



State of New Jersey

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DEPARTMENT OF HUMAN SERVICES
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NATASHA JOHNSON
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 **05611-19 M.D.**

AGENCY DKT. NO. **S447941014 (MORRIS CO. DIV. EMP. & TEMP ASST)**

Petitioner Agency charges Respondent with committing an intentional program violation ("IPV") of the Supplemental Nutrition Assistance Program ("SNAP"). The Agency asserts that Respondent failed to report her circumstances, namely, her husband's self-employment income, as well as the ownership of a business and purchase of a residence, while the household was receiving 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, the charges against her, and the proposed disqualification penalty by personal service. 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 May 9, 2019, the Honorable Susana E. Guerrero, Administrative Law Judge ("ALJ"), held a hearing, took testimony and admitted documents. On May 31, 2019, the ALJ issued an Initial Decision, finding that Respondent had committed an IPV.

No Exceptions to the Initial Decision were filed.

As the Director of the Division of Family Development ("DFD"), Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I hereby MODIFY the ALJ's Initial Decision, based on the discussion below.

When a SNAP benefits recipient receives an overpayment of 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).

In the Initial Decision, the ALJ found that the Agency had met its burden in establishing, by clear and convincing evidence, that Respondent had deliberately and intentionally withheld information from the Agency when she failed to report changes in her circumstances which would have affected the household's eligibility for SNAP benefits had they been reported. Specifically, the ALJ found that Respondent had intentionally failed to report her husband's self-employment income as a business owner since 2014. See Initial Decision at 4-5; see also N.J.A.C. 10:87-11.3, -11.5(a)(6). Further, the



ALJ found that Respondent had intentionally failed to report that she and A.D. had purchased a home in 2017, which Respondent had claimed the couple was renting, for which a \$177,000 down-payment was provided by Respondent and a mortgage of \$210,000 was secured. See Initial Decision at 3-4; see also Exhibit P-1 at 5-8, 17-20, 21-24, 88-90, and N.J.A.C. 10:87-5.4(a)(3), -9.5, -11.3, -11.5(a)(6).

Additionally, the issue regarding the overissuance of SNAP benefits to Respondent was not addressed in the Initial Decision, as the ALJ opined that it had been addressed in a prior Final Agency Decision. See Initial Decision at 5; see also Exhibit P-1 at 88-90. However, I find that the Agency has now met its burden of proof, and therefore, the overissuance issue is addressed below.

Household income for purposes of SNAP eligibility is defined as "all income from whatever source unless such income is specifically excluded," and therefore, Respondent was obligated to report ownership and income of any businesses owned by her spouse, but failed to do so. See Exhibit P-1 at 1-7, 17-20, 38-73, 81; see also N.J.A.C. 10:87-5.2, -5.3. Further, for the purpose of determining countable income from self-employment for SNAP benefits eligibility, the gross business income is identified, and after documenting allowable expenses, a standard self-employment deduction of 51 percent is applied. See Exhibit P-1 at 1-5, 42-49; see also N.J.A.C. 10:90-3.9(d), 7 C.F.R. 273.11(b)(3)(iv), and DFD Instruction 13-12-01. While neither New Jersey, nor Federal SNAP regulations, define "self-employment," the SNAP regulations do not distinguish between the income of a business owner and the income for a self-employed applicant/recipient. See N.J.A.C. 10:87-7.2, -7.3.

Based on an independent review of the record, I find that Respondent intentionally failed to accurately report that her husband was the president and sole shareholder of a bagel shop from which he had received self-employment income during the period of January 2014, through July 2018, resulting in an overissuance of SNAP benefits to Respondent in the amount of \$39,918. See Initial Decision at 3; see also Exhibit P-1 at 1-20, 35-73, 81, and N.J.A.C. 10:87-5.2(a)(1), -5.4(a)(3). The Initial Decision is modified to reflect this SNAP overissuance finding. See Initial Decision at 5. I direct that the Agency proceed to recoup the overissuance.

As this was the first IPV committed by Respondent, I also hereby impose upon Respondent 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). The Initial Decision is also modified to incorporate the mandatory regulatory penalty.

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

Officially approved final version.

JUL 18 2019

Natasha Johnson
Director

