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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

FINAL DECISION

OAL DKT. NO. HPW 07799-19 L.J.

AGENCY DKT. NO. C098887008 (GLOUCESTER COUNTY DIV. OF SOC. SVCS.)

Petitioner challenges the correctness of Respondent Agency's calculation of her Supplemental Nutrition Assistance Program ("SNAP") benefits amount. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On July 12, 2019, the Honorable Catherine A. Tuohy, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents into evidence. The record remained open for the parties to submit written closing arguments by July 26, 2019, and the record then closed. On August 7, 2019, the ALJ issued an Initial Decision, reversing the Agency's calculation of Petitioner's SNAP benefits amount.

Exceptions to the Initial Decision were filed by the Agency on August 13, 2019.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the Initial Decision and having made an independent review of the record in this matter, I hereby REJECT the ALJ's Initial Decision, and AFFIRM the Agency's determination.

Irrevocable trust funds with cash values that are not available and accessible to the household, are not considered in the determination of eligibility for participation in the SNAP program. See N.J.A.C. 10:87-4.7, -4.8(a)(13), (14).

Unearned income, for the purpose of determining NJ SNAP eligibility, includes "monies that are withdrawn, or dividends that are or could be received by a household from trust funds." See N.J.A.C. 10:87-5.5(a)(8).

N.J.A.C. 10:87-5.9(a)(2)(iv) states, in pertinent part, "Moneys which are legally obligated and otherwise payable to the household but which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded as a vendor payment." Subsection one of that regulation goes on to say, "If any employer, agency, former spouse, or other person who owes these funds to a household diverts them instead to a third party to pay for household expenses, these payments shall be counted as income to the household." See N.J.A.C. 10:87-5.9(a)(2)(iv)(1).



Here, the record indicates that since April 1, 2018, Petitioner had been receiving SNAP benefits in the amount of \$192 per month. See Initial Decision at 3; see also Exhibit R-1 at 88. Petitioner is disabled, and is a beneficiary of an Irrevocable Special Needs Trust ("ISNT"), into which her regular alimony payments are directly deposited. See Initial Decision at 2; see also Exhibit R-1 at 60-76. Petitioner's mother, E.S., one of the co-trustees of the ISNT, uses the ISNT funds to pay Petitioner's expenses. See Initial Decision at 2, 3; see also Exhibit R-1 at 58. An application for recertification of Petitioner's SNAP benefits was submitted in May 2019, at which time the existence of the ISNT was first reported. See Initial Decision at 2. After inclusion of an average of trust funds withdrawn as unearned income, together with Petitioner's Supplemental Security Income ("SSI") benefits, and after applicable deductions were applied, it was determined that Petitioner was entitled to a monthly SNAP benefit amount of \$15, effective June 1, 2019. See Initial Decision at 2; see also Exhibit R-1 at 86. The Agency maintained that the funds withdrawn from the ISNT, and used by E.S. to pay Petitioner's expenses, are countable as unearned income to Petitioner. *Id.* at 2; see also Exhibit R-1 at 49-55, and N.J.A.C. 10:87-5.5(a)(8)(i).

The ALJ opined that Petitioner, a beneficiary of the ISNT, has no access to the trust fund income, and that E.S., in her capacity as trustee, makes direct payments to various third parties on behalf of Petitioner. See Initial Decision at 3, 4. The ALJ further found that Petitioner never directly receives any monies from the ISNT. *Id.* at 3. Therefore, the ALJ concluded that the withdrawals made by E.S. from the ISNT, on Petitioner's behalf, should not have been included as income to Petitioner for the purposes of calculating SNAP income during Petitioner's May 2019, recertification for SNAP benefits. *Id.* 4-5; see also N.J.A.C. 10:87-4.8(a)(13). Accordingly, the ALJ reversed the Agency's calculation, and ordered to Agency to recalculate Petitioner's monthly SNAP benefits allotment, excluding the withdrawal amounts from the ISNT. See Initial Decision at 5; see also Exhibit R-1 at 49-55, 87.

Following an independent review of the record, I respectfully disagree with, and hereby reject, the ALJ's Initial Decision for the following reasons. While funds held in a trust may be excluded as a resource in calculating income for determining eligibility for SNAP benefits, applicable regulatory authority specifies that the funds must not be available to the SNAP household. See N.J.A.C. 10:87-4.8(a)(14). Here, the record reflects that the ISNT is funded by alimony payments made to Petitioner, and that such funds are available and accessible to Petitioner's household. See Initial Decision at 2; see also Exhibit R-1 at 60, and N.J.A.C. 10:87-5.5(a)(8). From those funds, E.S., as a co-trustee of the ISNT, pays the expenses, support and "special needs of [Petitioner]," as noted in Article 2 of the ISNT, on Petitioner's behalf. See Initial Decision at 3, see also Exhibit R-1 at 63. Therefore, I find that the ISNT funds are available to Petitioner, and are, in fact, being utilized by Petitioner, as income-in-kind, and as such, are considered unearned income for purposes of calculating Petitioner's SNAP benefits amount. See Exhibit R-1 at 49-54; see also N.J.A.C. 10:87-5.5(a)(8). Furthermore, as referenced above, applicable regulatory authority makes clear that alimony payments legally owed to a household, but diverted by a former spouse, to a third party, in this case an ISNT, to pay for household expenses, shall be counted as income. See N.J.A.C. 10:87-5.9(a)(2)(iv), (1). Based on the foregoing, I find that the Agency's inclusion of the average amount of trust withdrawals as unearned income in the SNAP benefits calculations, and the resultant reduction of Petitioner's SNAP benefits allotment, was proper and must stand. See Initial Decision at 2; see also Exhibit R-1 at 86-87.

Accordingly, the Initial Decision in this matter is REJECTED, and the Agency determination in this matter is AFFIRMED.

Officially approved final version.

AUG 28 2019

Natasha Johnson

Director

