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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 **02320-23 P.M.**

AGENCY DKT. NO. **S934349009 (HUDSON COUNTY DEPT OF FAM SVCS)**

Petitioner challenges the correctness of the Respondent Agency's claim for recovery of Supplemental Nutrition Assistance Program ("SNAP") benefits. The Agency asserts that Petitioner received SNAP benefits to which she was not entitled, and which must be repaid. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. A hearing was initially scheduled for May 30, 2023, but was adjourned to allow Petitioner the opportunity to retain counsel. On June 12, 2023, the Honorable Kelly J. Kirk, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents into evidence. On June 23, 2023, the ALJ issued an Initial Decision, affirming the overissuance of SNAP benefits issued to Petitioner.

Exceptions to the Initial Decision were filed by Legal Services, on behalf of Petitioner, on June 30, 2023.

As Assistant Commissioner, Division of Family Development ("DFD"), Department of Human Services, I have considered the ALJ's Initial Decision and following an independent review of the record, I hereby ADOPT the ALJ's Initial Decision, and AFFIRM the Agency determination, based on the discussion below.

SNAP is designed to promote the general welfare and to safeguard the health and well-being of the population by raising the levels of nutrition among low-income households. See N.J.A.C. 10:87-1.1(a). In the instance of an overpayment of 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 "an action or failure to take action by the [Agency]," called an "Agency Error" ("AE"). See N.J.A.C. 10:87-11.20(e)(3). Repayment of overissuances may be sought for amounts going back six years prior to 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 met its burden in establishing, by a preponderance of the credible evidence, that Petitioner received an overissuance of SNAP benefits to which she was not entitled. See Initial Decision at 10. The ALJ also found, and the record in this matter reveals that Petitioner previously had incurred three separate Intentional Program Violations ("IPVs"). *Id.* at 2-5, 9-10; see also Exhibit R-1 at 28-38. In accordance with applicable regulatory authority, Petitioner was



permanently disqualified from the receipt of SNAP benefits due to the three separate IPV's, the first in 1999, the second in 2006, and the third in 2008. See Initial Decision at 4, 9-10; see also Exhibit R-1 at 29-37 and N.J.A.C. 10:87-11.2(a)(1)-(3). Although Petitioner claimed that she was unaware that she had been permanently disqualified from the receipt of SNAP benefits because the third IPV violation "Waiver of Right to Administrative Disqualification Hearing" ("Waiver"), dated May 23, 2008, indicated a filled in 12-month disqualification period, the ALJ found that said Waiver, as well as the two prior Waivers that Petitioner had received, all clearly reflected the applicable penalty progression and that a third IPV would result in a permanent disqualification from receipt of SNAP benefits. See Initial Decision at 5, 9-10; see also Exhibit R-1 at 36-37. Moreover, the ALJ found that no further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. See Initial Decision at 10. As a result of the Agency's error, Petitioner received monthly SNAP benefits from May 2020, through April, 2022, totaling \$6,059.00, to which she was not entitled and which must now be recouped, regardless of fault. Id. at 4-5; see also Exhibit R-1 at 2-9, and N.J.A.C. 10:87-11.20. Accordingly, the ALJ concluded that Petitioner was overissued SNAP benefits to which she was not entitled during the time period claimed, and as such, the Agency is entitled to recoup, and Petitioner must repay, the overissuance of SNAP benefits to which she was not eligible to receive. See Initial Decision at 8-10; see also N.J.A.C. 10:87-11.20(b), (e)(3). I agree.

I ORDER and direct that the Agency proceed to recoup the overissuance.

By way of comment, I have reviewed the Exceptions submitted on behalf of Petitioner, and I find that the arguments made therein do not alter my decision in this matter.

Accordingly, the Initial Decision in this matter is ADOPTED, the Agency's determination is AFFIRMED, as outlined above.

Officially approved final version. August 17, 2023

Natasha Johnson
Assistant Commissioner

