d 566, 574 (1989) (internal quotations omitted).

<sup>2</sup> Hawai'i Administrative Rules (HAR) § 17-604.1-19 states, in relevant part, that "[t]he hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member or members committed, and intended to commit, intentional program violation."

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HEARING OFFICER'S STATEMENT OF THE ISSUE AND DECISION

Poouahi participated in the food stamp program from November 1993 to February 2001. In relevant part, the following was stated at the hearing on April 20, 2001:

[HEARING OFFICER]: . . . .

. . . .

Now for everyone's edification, the burden of proof at today's hearing falls on [DHS]. They have to show by preponderance of the evidence that [Poouahi] violated the financial assistance program. They have to show by clear and convincing evidence that [Poouahi] violated the food stamp program and that the violations were intentional for the purpose of obtaining more benefits.

. . . .

MS. LEE LOY:<sup>3</sup> . . . .

. . . And the issues -- it's one issue. Yeah?

Whether [Poouahi] committed an Intentional Program Violation when she failed to timely -- and we're going to stress the word timely -- in complete compliance with the rules that say within ten days. It does not say 11 days, three months, or six months. It says ten days to timely report her employment wages with Consolidated Amusement Company [(CAC)] from 9/3/99 through 10/31/99 for financial assistance purposes.

The May 14, 2001 Decision from Food Stamp Disqualification Hearing (May 14, 2001 Decision) stated, in relevant part, as follows:

**Statement of Issue**

The sole issue before the hearing officer is whether or not [Poouahi] committed an intentional food stamp program violation when she failed to timely report her employment and wages with [CAC] from September 3, 1999 through November 18, 1999 for the food stamp program.

**Decision**

An intentional program violation was committed by [Poouahi], as there does exist clear and convincing evidence that [Poouahi] intentionally failed to timely report and did falsely fail to report

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<sup>3</sup> Gale Lee Loy, Disqualification Hearing Specialist, represented the "Investigations Office for Public Welfare."

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her employment and income with [CAC] from September 3, 1999 through November 18, 1999, on an application for assistance submitted in November 1999, resulting in an overpayment of food stamp benefits. Therefore, [Poouahi] shall be disqualified from the food stamp program for a period of twelve (12) months as a first program violation. Hawaii Administrative Rules § 17-604.1-9.

BACKGROUND

Poouahi testified that on Friday, September 3, 1999, she was hired as a part-time hourly-wage employee with CAC. Monday, September 6, 1999, was a holiday. Poouahi testified that she telephoned her welfare case worker, Bessiluan Waa (Waa), on September 7, 1999, and told Waa that she had been hired but "never really start yet." Waa told Poouahi to keep Waa informed. Poouahi had one orientation with CAC on Tuesday, September 7, 1999, commencing at 5:30 p.m., and another on Thursday, September 9, 1999. She "started training in that weekend."

Poouahi testified that she again called Waa on Tuesday, September 14, 1999, to tell Waa that Poouahi "was in training now" and Waa told Poouahi to keep Waa updated. Poouahi's training period ended with the grand opening of the theater on Friday, October 8, 1999. CAC paid Poouahi the following amounts on the following dates:

September 23, 1999	\$197.30
October 7, 1999	\$304.46
October 21, 1999	\$366.71
November 4, 1999	\$394.86
November 18, 1999	\$320.78
December 2, 1999	\$239.07
December 16, 1999	\$189.59
December 30, 1999	\$482.06

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On November 8, 1999, pursuant to DHS reapplication requirements, Poouahi filled out and submitted an "Application for Financial and Food Stamps Assistance" (November 8, 1999 Application). Poouahi checked the "NO" box in response to the question, "Does anyone in your home expect to receive any money this month?" In response to question 21, which stated, "Give record of all places where you have worked. (Begin with most recent job)[,]" Poouahi wrote, "NO". In response to question 22, which asked, "Is anyone working?[,]" Poouahi checked the "No" box. Had she checked the "Yes" box, the form required her to fill in spaces identifying the person employed, the employer, the job title, the date started, the pay period, payday, hours worked per week, hourly rate of pay, and gross per pay check. In response to question 25, "Does anyone expect a change in income (such as a new job, a change in wages, etc.)?[,]" Poouahi checked the "Yes" box and wrote "looking for a full time job if can[.]"

After Poouahi filled out the November 8, 1999 Application, Waa informed Poouahi of her rights and responsibilities, including the responsibility to report any changes in her household or family status within ten days of the time she found out about the change. Waa also told Poouahi about the possibility of criminal charges for misrepresenting or concealing facts that determine eligibility. Poouahi signed the application authorizing DHS to verify the information she provided and certifying she understood her rights and responsibilities.

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The record contains a statement signed by Waa stating as follows:

I, B. Waa, learned from [Poouahi] on 11/18/99 that [Poouahi] was working at [CAC]. At that time she indicated that she had started her employment in 11/99. General Assistance shut down on 10/31/99 due to failure to submit statement of disability for financial assistance. For foodstamp purposes client was given until 11/29/99 to return the request for verification of said employment notice mailed to her on 11/18/99. When she failed to submit it the case shut down 12/31/99.

A computer generated document, printed on November 18, 1999, described as a "Hawaii Automated Welfare Information (HAWI) Request for Verification of Employment, Notice F005[,]" and pertaining to "PROGRAM: FS BENEFIT MONTH: 1299[,]" states, in relevant part:

REQ FOR VERIFICATION OF EMPLOYMENT [sic] (FS, MA)

WE NEED MORE INFORMATION ABOUT THE EMPLOYMENT OF JOCELYN POOUAHI IN ORDER TO DETERMINE ELIGIBILITY FOR FOOD STAMPS. PLEASE HAVE THE EMPLOYER ANSWER THE QUESTIONS BELOW AND RETURN THIS FORM BY NOVEMBER 29, 1999. FAILURE TO COMPLY COULD RESULT IN [XX] FOOD STAMPS AND [XX] MEDICAL ASSISTANCE BEING DENIED OR STOPPED.  
AUTH: H.A.R. 17-647-32.

YOU WILL BE REQUIRED TO VERIFY (MONTHLY) YOUR GROSS EARNINGS THROUGH PAY STUBS OR AN EMPLOYER STATEMENT. . . .  
. . . .

PLEASE SIGN HERE: x \_\_\_\_\_ DATE: \_\_\_\_\_  
\*\*\*\*\* HAVE THE EMPLOYER PROVIDE THE FOLLOWING INFORMATION: \*\*\*\*\*

. . . .  
FAIR HEARING RIGHTS AND OTHER IMPORTANT INFORMATION ARE EXPLAINED ON THE BACK OF THIS NOTICE. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ME AT THE PHONE NUMBER LISTED ABOVE.  
JOCELYN [POOUAHI], TAKE THIS FORM TO YOUR EMPLOYER FOR COMPLETION ONLY IF YOU GET HIRED. THANKYOU, [sic] MRS. WAA[.]

DHS stated that this document "informed [Poouahi] that in order to determine eligibility for food stamps and medical assistance, she was to have her employer complete this notice and return it by November 29, '99" and alleged that this document was

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sent to Poouahi on November 18, 1999. Poouahi testified that she did not recall receiving it, and thus did not return it.

On December 1, 1999, Waa sent written notice to Poouahi informing her that as a result of her failure to return the verification form, her benefits were being cancelled. Poouahi's benefits were terminated effective January 2000.

On April 17, 2000, DHS received a completed "Investigative Referral" form from N. Matsumoto, a DHS income maintenance worker, who reported, "SWICA<sup>4</sup> query shows employment at [CAC] for 09/99 quarter \$197.30 and 12/99 quarter \$2293.53. . . . Client had received [Government Assistance and Food Stamp Assistance in] 9/99 [and] 10/99 and income was not reported at that time." (Footnote added.) In response to a DHS inquiry, CAC indicated that Poouahi had been hired to work twenty-one hours per week for \$5.25 per hour.

A copy of a printout of information apparently stored in DHS' computer indicates that on October 16, 2000, DHS informed Poouahi

IT HAS BEEN DETERMINED THAT YOU WERE PAID \$67.00 MORE FOOD STAMPS THAN YOUR HOUSEHOLD WAS ENTITLED TO RECEIVE FOR THE MONTHS [sic] OF DECEMBER, 1999. THE OVERPAYMENT OCCURRED BECAUSE YOU FAILED TO TIMELY REPORT YOUR EMPLOYMENT WITH [CAC]. 10/00 WAGES SHOULD HAVE BEEN BUDGETED TO DETERMINE 12/00 AMOUNT.

A similar printout indicates that DHS informed Poouahi on October 16, 2000, that she had been paid \$370 more in financial

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<sup>4</sup> "SWICA" is the "State Wage Information Collection Agency" that provides employment-related eligibility data pursuant to HAR § 17-610-1.



assistance payments than she was entitled to receive during the month of October 1999 because she failed to timely report her employment with CAC.

A similar printout indicates that DHS paid Pooauhi \$370 for the months of June, July, August, September, and October of 1999, and no payment was made for the months of November and December of 1999, or January and February of 2000.

In relevant part, at the hearing on April 20, 2001, the following was stated:

MS. LEE LOY: . . . .

. . . And the issues -- it's one issue. Yeah?

Whether Jocelyn K. Poouahi committed an Intentional Program Violation when she failed to timely -- and we're going to stress the word timely -- in complete compliance with the rules that say within ten days. It does not say 11 days, three months, or six months. It says ten days to timely report her employment wages with CAC from 9/3/99 through 10/31/99 for financial assistance purposes.

. . . .

[COUNSEL FOR POOUAHI]: Okay. Our position is that [Poouahi] did not commit an intentional program violation. That she did in fact timely report her employment to [DHS] and our offer for proof will be for [sic] testimony to that effect.

. . . .

[COUNSEL FOR POOUAHI]: Okay. Note the question is --

MS. LEE LOY: Is how come the \$700 and some odd dollars that [Poouahi] earned . . . [in] November '99 was not declared on this application.

. . . .

MS. POOUAHI: I thought I was only going get [sic] food stamps on this.

. . . .

MS. POOUAHI: That's when I thought I only was going get [sic] food stamps because I only [sic] working part-time heh?

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Hearing Officer's May 14, 2001 Decision stated, in relevant part, as follows:

**Statement of Issue**

The sole issue before the hearing officer is whether or not [Poouahi] committed an intentional food stamp program violation when she failed to timely report her employment and wages with [CAC] from September 3, 1999 through November 18, 1999 for the food stamp program.

**Decision**

An intentional program violation was committed by [Poouahi], as there does exist clear and convincing evidence that [Poouahi] intentionally failed to timely report and did falsely fail to report her employment and income with [CAC] from September 3, 1999 through November 18, 1999, on an application for assistance submitted in November 1999, resulting in an overpayment of food stamp benefits. Therefore, [Poouahi] shall be disqualified from the food stamp program for a period of twelve (12) months as a first program violation. Hawaii Administrative Rules § 17-604.1-9.

**Findings of Fact**

. . . . .

13. [Poouahi] at hearing asserted that there was no intentional program violation as [Poouahi] testified that she . . . did timely report her employment during a telephone calls [sic] with her case worker on September 7 and September 14, 1999, but that the case worker failed to log the telephone call, as duly required by the [DHS], on [Poouahi's] Income Maintenance Recording Sheet. [Poouahi] showed that there were virtually no entries on said Recording Sheet which showed any contact whatsoever between [Poouahi] and the case worker in 1999. (Exhibit A).
14. [DHS] at hearing did acknowledge that [Poouahi] would have been required to have periodic contact with her case worker, including for the year 1999, or her benefits would not be renewed or continued. [Poouahi] at hearing asserted that the Recording Sheet also failed to show this contact, yet [Poouahi] did not lose her benefits for failure to contact her case worker in 1999.
15. [Poouahi] at hearing further asserted that by virtue of [DHS'] written Request for Verification of Employment, the [DHS] had knowledge that [Poouahi] was employed (Exhibit 2). [Poouahi] further established that [DHS] was unable to explain at the hearing how and when they learned of [Poouahi's] employment status. . . .
16. [DHS] at hearing countered that nonetheless, [Poouahi] falsely reported her employment status to [DHS] in her application dated-stamped November 8, 1999, wherein she specifically answered question 21 "No" as to giving a record of all places where she had worked, beginning with the most recent job,

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which should have been the [CAC] job, and question 22 "No" as to whether anyone in her household was employed (Exhibit 1).

17. [Poouahi] at hearing asserted that she misunderstood question 22 as applying to persons in her household other than herself, and that she would have answered "Yes" if she had understood the question correctly. . . .

. . . .

**Conclusions of Law**

Legal Basis

Hawaii Administrative Rules § 17-604.1-2 specifies that an "intentional program violation" means any action by an individual, for the purpose of establishing or maintaining eligibility or for increasing or preventing a reduction in benefits, who intentionally:

- (1) Made a false or misleading statement;
- (2) Misrepresented, concealed, or withheld facts; or
- (3) Committed any action that constitutes a violation of the Food Stamp Act, the food stamp program regulations adopted by the United States Department of Agriculture and the department of human services, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons, or ATP cards.

Hawaii Administrative Rules §§ 17-604.1-10 and 17-604.1-19 require [DHS] the Department to show by clear and convincing evidence that an individual committed, and intended to commit, an intentional program violation.

. . . .

**Discussion**

In this case, [DHS] has sufficiently proven that [Poouahi] did apply and qualify for and receive food stamp benefits for the months November 19, 1993 through October 31, 1999, November 8, 1999 through December 31, 1999, March 22, 2000 through July 31, 2000 and August 8, 2000 through the present, that she was aware of reporting responsibilities and the penalties for misrepresenting or concealing facts, that [Poouahi] was employed with [CAC] from September 3, 1999 through March 16, 2000, during which time she received income. [DHS] was unable to establish how it acquired the information regarding [Poouahi's] employment with [CAC] nor when.<sup>5</sup> [DHS] was likewise unable to establish that [Poouahi] had not, in fact, called

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<sup>5</sup> This statement fails to recognize the signed statement by welfare case worker, Bessiluan Waa, that "I, B. Waa, learned from [Appellant-Appellant Jocelyn K. Poouahi [(Poouahi)]] on 11/18/99 that [Poouahi] was working at Consolidated Amusement Company. At that time she indicated that she had started her employment in 11/99."

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[DHS] to inform them of her employment status within the ten (10) day reporting period.

However, [DHS] was able to clearly prove that [Poouahi] falsely and intentionally reported information to [DHS] in her Application for Financial and Food Stamps Assistance filed-dated November 8, 1999 by failing to list in question 22 her employment with [CAC] which she had begun on September 3, 1999 and was still employed at the date of her application (Exhibit 1). [Poouahi] certified her answers to the application were correct and accurate and in knowledge of penalties for withholding information. The worker noted [Poouahi's] response at the interview on November 11, 1999<sup>6</sup> that [Poouahi] reported that there was no income to the household. As to [Poouahi's] assertion that she misunderstood question 22 of the application as applying to persons in her household other than herself, this is controverted by the specific language in paragraph 3 on page 10 of her application (Exhibit 1).<sup>7</sup> In addition, [Poouahi] could not have mistaken questions to be about non-household members without reference to herself as well. There is clear and convincing evidence that the failure to report her employment status was intentional and for the purpose of receiving additional food stamp benefits than the household was entitled to receive.

Therefore, a decision is entered finding that there was an intentional program violation committed by [Poouahi]. As a result, [Poouahi] shall be disqualified from receiving food stamp benefits for twelve (12) months as a first violation effective June 1, 2001. Hawaii Administrative Rules § 17-604.1-19.<sup>8</sup>

. . . .

In closing, it is noted that [DHS'] record-keeping practices are undesirably incomplete, and were it not for the false information provided affirmatively by [Poouahi] in her benefits application form regarding her employment and income status at the time, [DHS] would not have prevailed in this case.

(Footnotes added.)

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<sup>6</sup> We did not find in the record any reference to an interview on November 11, 1999. The "NOTICE OF SUSPECTED INTENTIONAL PROGRAM VIOLATION" states that Poouahi was present at an office interview on "11/17/99."

<sup>7</sup> Paragraph 3 on page 10 of the application advised Poouahi of her responsibility to "REPORT ANY CHANGES IN YOUR HOUSEHOLD OR FAMILY WITHIN 10 DAYS OF THE TIME YOU LEARN OF THE CHANGE" and gave as an example the change "if anyone in your home: . . . [s]tarts to work[.]"

<sup>8</sup> HAR § 17-604.1-9(a) states in relevant part that "[i]ndividuals found by an administrative disqualification hearing . . . to have committed intentional program violation . . . shall be ineligible to participate in the program for: (1) One year for the first violation[.]"

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On June 13, 2001, Poouahi filed a "Notice of Appeal to Circuit Court" of the May 14, 2001 Decision. On November 28, 2001, after a hearing on November 13, 2001, the circuit court affirmed the May 14, 2001 Decision. The May 23, 2002 Judgment followed.

POINT ON APPEAL

Poouahi asserts that the May 23, 2002 Judgment should be reversed because "no evidence was adduced at the hearing in this matter that [Poouahi] acted with the requisite intent to commit a program violation when she reapplied for the food stamps program in November 1999."

DISCUSSION AND DECISION

The following are relevant facts:

(1) When the hearing commenced, the Hearing Officer stated as follows:

Now for everyone's edification, the burden of proof at today's hearing falls on [DHS]. They have to show by preponderance of the evidence that [Poouahi] violated the financial assistance program. They have to show by clear and convincing evidence that [Poouahi] violated the food stamp program and that the violations were intentional for the purpose of obtaining more benefits.

The statement that "[t]hey have to show by preponderance of the evidence that [Poouahi] violated the financial assistance program" states the wrong burden of proof.

(2) Immediately after the Hearing Officer's stated two issues and their corresponding burdens of proof as noted in (1) above, DHS stated that there was only one issue and defined it as follows:

And the issues -- it's one issue. Yeah?

Whether [Poouahi] committed an Intentional Program Violation when she failed to timely -- and we're going to stress the word timely -- in complete compliance with the rules that say within ten days. It does not say 11 days, three months, or six months. It says ten days to timely report her employment wages with [CAC] from 9/3/99 through 10/31/99 for financial assistance purposes.

(3) The Hearing Officer found that

[DHS] was unable to establish how it acquired the information regarding [Poouahi's] employment with [CAC] nor when. [DHS] was likewise unable to establish that [Poouahi] had not, in fact called [DHS] to inform them of her employment status within the ten (10) day reporting period.

(4) Poouahi testified that by telephone on September 7, 1999, and September 14, 1999, she informed DHS of her employment.

(5) On November 8, 1999, Poouahi presented DHS with a reapplication containing erroneous information regarding her employment.

(6) DHS admits that it learned from Poouahi on November 18, 1999, that she was working at CAC.

(7) The May 14, 2001 Decision stated, in relevant part, as follows:

**Statement of Issue**

The sole issue before the hearing officer is whether or not [Poouahi] committed an intentional food stamp program violation when she failed to timely report her employment and wages with [CAC] from September 3, 1999 through November 18, 1999 for the food stamp program.

**Decision**

An intentional program violation was committed by [Poouahi], as there does exist clear and convincing evidence that [Poouahi] intentionally failed to timely report and did falsely fail to report her employment and income with [CAC] from September 3, 1999 through November 18, 1999, on an application for assistance submitted in November 1999, resulting in an overpayment of food stamp benefits. Therefore, [Poouahi] shall be disqualified from the food stamp program for a period of twelve (12) months as a first program violation. Hawaii Administrative Rules § 17-604.1-9.

. . . . .

Discussion

. . . . .

. . . [DHS] was unable to establish how it acquired the information regarding [Poouahi's] employment with [CAC] nor when. [DHS] was likewise unable to establish that [Poouahi] had not, in fact, called [DHS] to inform them of her employment status within the ten (10) day reporting period.

However, [DHS] was able to clearly prove that [Poouahi] falsely and intentionally reported information to [DHS] in her Application for Financial and Food Stamps Assistance filed-dated November 8, 1999 by failing to list in question 22 her employment with [CAC] which she had begun on September 3, 1999 and was still employed at the date of her application (Exhibit 1). . . . There is clear and convincing evidence that the failure to report her employment status was intentional and for the purpose of receiving additional food stamp benefits than the household was entitled to receive.

Two types of assistance are relevant: financial assistance and food stamp assistance. The record reveals why DHS, at the hearing on April 20, 2001, stated that the "one issue" was as follows:

Whether Jocelyn K. Poouahi committed an Intentional Program Violation when she failed to timely -- and we're going to stress the word timely -- in complete compliance with the rules that say within ten days. It does not say 11 days, three months, or six months. It says ten days to timely report her employment wages with [CAC] from 9/3/99 through 10/31/99 for financial assistance purposes.

The reason is that DHS knew that Poouahi's error on the November 8, 1999 Application was not the cause of the award of financial assistance given to Poouahi by DHS. The \$370 excess financial assistance was paid to Poouahi in October 1999, before Poouahi made the error. As established by facts (3) and (6) noted above, the \$67 excess food stamp assistance was given to Poouahi in December 1999, more than twelve days after DHS knew that Poouahi had a job and more than one day after the November 29, 1999 deadline imposed

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upon Poouahi for returning DHS' November 18, 1999 request for verification of the employment DHS knew she had. Waa stated that "[f]or foodstamp purposes [Poouahi] was given until 11/29/99 to return the request for verification of said employment notice mailed to her on 11/18/99. When she failed to submit it the case shut down 12/31/99." The record contains no explanation why the case did not shut down on November 30, 1999.

In sum, the Hearing Officer's decision that DHS showed, by clear and convincing evidence, that Poouahi's failure "in her Application for Financial and Food Stamps Assistance filed-dated November 8, 1999" "to report her employment status was . . . for the purpose of receiving additional food stamp benefits than the household was entitled to receive" (1) was not the issue presented by the DHS to the Hearing Officer and (2) is not supported by the Hearing Officer's findings or the evidence.

CONCLUSION

Accordingly, we reverse (1) the May 23, 2002 Judgment entered by the circuit court, (2) the part of the circuit court's November 28, 2001 "Order Denying in Part and Remanding in Part the Appeal Filed on June 13, 2001" that affirms the May 14, 2001 Decision From Food Stamp Disqualification Hearing entered by the Hearing Officer, and (3) the May 14, 2001 Decision From Food Stamp Disqualification Hearing entered by the Hearing Officer.



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DATED: Honolulu, Hawai'i, October 7, 2003.

On the briefs:

Michael P. Kalish (Legal Aid Society of Hawai'i) for Appellant-Appellant.	Chief Judge
Heidi M. Rian and Wendy J. Utsumi, Deputy Attorneys General, for Appellee-Appellee.	Associate Judge
	Associate Judge

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