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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 12037-23 E.A.

AGENCY DKT. NO. C424187016 (PASSAIC COUNTY BOARD OF SOC. SVCS.)

Petitioner seeks recovery of Supplemental Nutrition Assistance Program ("SNAP") benefits which had been 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. Following conferences on January 11, 2024, and February 8, 2024, the matter was scheduled to be heard on March 21, 2024, however Petitioner did not call in at the appointed time and the matter was rescheduled for April 4, 2024. On April 4, 2024, the Honorable Matthew G. Miller, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents. The record was held open until April 9, 2024, and then closed. On April 17, 2024, the ALJ issued an Initial Decision, reversing the Agency's determination, and directing the Agency to restore \$582 of the stolen funds to Petitioner.

No Exceptions to the Initial Decision were received.

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 ADOPT the Initial Decision, and REVERSE the Agency's determination, based on the discussion below.

It should be noted that there is no federal or State regulation which allows 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 SNAP benefits shall not be replaced once they are posted to a household's Families First account.

However, due to 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 were 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 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, SNAP benefits recipients may submit a claim for the replacement of lost benefits, alleged to have occurred by means of electronic theft or fraud, within the designated time frames. See generally DFD Instruction ("DFDI") No. 23-08-02. For benefits stolen after July 1, 2023, a cardholder has "thirty-days from the date they discovered the theft to submit a request (for replacement)". See Initial Decision at 8; see also DFD Informational Transmittal ("IT") 23-04 (cited within the Initial Decision, but rescinded by DFDI No. 23-08-02).

It is within the above stated law that the facts of this case must be examined. Here, the ALJ found that Petitioner received monthly SNAP benefits totaling \$291. See Initial Decision at 6. On August 9, 2023, six fraudulent transactions occurred out of state in Maryland and Virginia totaling \$674.54, charges which were discovered by Petitioner on August 11, 2023. See Initial Decision at 6. On August 12, 2023, Petitioner phoned the number on the back of his EBT card to report the fraudulent usage and on August 15, 2023, he went in-person to the Agency's Passaic office where it was documented that he requested a new EBT card be issued. See Initial Decision at 6. Petitioner testified that he was not informed by either the EBT card telephone representative, nor the Agency representative, that he needed to complete any further paperwork regarding the fraudulent use of the EBT card. See Initial Decision at 4. On October 3, 2023, the Agency received a referral that Petitioner was reporting fraud on the card and on October 4, 2023, he completed the EBT-20 claim form telephonically with an Agency representative. See Initial Decision at 6. On October 12, 2023, Petitioner signed the EBT-20 claim form in person noting that "I reported the fraud when I found out it happened, and I did not wait 30 days before I reported it." See Initial Decision at 6; see also Exhibit R-1 at 6. On October 12, 2023, the Agency denied Petitioner's claim for stolen benefits, stating that Petitioner "reported the theft more than 30 days after you discovered it." See Initial Decision at 6; see also Exhibit R-1 at 2-3. While the Agency alleges that Petitioner failed to comply with the thirty-day time limitation to request reimbursement of stolen benefits, it does not dispute that the transactions at issue were fraudulent. See Initial Decision at 3, 5.

Here, the form at issue, the EBT-20 claim form, became publicly available via the DFD webpage on August 11, 2023 at 3:00 p.m. The ALJ in this matter rather thoroughly provided information from a DFD training power point presentation, "Replacement of Electronically Stolen NJ EBT Benefits," outlining the six different ways to submit the EBT-20 claim form. See Initial Decision at 9-10; see also Exhibit R-2.

Here, the ALJ found that, while both parties provided testimony which was credible, Petitioner's testimony more closely encapsulated what actually happened, versus the testimony of the Agency representative, as to what usually happens in similar situations. See Initial Decision at 10. The ALJ found that Petitioner informed several pertinent persons that fraudulent usage of his card had occurred, and that it would have been "practically impossible to explain why he needed a new card without recounting the August 12, 2023, telephone call and his explanation that the card had been used fraudulently in Maryland and Virginia." See Initial Decision at 10-11. As such, the ALJ concluded that Petitioner was never afforded the opportunity to timely complete the EBT-20 claim form, and was never provided the form until October 4, 2023. See Initial Decision at 11. The ALJ found that, unintentionally and due to the newness of the replacement of stolen benefits program, the Agency did not offer Petitioner an opportunity to complete the correct form in a timely manner when he came to the Agency office on August 15, 2023. See Initial Decision at 11. This oversight led to Petitioner filing the reimbursement claim outside of the thirty days permitted, and the subsequent denial by the Agency for replacement of benefits. See Initial Decision at 12. Based upon the very specific factual scenario of this matter, the ALJ concluded that Petitioner's claim for reimbursement of his stolen SNAP benefits was improperly denied, as the delay in filing the correct form was through no fault of his own, but rather, was due to the Agency's failure to advise him of the claim process. See Initial Decision at 12. Further, the ALJ concluded that the Petitioner's recovery is limited to two months of Petitioner's SNAP benefits allotment, \$291 x 2, or \$582. See Initial Decision at 12. Based upon the specific facts of this matter, and the testimony and evidence presented in the record, I agree, and I therefore direct that Petitioner be issued the \$582 in replacement funds for the stolen benefits. See N.J.A.C. 10:87-8.18.

Accordingly, the Initial Decision is hereby ADOPTED, and the Agency's determination is REVERSED, as outlined above.

Officially approved final version. June 05, 2024

Natasha Johnson
Assistant Commissioner

