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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

REMAND DECISION

OAL DKT. NO. HPW 15164-18 M.D.

AGENCY DKT. NO. S447941014 (MORRIS CO. OFFICE OF TEMP ASSISTANCE)

Petitioner challenges the Respondent Agency's correctness of a Supplemental Nutrition Assistance Program ("SNAP") recoupment due to an overissuance and the reduction of SNAP benefits. The Agency asserts that Petitioner received SNAP benefits to which she was not entitled, as the result of a failure to report earned income. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On November 1, 2018, the Honorable Gail M. Cookson, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On November 14, 2018, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by the Agency on November 19, 2018.

A reply to the Agency's Exceptions was filed by Petitioner on December 12, 2018.

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, REVERSE the Agency's determination, and REMAND the matter to the Agency, based on the discussion below.

In relevant part, an Intentional Program Violation ("IPV") is defined as intentionally making a false or misleading statement, or intentionally misrepresenting, concealing or withholding 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).

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).

Here, Petitioner's household consists of Petitioner, her spouse, and five children. See Initial Decision at 2. As a result of an Agency investigation, it was determined that Petitioner had failed to report income from her spouse's owner-operated business for the period of January 2014, through July 2018, which resulted in an overissuance of SNAP benefits in the amount of \$39,918. See Initial Decision at 1-2; see also Exhibit R-1 at 4-10. However, the ALJ found that, because



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Petitioner's spouse's business was designated as an S corporation (a corporation formed under Subchapter S of the Internal Revenue Code, 26 U.S.C. §1361 et seq.) and not a sole proprietorship or a Limited Liability Corporation ("LLC"), Petitioner was only required to report the wages that her spouse received from his owner-operated bagel shop, which she did. See Initial Decision at 2-6; see also Exhibit R-1 at 44-69, and <https://www.irs.gov/newsroom/wage-compensation-for-s-corporation-officers>. Therefore, based on Petitioner's spouse's gross weekly wages for the period of January 2014, through July 2018, the ALJ determined that there was no overissuance of SNAP benefits, and reversed the Agency's determination. See Initial Decision at 6; see also Exhibit R-1 at 1-10, and N.J.A.C. 10:87-11.20.

However, based upon my independent review of the record, I find that Petitioner's spouse is the president and sole shareholder of Long Valley Bagel, LLC ("Long Valley"), and that he is considered to be self-employed for purposes of SNAP eligibility. See Initial Decision at 2; see also Exhibit R-1 at 42. Specifically, I find that Long Valley's business designation as an S corporation simply establishes that Petitioner's spouse is an employee of the corporation for federal employment tax purposes, with a mandate that he pay himself a "reasonable" wage from that business. See Exhibit R-1 at 42; see also <https://www.irs.gov/newsroom/wage-compensation-for-s-corporation-officers>. This S corporation designation does not change the fact that Petitioner's spouse has testified that he is in charge of all business operations, or the fact that he is the sole owner of said business. See Initial Decision at 2; see also Exhibit R-1 at 42.

Household income for purposes of SNAP eligibility is defined as "all income from whatever source unless such income is specifically excluded," and therefore, Petitioner was obligated to report ownership and income of any businesses owned by her spouse, but failed to do so. See Exhibit R-1 at 11-41; 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 R-1 at 83-85; see also N.J.A.C. 10:90-3.9(d), 7 CFR 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.

Here, Petitioner's spouse owns the bagel shop business, is the president of the business, runs the business, has dominion and control over the disposition of the funds for the business, including the determination of his "reasonable wage," and signs the tax returns for the business; therefore, I find that in accordance with SNAP regulations, Petitioner's household income was derived from her spouse's self-employment. See Initial Decision at 2; see also Exhibit R-1 at 42, 44-61, and N.J.A.C. 10:87-5.3, and *Gardner v. CIR*, 845 F.3d 971 (9th Cir. 2017) (affirming the holding of the U.S. Tax Court that where a taxpayer has complete control and dominion over the income of a business entity, that income may be attributed to the taxpayer). Nevertheless, the Agency has failed to provide any documentation needed to determine the correctness of its overissuance and reduction of SNAP benefits, and on that basis alone, I concur with the ALJ's reversal of the Agency's determination. See Initial Decision at 6. However, I do not agree with the ALJ's order that the Agency is to rebate to Petitioner additional SNAP benefits for the repayments automatically deducted from her SNAP benefits since August 2018. *Ibid.* Rather, I find that the Agency needs to conduct further investigations into Petitioner's household income and resources, and her failure to report same, as there appears to be a possible IPV action in this matter, as discussed below. The Initial Decision is modified to reflect this finding.

First, Petitioner was required to fully disclose her spouse's business ownership and income during the course of her SNAP certification periods, but failed to do so at any time during the period of January 2014, through July 2018. See Initial Decision at 3; see also Exhibit R-1 at 9-41, and N.J.A.C. 10:87-5.2. Second, the record reflects that Petitioner's spouse had complete control over his business' operations, including its expenses and income, but had only paid himself a poverty level income of \$339 per week, and only reported that amount to the Agency for the suspected purpose of making the household eligible for SNAP benefits. See Initial Decision at 2; see also Exhibit R-1 at 11-42, 48-61. Third, and most suspect, it appears that Petitioner had not reported the household's resources. Specifically, the Agency, as stated in its Exceptions, had confirmed that Petitioner purchased a home in May 2017, for which a \$177,000 down-payment was provided and a mortgage of \$210,000 was secured. See "Exceptions" dated November 19, 2018. The record also reflects that Petitioner owns a home upon which a private mortgage has been secured. See Initial Decision at 2. It is suspect that Petitioner was able to make this real estate transaction on a reported household income of \$339 per week. *Ibid.*; see also Exhibit R-1 at 48-61. Furthermore, the property that Petitioner purchased in May 2017, is the same property that she reported as being rented from Darwishko Masrawy, LLC for a monthly rent of \$1,550. See Exhibit R-1 at 9-10, 62-68. Finally, the record is also devoid of Petitioner's spouse's complete S corporation tax returns and personal income tax returns. See Exhibit R-1 at 44-47. Based on the foregoing, I am remanding the matter to the Agency to further investigate Petitioner's household income and resources, to re-evaluate the overissuance and reduction of SNAP benefits, and to determine if an IPV has been committed.

By way of comment, I note for the benefit of Petitioner that replies to Exceptions or Cross-Exceptions are not permitted in DFD hearings. See N.J.A.C. 1:10-18.2.



Accordingly, the Initial Decision is hereby MODIFIED, the Agency's action is REVERSED, and the matter is REMANDED to the Agency, based on the discussion above.

JAN 23 2019

Officially approved final version.

Natasha Johnson
Director

