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Assistant Commissioner

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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

FINAL DECISION

OAL DKT. NO. HPW 12583-24 J.D.

AGENCY DKT. NO. C288794020 (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 improperly and intentionally approached an unauthorized person to access and use Respondent's SNAP benefits, in exchange for cash, during April 2024. On July 29, 2024, Respondent was properly noticed of the Administrative Disqualification Hearing ("ADH"), the charges against him, and the proposed disqualification penalty. 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 12, 2024, the Honorable Kimberly A. Moss, Administrative Law Judge ("ALJ"), held a telephonic hearing, took testimony, and admitted documents. Respondent appeared, with the benefit of an interpreter, and provided testimony regarding the allegation that he committed an IPV. The record then closed on that date.

On September 18, 2024, the ALJ issued an Initial Decision, which found that the Agency had met its burden in establishing, by clear and convincing evidence, that Respondent had attempted to participate in the transferring of SNAP benefits. See Initial Decision at 7. Here, Petitioner began receiving SNAP benefits during March 2024 and, during April 2024, an administrative error led to his benefit amount being input as \$4,793, rather than \$973. See Initial Decision at 4. The record reveals that Petitioner approached a restaurant owner (S.S.) in an attempt to transfer or traffic SNAP benefits, who then phoned the Agency to report the illegal use of an Electronic Benefits Transfer ("EBT") card at her restaurant, which led to the Agency's investigator retrieving Petitioner's EBT card, as well as a receipt with Petitioner's name and phone number from S.S. See Initial Decision at 2. The investigator interviewed Petitioner in regards to the accusation made and he stated that he lost or dropped his EBT card in a store, but could not remember the name of the store. Ibid. S.S. testified that on April 7, 2024, the aunt of Petitioner phoned her stating she wanted to speak with her about something, and subsequently the aunt and Petitioner came to her restaurant. See Initial Decision at 2-3. S.S. further testified that Petitioner proposed that she could use three thousand dollars of his SNAP benefits in exchange for one to two thousand dollars in cash. See Initial Decision at 3. S.S. rejected the offer and contacted the Agency. Ibid. The Agency's investigator did meet with Petitioner, who signed an affidavit on May 14, 2024, however, the affidavit is in Haitian Creole and the Agency failed to provide the ALJ with a requested translated affidavit. See Initial Decision at 4-5. Petitioner testified, through an interpreter, that he went to the restaurant to purchase food and was told the restaurant would not accept his EBT card for food purchases. Ibid. Following the testimony of the Agency investigator, the restaurant owner, and Petitioner, the ALJ found credible the testimony of the agency investigator and restaurant owner and the ALJ did not find Petitioner's testimony credible. See Initial Decision at 3-4.

The ALJ found that Respondent had improperly attempted to transfer his SNAP benefits to S.S, in exchange for cash, by giving his EBT card to S.S., with full knowledge that she was not authorized to have, or use, Respondent's EBT card. Id.



at 7; see also Exhibit R-3, and N.J.A.C. 10:87-11.3(a)(2). I agree. Based upon the ALJ's finding, that Respondent had committed an IPV, pursuant to the applicable regulatory authority, thereby warranting disqualification from the receipt of SNAP benefits, 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 7. I agree.

However, 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. Here, J.D., 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 be have referred to as Petitioner. This Initial Decision is modified so as to reflect the correct designation of the parties.

Exceptions to the Initial Decision were filed by the Agency on September 24, 2024. Within the Exceptions filed, the Agency argues that the IPV committed by Respondent constitutes trafficking, within the definition of N.J.A.C. 10:87-11.20(y). However, the Agency did not include such language or regulatory citation within any of their testimony and/or documentation and thus the ALJ made no specific finding as to trafficking. Further, the Agency argues that the imposed penalty should be a permanent disqualification from SNAP benefits due to trafficked benefits, rather than the twelve-month disqualification imposed by the ALJ. In reviewing the Initial Decision, as well as the Agency's Exception, I find two issues of concern. First, the ALJ specifically requested that the Agency submit for review a translated affidavit (Exhibit P-4) as executed by Petitioner during his May 14, 2024, meeting with Agency investigators. Without the benefit of a translated document, neither the ALJ, nor the undersigned, are able to consider the full documentary evidence in this matter. This is especially concerning as the ALJ finds the testimony given by Petitioner to not be credible. Secondly, Respondent was notified of varying disqualification periods by the Agency. On the Agency's May 14, 2024, Appointment Notice (Exhibit P-5), Respondent was informed that his activity could result in a permanent disqualification from receipt of SNAP benefits, however, on the May 15, 2024 Waiver of Right to Administrative Disqualification Hearing (Exhibit P-5) and Advance Notice of Administrative Disqualification Hearing (Exhibit P-5), Respondent was informed that the disqualification period would be 12-months. In fact, had Respondent signed the waiver, rather than the matter being sent to OAL, he would have agreed to a 12-month disqualification. Further, the Advance Notice of Administrative Disqualification Hearing of August 22, 2024, (Exhibit P-5) which was sent via certified mail, included a 12-month disqualification. The only document aside from the initial Appointment Notice to include the permanent disqualification language was the Notification Form (FSP-15) dated August 12, 2024, which includes no proof of receipt by Respondent. Without the benefit of the translated affidavit, and with concern that Respondent was not properly noticed of the correct disqualification period applicable to the IPV, I reject the assertion by the Agency to alter the determination of the ALJ in this matter. Moreover, it should be noted that the appropriate disqualification penalties, permissible when a matter is brought as an ADH, such as the present matter, are listed in N.J.A.C. 10:87-11.2(a)(1) – (3). Contrary to the Agency's assertions, the OAL is not a Federal, state or local "court" as referenced in N.J.A.C. 10:87-11.2(d), as there is no conviction and the matter was not brought by referral to a prosecutor in a court of appropriate jurisdiction in the judiciary system. See N.J.A.C. 10:87-11.1(a).

As Assistant Commissioner, Division of Family Development, Department of Human Services, I have considered the Initial Decision in this matter, and following an independent evaluation of the record, while I concur with the ALJ's Findings of Fact and Conclusion of Law in this matter, I am MODIFYING the Initial Decision, based upon the discussion above.

Accordingly, based upon the foregoing, I hereby MODIFY the Initial Decision in this matter, and ORDER that Respondent is disqualified from receipt of SNAP benefits for a period of 12 months.

Officially approved final version. October 24, 2024

Natasha Johnson
Assistant Commissioner

