



State of New Jersey

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Director

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 08961-19 R.S.

AGENCY DKT. NO. C082397002 (BERGEN COUNTY BD. OF SOC. SVCS.)

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 Unemployment Insurance Benefits ("UIB"), 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 June 25, 2019. See Exhibit P-1 at 20-21, 22-23. 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. On July 23, 2019, the Honorable Evelyn J. Marose, 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). On July 25, 2019, the ALJ issued an Initial Decision, finding that Respondent did not commit an IPV, and therefore, no 12-month disqualification penalty from receipt of SNAP benefits was warranted.

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, and hereby MODIFY the ALJ's Initial Decision, as outlined below.

IPVs shall consist of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts. See N.J.A.C. 10:87-11.3. The ALJ shall base the determination 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. 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 record reflects that Petitioner applied for SNAP benefits, and had advised the Agency that she had a pending application for UIB. See Initial Decision at 2; see also P-1 at 26-36. On May 24, 2017, the Agency approved Petitioner's application for SNAP benefits. See Initial Decision at 2; see also Exhibit P-1 at 67. Thereafter, in July, 2017, Respondent advised the Agency that her application for UIB was denied, and that she had appealed the denial. See Initial Decision at 2; see also Exhibit P-1 at 96. In October, 2017, the Agency discovered that Respondent had received UIB for the period beginning September, 2017, through October, 2017. See Initial Decision at 2; see also Exhibit P-1 at 101-102. In July 2018, the Agency issued a repayment notice for SNAP benefits to Respondent, for failing to timely report UIB received during the months of September, 2017, and October, 2017. See Initial Decision at 2; see also Exhibit P-1 at 113-116.

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 3; see also N.J.A.C. 10:87-11.3. Respondent believed that the Division of Unemployment Benefits would have advised the Agency regarding the status of her appeal of the denial of UIB. See Initial Decision at 2-3. The ALJ also found, and Petitioner Agency agreed, that Respondent did not intend to collect benefits to which she was not entitled. *Id.* at 3. Based on the record presented, the ALJ concluded that the Agency failed to meet its burden, by clear and convincing evidence, that Respondent had committed an IPV, and as such, no 12-month disqualification penalty from receipt of SNAP benefits would be imposed. *Id.* at 3, 4; see also Exhibit P-1 at 12-13, and N.J.A.C. 10:87-11.2(a)(1), -11.3(a). I agree.

While I agree with the ALJ's conclusion that Respondent did not have the requisite intent to commit an IPV, based upon an independent review of the record, I find that Respondent did receive an overissuance of SNAP benefits for which she was not entitled. See Initial Decision at 3. I further find that Respondent's receipt and use of SNAP benefits in September, 2017, and October, 2017, resulted in a windfall to her benefit, as receipt of SNAP benefits is money to which she was not entitled, and therefore, must be repaid. *Ibid.*, see also Exhibit P-1 at 122, 125-126, and N.J.A.C. 10:87-11.20(a), (b). The record reflects that Respondent is currently repaying the overissuance of SNAP benefits. See Initial Decision at 2; see also Exhibit P-1 at 132, 133. Therefore, I direct that the Agency continue to recoup the overissuance, until the balance is satisfied. The Initial Decision is modified to reflect these findings.

Additionally, with respect to a matter alleging an IPV, the Agency is responsible for initiating an administrative disqualification hearing. See N.J.A.C. 10:87-11.1. Accordingly, as the Agency is the party requesting relief in an IPV case, it is the "Petitioner." See N.J.A.C. 1:1.2.1, "Definitions." Conversely, the party responding to the Agency's request for relief in an IPV case is the "Respondent." *Ibid.* Here, R.S., was incorrectly referred to as "Petitioner," when she was, in fact, the Respondent. The Agency was incorrectly referred to as "Respondent" throughout the Initial Decision, when it should be have referred to as Petitioner. Therefore, the Initial Decision is also modified so as to reflect the correct designation of the parties.

Based on the foregoing, the Initial Decision in this matter is MODIFIED, as discussed above. I further ORDER and direct the Agency to continue to recoup the overissuance.

Officially approved final version.

AUG 30 2019

Natasha Johnson
Director

