



State of New Jersey

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DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT
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TRENTON, NJ 08625-0716

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 **03518-23 B.M.**

AGENCY DKT. NO. **C148611020 (UNION COUNTY DIVISION 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 accurately report household composition and income, while she received SNAP benefits, thus causing Respondent to receive an overissuance of benefits to which she was not entitled. Respondent was properly noticed of the Administrative Disqualification Hearing ("ADH"), the charges against her, and the proposed disqualification penalty, via certified mail, return receipt requested, on March 7, 2023. See Exhibits P-6 at 4-6, 7-11, P-7. 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 2-3. On May 5, 2023, the Honorable John P. Scollo, Administrative Law Judge ("ALJ"), held a hearing, took testimony, admitted documents, and the record then closed. 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 May 10, 2023, the ALJ issued an Initial Decision, affirming the Agency's determination to recoup the amount of overissued SNAP benefits Respondent had received, while also affirming its determination to impose a 12-month disqualification period on Respondent's ability to seek SNAP benefits.

No Exceptions to the Initial Decision were filed.

As Assistant Commissioner, Division of Family Development, Department of Human Services, I have reviewed the Initial Decision and the record in this matter, and hereby MODIFY the ALJ's Initial Decision, based on the discussion below.

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). Additionally, the [Agency] shall be responsible for investigating any case of an alleged IPV, and ensuring that appropriate cases are acted upon either through an ADH or by referral to a court of appropriate jurisdiction. See N.J.A.C. 10:87-11.1(a).



Here, the ALJ found that Respondent had deliberately and intentionally withheld information from the Agency, which resulted in Respondent receiving an overissuance of SNAP benefits, to which she was not entitled. See Initial Decision at 3-4. The ALJ found that Respondent, while receiving SNAP benefits, deliberately and intentionally did not report changes in her household composition and income, specifically, that S.F. had lived in the same household with Respondent and Respondent's children, and that S.F. had earned income, which resulted in an overissuance to Respondent in the amount of \$30,470.56, in SNAP benefits, for the period beginning year 2020, through year 2023. Id. at 2, 3, 4; see also Exhibits P-1, P-2, P-3, P-4, P-5, P-8; and N.J.A.C. 10:87-2.2, -5.4(a)(1), (2), -9.5.

As this was the first IPV committed by Respondent, the ALJ ordered the mandatory regulatory penalty of a 12-month disqualification from receipt of SNAP benefits, pursuant to N.J.A.C. 10:87-11.2(a)(1). See Initial Decision at 5.

While I agree with the ALJ's finding, that Respondent committed an IPV of the SNAP program, thereby warranting disqualification from the receipt of SNAP benefits, I find that the standard of review on which the ALJ based that finding, specifically, by a preponderance of the credible evidence, is incorrect. Id. at 3. Pursuant to regulatory authority, the ALJ should have based the finding that Respondent had committed an IPV, on clear and convincing evidence. See N.J.A.C. 10:87-11.5(a)(6). Accordingly, based upon my independent review of the record, I find that, based upon clear and convincing evidence, Respondent committed an IPV of the SNAP program, thereby warranting a 12-month disqualification from the receipt of SNAP benefits. The Initial Decision is modified to reflect this finding.

By way of comment, 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. In the Initial Decision, B.M., 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 have been referred to as Petitioner. The parties are correctly identified in this Final Agency Decision. Accordingly, the Initial Decision is also modified so as to reflect the correct designation of the parties.

By way of further comment, the parties are reminded that pursuant to regulatory authority, alleged IPV matters are adjudicated either through an ADH, or by a referral to a court of appropriate jurisdiction. See N.J.A.C. 10:87-11.1(a). In the instant matter, the ALJ is reminded that since this case has proceeded by way of an ADH, the Agency cannot now refer the matter to the local Prosecutor, so that it may be reviewed for possible criminal violations.

Accordingly, I hereby MODIFY the Initial Decision in this matter, based upon the discussion above, and ORDER that Respondent is ineligible to participate in SNAP for a period of 12 months. I further ORDER that the Agency is to recoup the overissued SNAP benefits.

Officially approved final version. June 08, 2023

Natasha Johnson
Assistant Commissioner

