



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT
PO BOX 716

SARAH ADELMAN
Commissioner

TAHESHA L. WAY
Lt. Governor

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 **08025-23 A.Y.**

AGENCY DKT. NO. **C708788007 (ESSEX COUNTY DIVISION OF WELFARE)**

Petitioner seeks recovery of Supplemental Nutrition Assistance Program ("SNAP") benefits which had been allegedly stolen from Petitioner's Electronic Benefits Transfer ("EBT") card. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On October 17, 2023, the Honorable John P. Scollo, Administrative Law Judge ("ALJ"), held a plenary hearing and took testimony. No documents were entered into evidence by either party. On October 24, 2023, the ALJ issued an Initial Decision, directing the Agency, the State, and the State's third party vendor, who issues the EBT cards, to restore the allegedly stolen funds to Petitioner.

Exceptions to the Initial Decision were filed by the Agency on November 3, 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 REJECT the Initial Decision and AFFIRM on other grounds, the Agency's determination, based on the discussion below.

The Initial Decision rendered by the ALJ in this case makes a finding in favor of Petitioner, that she is entitled to replacement of allegedly stolen SNAP benefits. See Initial Decision at 9-10. However, the Initial Decision is completely devoid of citation to any applicable law, and moreover, makes findings of fact without any corroborating evidence having been entered into the record by either party. A review of the applicable law, before consideration of the actual facts in this case, follows.

It should be noted that there is no federal or State regulation which would allow the Agency, or the State, to restore SNAP benefits that are lost due to skimming or cloning of an EBT card. N.J.A.C. 10:87-9.8(a) specifically states that SNAP benefits shall not be replaced once they are posted to a household's Families First account. Similarly, N.J.A.C. 10:88-5.1, which governs the Families First Programs and the replacement of benefits, dictates that Work First New Jersey ("WFNJ") or SNAP benefits shall not be replaced once they are posted to a household's Families First account.

However, due to of the prevalence of the issue of electronic theft and skimming of benefits, Congress addressed this ongoing problem when it enacted the Consolidated Appropriations Act, 2023. In



December 2022, as part of the Consolidated Appropriations Act, 2023 (“the Act”), Congress enacted provisions intended to prevent SNAP EBT benefit fraud. Consolidated Appropriations Act, 2023, H.R. 2617, 117th Cong. § 501(b) (2023). Section 501(b) of the Act directs the United States Department of Agriculture (“USDA”) to require States “to replace benefits that are determined by the State agency to have been stolen through card skimming, card cloning, or similar fraudulent methods.”

As a result of this new law, states are now able to replace benefits, within certain parameters, stolen by means of electronic theft or skimming, which occurred between October 1, 2022, and September 30, 2024. The allowable replacement amount is the lesser of the total benefits stolen or two allotments (two months of benefits). *Id.* at sec. 501(b)(2)(A). Further, under the Act, states are required to develop and submit plans to the Food and Nutrition Service (“FNS”) for the replacement of electronically stolen SNAP benefits. *Id.* at sec. 501(b)(1).

New Jersey’s State Plan for implementing the new law for replacement of electronically stolen SNAP benefits was approved by FNS on May 23, 2023, and went into effect on July 1, 2023. Additionally, in late June 2023, the New Jersey Legislature appropriated funds for the replacement of WFNJ benefits and State SNAP supplements stolen through unauthorized transactions as a result of some form of electronic theft or fraud. See Fiscal Year (“FY”) Appropriations Act, P.L. 2023, c.74. As such, both SNAP and WFNJ benefits recipients may submit a claim for the replacement of lost benefits, alleged to have occurred by means of electronic theft or fraud, and within the designated time frames. See generally DFD Instruction (“DFDI”) No. 23-08-02.

It is with the above stated law that the facts of this case must be examined. The Initial Decision states that the electronic theft of Petitioner’s SNAP benefits allegedly occurred on September 17, 2020. See Initial Decision at 4. I take official notice of the fact that the records of this office reflect that the actual date of the electronic theft incidents in this matter was September 17, 2022. See N.J.A.C. 1:1-15.2(a) and N.J.R.E. 201(b)(4). Additionally, the records of this office indicate that the benefits that were stolen were not SNAP benefits, as stated in the Initial Decision, but rather, were WFNJ/General Assistance (“WFNJ/GA”) benefits, of which Petitioner’s assistance unit of two adults with no dependent children receives the amount of \$382 per month. See N.J.A.C. 10:90-3.6; see also DFD Information Transmittal no. 19-21 at 4. I note that only WFNJ cash benefits, and not SNAP benefits, may be accessed through an Automatic Teller Machine (“ATM”), as was done in this case.

The records of this office further show that Petitioner filed a claim on July 18, 2023, under the new law discussed above, for the replacement of WFNJ/GA benefits, in the total amount of \$1,897.00, comprising almost five months of WFNJ/GA benefits, lost by means of electronic fraud/skimming. The claim form submitted notes a total of four transactions which occurred at four ATMs, each at different locations, three banks and a supermarket, all located in Newark, New Jersey. The Agency investigated the claim, and on July 25, 2023, denied the submitted claim on the basis that the benefits were purportedly not stolen by means of skimming or other electronic theft. A further review of the records of this office clearly supports that the fraudulent transactions occurred on September 17, 2022, as reported by Petitioner on the submitted claim form. However, under the Act, the theft occurred prior to the October 1, 2022, eligibility date for consideration of the claim, and as such, the Agency’s denial of the claim is correct, but on the basis of being outside the permissible time frame for claim consideration. Moreover, even had the date of the thefts occurred within the permissible time frames for possible repayment, Petitioner would only have been eligible for two months of WFNJ/GA benefits, or \$764, and not the full amount of \$1,897.00, as sought by Petitioner. Finally, as outlined above, there exists no State or federal regulatory authority through which the benefits, lost on September 17, 2022, may be replaced. See N.J.A.C. 10:88-5.1. As such, I find the ALJ’s decision, that the Agency, the State, and the third party vendor who issues the EBT cards are jointly responsible for the replacement of Petitioner’s stolen WFNJ/GA benefits, to be without any legal basis, and therefore, the Initial Decision is hereby rejected in its totality.



Based on the foregoing, the Initial Decision is hereby REJECTED, and the Agency's determination is AFFIRMED on other grounds, as outlined above.

Officially approved final version. January 10, 2024

Natasha Johnson
Assistant Commissioner

