



## State of New Jersey

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DIVISION OF FAMILY DEVELOPMENT  
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TRENTON, NJ 08625-0716

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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 11379-24 F.M.

AGENCY DKT. NO. C112036020 (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 also seeks to recoup an overpayment of SNAP benefits in the amount of \$1,720, as it asserts that Respondent improperly used his SNAP benefits during a period from February 22, 2024, through February 24, 2024, (hereafter, the "Relevant Time Period" or "RTP.") See Initial Decision at 5-6; see also Exhibit P-4. On July 2, 2024, Respondent was properly noticed of the Administrative Disqualification Hearing ("ADH"), the charges against him, and the proposed disqualification penalty, via certified mail, return receipt requested. See Exhibits P-5, P-6. Because Respondent failed to execute and return the waiver of his right to a hearing, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. On September 4, 2024, the Honorable R. Tali Epstein, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, admitted documents, and the record then closed.

On September 18, 2024, the ALJ issued an Initial Decision, which found that the Agency had not met its burden in establishing, by clear and convincing evidence, that Respondent had committed an IPV, by participating in the transferring or trafficking of SNAP benefits. See Initial Decision at 7-8; see also N.J.A.C. 10:87-11.3(a)(2).

No Exceptions to the Initial Decision were filed.

In relevant part, an IPV is defined as a false or misleading statement, or misrepresented, concealed or withheld facts. See N.J.A.C. 10:87-11.3(a)(1). The Agency shall be responsible for investigating any case of alleged IPV, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the proper procedures. See N.J.A.C. 10:87-11.1(a). Administrative disqualification procedures or referral for prosecution action shall be initiated by the Agency in cases in which it has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of IPV as defined at N.J.A.C. 10:87-11.3(a). In the instance of an IPV, the ALJ shall base the determination of an IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined above. See N.J.A.C. 10:87-11.5(a)(6).

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

Here, the record reflects that on March 1, 2024, Respondent reported unauthorized purchases made with his Electronic Benefits Transfer ("EBT") card as the amount of his issued monthly SNAP benefits was incorrect, reflecting a beginning



monthly balance of \$42.60 rather than his normal monthly benefit amount of \$291. See Initial Decision at 2; see also Exhibit P-4. Respondent filed a Request for Replacement of Electronically Stolen Benefits on March 1, 2024, and identified several transactions, totaling \$251.38, which had occurred on February 26 and February 27, 2024. See Initial Decision at 2; see also Exhibit P-1. On March 25, 2024, the Agency completed a fraud referral for Respondent's case which indicated an error when, on February 20, 2024, Respondent was issued SNAP benefits in the amount of \$2,011, rather than Petitioner's monthly benefit amount of \$291. See Initial Decision at 3; see also Exhibit P-1. There

is no explanation provided by the Agency to explain why Respondent's SNAP benefits were issued on the 20<sup>th</sup> of that month, rather than on the first of the month. The following day, on March 26, 2024, the Agency partially approved Respondent's replacement of benefits claim and issued \$246 in replacement benefits and denied \$5 of the claim. Ibid. On April 5, 2024, the Agency notified Respondent via an Appointment Notice of Suspected IPV that he was suspected of intentionally violating SNAP rules by "selling or exchanging SNAP benefits." See Initial Decision at 3; see also Exhibit P-5. Respondent appeared for, and was interviewed by, Agency investigators on April 16, 2024, at which time he spoke with two Agency investigators, and Respondent asserted he had no knowledge of the erroneous amount of benefits issued to his SNAP benefits account during February 2024, and further denied spending any of the overissued amount of benefits, specifically indicating that his living situation, in a shared rooming environment, would not permit for the storage of any surplus purchases. See Initial Decision at 3-4. Respondent specifically noted that he had come to the Agency on March 1, 2024, and reported that he had apparently not been issued his normal monthly benefits amount of \$291, as his card was only showing a balance of \$42.00. See Initial Decision at 4. Respondent was concerned that his account may have been "hacked," and he further executed a sworn, written statement attesting to the information he provided during the interview, including a denial that he spent any of the money issued in error to his SNAP EBT card. Ibid.; see also Exhibit P-3. The Agency investigators, in their April 25, 2024 "Interview Findings" concluded that the Agency should not proceed with an IPV and that no overpayment of SNAP benefits to Respondent had been established. Ibid.

However, on April 19, 2024, the Agency advised Respondent that his SNAP benefits would be reduced effective May 1, 2024, based upon the overissuance claim for the balance of the benefits issued in error. See Initial Decision at 4; see also Exhibit P-5. The ALJ in this matter found no evidence that Respondent requested a fair hearing regarding the reduction of his monthly SNAP benefits. See Initial Decision at 5. The record further shows that on April 30, 2024, despite the investigators' findings, an Agency supervisor concluded, without any additional corroborating evidence, that there was sufficient evidence to pursue an IPV against Respondent, as well as recoupment of the overissued SNAP benefits amount. See Initial Decision at 5; see also Exhibit P-3. In support of the alleged IPV, the Agency relied upon Respondent's EBT card transaction history, specifically from February 22, through February 26, 2024, as proof of the IPV. See Initial Decision at 5; see also Exhibit P-4. The EBT card transaction history shows a total of \$818.85 spent from February 22 to February 26, 2024 at two Shoprite stores, two local grocers, and Walmart, where each of the charges, with the exception of two smaller amount charges (\$3 and \$19.50) made on February 26, 2024, at one local grocer in Carteret, New Jersey, were made by manual entry of personal account number (and not swiping of the magnetic strip on the card) and PIN for the SNAP EBT card. See Initial Decision at 5-6; see also Exhibit P-4.

The ALJ found that the EBT transaction data alone did not rise to the level of clear and convincing evidence required to establish that Respondent had, in fact, committed an IPV. See Initial Decision at 6-8; see also N.J.A.C. 10:87-11.3(a)(2). Rather, the ALJ found that the Agency had not attempted to obtain any security footage from any of the locations where the EBT card was used, nor conduct any interviews or further investigation at any of the purchase locations. See Initial Decision at 7. Moreover, the ALJ found that, despite the investigators' findings and Respondent's sworn denial of knowledge or use of the overissued amount and that his SNAP EBT card had remained in his possession and that he had never authorized use of his SNAP EBT card by others, an Agency supervisor made a determination, based solely on "a series of assumptions," and with no additional supporting, corroborating evidence, that Respondent must have trafficked his SNAP benefits. Ibid.; see also N.J.A.C. 10:87-11.20(y). Based upon the record presented, the ALJ concluded that Respondent did not commit an IPV. See Initial Decision at 8; see also Exhibit P-4, and N.J.A.C. 10:87-11.2(a)(1). Based on an independent review of the record, I agree.

Additionally, based on the evidence presented, or lack thereof, needed to definitively establish that Respondent made any of the challenged purchases, and coupled with Respondent's credible testimony, sworn affidavit and the due diligence he exercised on March 1, 2024, when he found a low balance on his EBT card, and not his usual monthly allotment amount of \$291, I find that Respondent presently may not be held accountable for the unauthorized use of the erroneously issued benefits in the amount of \$1,720, and therefore the April 19, 2024, adverse action notice, advising of a reduction of Respondent's benefits in order to recoup that amount, is hereby reversed. See Exhibit P-5. Accordingly, based upon the findings made in this matter, I find that any amounts collected from Respondent by a reduction of benefits, effective May 1, 2024, must be returned to Respondent. See N.J.A.C. 10:87-8.18. The Initial Decision is modified to reflect these findings.



By way of comment, the May 15, 2024, Waiver of Right to Administrative Disqualification Hearing noted that if Respondent signed the waiver, he would be disqualified from SNAP benefits for a period of ten years. See Exhibit P-5. It should be noted that this is contrary to the applicable regulatory consequences, as a result of an ADH, when an individual has no prior disqualifications. See N.J.A.C. 10:87-11.2(a); see also 7 C.F.R. 273.16(b). However, as no IPV was found in this case, the issue of the length of the disqualification from SNAP benefits need not be reached.

Accordingly, the Initial Decision is hereby MODIFIED, and the Agency's determinations are REVERSED, as outlined above.

Officially approved final version.      October 16, 2024

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Natasha Johnson  
Assistant Commissioner

