



State of New Jersey

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DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT
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NATASHA JOHNSON
Assistant Commissioner

The following Decision is distributed for your information. This Decision has been made in consideration of the specific facts of this case. This Decision is not to be interpreted as establishing any new mandatory policy or procedure otherwise officially promulgated.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

FINAL DECISION

OAL DKT. NO. HPW 12408-19 J.D.

AGENCY DKT. NO. S525494012 (MIDDLESEX COUNTY BD OF SOC SCVS)

Petitioner Agency charges Respondent with committing an intentional program violation ("IPV") of the Supplemental Nutrition Assistance Program ("SNAP"). The Agency asserts that Respondent intentionally failed to report receipt of unearned income, thus causing Respondent to receive an overissuance of benefits to which she was not entitled. Respondent was properly noticed of the Administrative Disqualification Hearing, the charges against her, and the proposed disqualification penalty, via certified mail, return receipt requested, on July 24, 2019. See Exhibit P-1 at 1, 2-3. Because Respondent failed to execute and return the waiver of her right to a hearing, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. *Id.* at 4-5. On October 1, 2019, the Honorable Joseph A. Ascione, Administrative Law Judge ("ALJ"), held a hearing, took testimony and admitted documents. Respondent did not appear for the hearing, and the matter proceeded *ex parte*, which is permissible pursuant to our regulatory scheme. See N.J.A.C. 1:10-14.1(d). The record remained open for ten days for Respondent to present good cause for her failure to appear. Respondent did not respond and the record then closed. On October 16, 2019, the ALJ issued an Initial Decision, reversing the Agency's alleged IPV, and one-year disqualification period from receipt of SNAP benefits, and affirming the overissuance of SNAP benefits issued to Respondent.

No Exceptions to the Initial Decision were filed.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the Initial Decision and the record in this matter, and hereby ADOPT the ALJ's Initial Decision, as discussed below.

An IPV occurs when SNAP benefits are issued as the result of an intentional false or misleading statement, or misrepresentation, concealment or withholding of facts. See N.J.A.C. 10:87-11.3. An ALJ shall base the finding of an IPV on clear and convincing evidence which demonstrates that the household member committed, and intended to commit, an IPV. See N.J.A.C. 10:87-11.5(a)(6).

In the instance of an overpayment of SNAP benefits, the Agency must recoup the overissuance. See N.J.A.C. 10:87-11.20. One type of overpayment which is subject to recoupment is one which results



from "a misunderstanding or unintended error on the part of the household" receiving benefits, called an "Inadvertent Household Error" ("IHE"). See N.J.A.C. 10:87-11.20(e)(2). Repayment of overissuances may be sought for up to six years following the time that the Agency becomes aware of the overpayment. See N.J.A.C. 10:87-11.20(f)(1)(i).

Here, the ALJ found that the Agency had not met its burden in establishing, by clear and convincing evidence, that Respondent intentionally made false or misleading statements, or concealed facts. See Initial Decision at 4; see also N.J.A.C. 10:87-11.3(a)(1). The Agency purports that in October, 2013, Respondent misreported that her child, A.S., had not yet received Supplemental Security Income ("SSI") benefits, when she had, in fact, received SSI benefits for the entire year, causing Respondent to receive an overpayment of \$153 in SNAP benefits. See Initial Decision at 1-2, 3; see also Exhibit P-2 at 5, P-4 at 2, P-7 at 9. The ALJ found that Respondent's initial application for SNAP benefits, dated December 12, 2012, correctly reflected that A.S. had not received SSI benefits, and that her October, 2013, Interim Reporting Form ("IRF"), while technically incorrect, does not rise to the level of fraud or an IPV. See Initial Decision at 3; see also Exhibit P-7. Based on the foregoing, the ALJ concluded that the Agency had failed to meet its burden, by clear and convincing evidence, that Respondent had committed an IPV, and therefore reversed the Agency's action disqualifying her from receipt of SNAP benefits for 12 months. See Initial Decision at 4-5; see also Exhibit P-1 at 2-3, P-2 at 1-3, and N.J.A.C. 10:87-11.2(a)(1), -11.3. I agree.

Additionally, based upon an independent review of the record, I also agree with the ALJ's conclusion that Respondent received an overissuance of SNAP benefits to which she was not entitled. See Initial Decision at 3, 5. While Respondent did not have the requisite intent to commit an IPV, I find that Respondent's receipt and use of overissued SNAP benefits, resulted in an improper windfall to her benefit, as money to which she was not entitled, and therefore, must be repaid. See N.J.A.C. 10:87-11.20(a), (b). Therefore, I ORDER and direct the Agency to recoup the overissuance.

Accordingly, the Initial Decision in this matter is ADOPTED and the Agency is ORDERED to proceed to recoup the overissuance, as outlined above.

Officially approved final version.

Natasha Johnson
Assistant Commissioner

OCT 22 2019

