



State of New Jersey

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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 05069-18 A.M.

AGENCY DKT. NO. S575776012 (MIDDLESEX COUNTY BD. OF SOC. SVCS.)

Petitioner challenges the correctness of the Respondent Agency's claim for recovery of Supplemental Nutrition Assistance Program ("SNAP") benefits issued to Petitioner between December 2013 and March 2014, as well as Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") benefits issued to Petitioner between November 2013 and March 2014. The Agency asserts that Petitioner's household received SNAP and WFNJ/TANF benefits, to which it was not entitled, resulting in overissuances of benefits which must be recouped. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing. A hearing was initially scheduled for May 4, 2018, but was adjourned. The matter was rescheduled for May 15, 2018, and on that date, the Honorable David M. Fritch, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On May 25, 2018, the ALJ issued an Initial Decision affirming the Agency's determination.

No Exceptions to the Initial Decision were filed.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the record in this matter and I hereby MODIFY the Initial Decision, and AFFIRM the Agency determination based on the discussion below.

In the instance of an overpayment of SNAP benefits, the Agency must recoup the overissuance. See N.J.A.C. 10:87-11.20. A type of overpayment which is subject to recoupment is one which results from "a misunderstanding or unintended error on the part of the household receiving benefits, called an "Inadvertent Household Error" ("IHE"). See N.J.A.C. 10:87-11.20(e)(2). 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).

Similarly, under the WFNJ regulations, a recipient is required to satisfy any repayment obligation pursuant to state or Federal law governing public assistance. See N.J.A.C. 10:90-2.2(a)(7). An overpayment of WFNJ benefits, including Emergency Assistance benefits, is subject to recoupment,



"regardless of fault, including overpayments caused by administrative action or inaction[.]" See N.J.A.C. 10:90-3.21(a)(1).

Here, Petitioner applied for SNAP benefits and WFNJ/TANF benefits on November 27, 2013, and reported that her household consisted of herself and one child. See Initial Decision at 2; see also Exhibit R-18. Petitioner also reported that the child's father, M.C., used the same address as hers "for mailing," but she did not know where he was resided at that time. See Initial Decision at 2; see also Exhibit R-18 at 9. Based on Petitioner's representations in her application, the Agency began an investigation into Petitioner's household, specifically, to determine whether M.C. lived with Petitioner. See Initial Decision at 3; see also Exhibits R-4, R-5. The Agency provided documentation retrieved as part of its investigation, as well as testimony from an investigator who went to Petitioner's home, where a woman, identified as M.C.'s mother, confirmed that he did, in fact, live there. Ibid. Petitioner provided a letter purporting to be from "E.M." stating that M.C. lived with her and her husband in another town between February 2013, and March 2014. See Initial Decision at 4; see also Exhibit P-4. However, the ALJ found that the letter constituted hearsay within the dictates of the Residuum Rule, and that Petitioner had not provided a residuum of competent evidence to support her contention that M.C. did not live with her. See Initial Decision at 6-7, and N.J.A.C. 1:1-15.5(a), -15.5(b).

Based on the evidence presented, the ALJ concluded that Petitioner failed to report M.C. and his income as part of her household, which resulted in Petitioner's household receiving an overissuance of SNAP benefits in the amount of \$1,165 for the period of December 2013, through March 2014, to which she was not entitled. See Initial Decision at 9; see also Exhibits R-1, R-2 at 1, R-3 at 11-12, and N.J.A.C. 10:87-11.20(e)(2). The ALJ also concluded that Petitioner's failure to report M.C. and his income as part of her household resulted in Petitioner's household receiving an overissuance of WFNJ/TANF benefits in the amount of \$674 for the period of November 2013, through March 2014, to which she was not entitled. See Initial Decision at 9-10; see also Exhibits R-1, R-2 at 4, R-3 at 10; and N.J.A.C. 10:90-3.21(a)(1). I agree.

However, I note that in the Legal Analysis and Conclusion sections of the Initial Decision, the ALJ references and cites to regulatory authority pertaining to Intentional Program Violations ("IPV"). See Initial Decision at 8, 9. The matter herein does not allege an IPV, but rather, only overissuances. In order to make a finding of an IPV, certain procedural safeguards must first be met, after which, the facts and evidence are scrutinized under a higher burden of proof. See N.J.A.C. 10:87-11.5(a)(3), (a)(6). Those procedural safeguards are not present in this case, nor is the higher standard of clear and convincing evidence being applied. Therefore, an IPV has not been established, but rather, an overpayment subject to recoupment for benefits received to which the household was not entitled. The Initial Decision is modified on this basis.

I ORDER and direct the Agency to proceed to recoup the overissuances.

Accordingly, the Initial Decision is hereby MODIFIED and the Agency determination is AFFIRMED.

Officially approved final version. JUN 04 2018

Natasha Johnson
Director

