



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT

CAROLE JOHNSON
Commissioner

SHEILA Y. OLIVER
Lt. Governor

PO BOX 716
TRENTON, NJ 08625-0716

NATASHA JOHNSON
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 13998-19 R.J.

AGENCY DKT. NO. S510131012 (MIDDLESEX COUNTY BD. OF SOC. SVCS.)

Petitioner appeals the Respondent Agency's termination of Supplemental Nutrition Assistance Program ("SNAP") benefits. The Agency terminated Petitioner's SNAP benefits, contending that Petitioner allowed unauthorized use of her SNAP benefits. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On October 22, 2019, the Honorable Carl V. Buck, III, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents. The Agency requested, and was granted, additional time to submit a copy of the video testified to at the hearing. The record then closed on October 29, 2019, after receipt of the video. On November 7, 2019, the ALJ issued an Initial Decision, reversing the Agency's determination.

No Exceptions to the Initial Decision were filed by either party.

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

Intentional Program Violations ("IPV") occur when SNAP benefits are issued as the result of an Intentionally false or misleading statement, misrepresentation, concealment or withholding of facts, or when SNAP benefits are improperly used, presented, transferred, acquired, possessed, received or trafficked. See N.J.A.C. 10:87-11.3(a)(1), (2). Allegations of an IPV are brought through an Administration Disqualification Hearing ("ADH"), which requires proof of advance notice of at least 30 days. See N.J.A.C. 10:87-11.5(a)(3). If the individual alleged to have committed an IPV does not waive their right to a hearing, and the matter then proceeds to an ADH, the ALJ shall then base the finding of an IPV on clear and convincing evidence, which demonstrates that the household member committed, and intended to commit, an IPV. See N.J.A.C. 10:87-11.5(a)(6).

The record reflects that on August 4, 2019, Petitioner reported her SNAP Electronic Benefits Transfer ("EBT") card as lost. See Initial Decision at 3; see also Exhibit R-4, and N.J.A.C. 10:87-9.7(a). Due to the number of times Petitioner reported her card as lost, stolen, or damaged (at least five times between November, 2018, and August, 2019), the Agency initiated an investigation based upon excessive EBT



card issuances. See Initial Decision at 2; see also Exhibits R-1, R-4, R-9. As part of its investigation, the Agency reviewed Petitioner's EBT card transaction history, and noticed two consecutive transactions it deemed as "suspicious," which had occurred on August 3, 2019, the day before Petitioner reported her card as lost. See Initial Decision at 3, 5; see also Exhibit R-1, R-4 at 3, R-4 at 3-5. On September 11, 2019, Petitioner met with the Agency. See Initial Decision at 3; see also Exhibits R-1, R-6. After being presented with the details of the two August 3, 2019, transactions that occurred within 10 minutes of each other, Petitioner stated that she was shopping with her boyfriend, his sister and his mother. See Initial Decision at 5, 6; see also Exhibit R-1. On September 12, 2019, the Agency obtained the video of the two August 3, 2019, transactions, and observed two individuals, neither of which is Petitioner, using Petitioner's SNAP EBT card. See Initial Decision at 5; see also Exhibits R-1, R-10. On September 19, 2019, after being confronted with contents of the video, Petitioner changed her story to state that she was waiting in the car when the transactions occurred, or that someone must have stolen her card. See Initial Decision at 7; see also Exhibit R-1.

The ALJ found that Petitioner's history of incarceration and medical needs could provide a presumption that Petitioner was not necessarily untruthful, but was sincerely confused about her situation, surroundings and circumstances. See Initial Decision at 6. The ALJ further found that Petitioner's homelessness, medical needs and confusion provide evidence that a loss of the EBT card, although not an excuse, is understandable. *Id.* at 7. Based on the record presented, the ALJ determined that the Agency did not prove that Petitioner had intentionally violated the SNAP regulations. *Ibid.* Therefore, the ALJ reversed the Agency's determination to terminate Petitioner's SNAP benefits. *Ibid.*; see also Exhibits R-2, R-11, and N.J.A.C. 10:87-11.1, -11.2, -11.3.

While I agree with the ALJ's ultimate conclusion, that the Agency's action must be reversed, I do so on the basis that the Agency's adverse action notice, Exhibit R-11, is null and void due to a procedural deficiency, and the attendant due process which was neglected in bringing this action. The transmittal in this matter states that the issue presented pertained to an Interim Reporting Form ("IRF") issue, which the ALJ then states had been resolved. See Initial Decision at 2. Despite the fact that the transmitted issue had been resolved, the Agency then presented evidence, and the ALJ then analyzed, the case as an IPV, for alleged unauthorized use of Petitioner's SNAP benefits. As outlined above, a mandated process and procedure for bringing an ADH is outlined in our regulations. This required process and procedure cannot be disregarded, as to do so is a violation of an accused individual's due process rights of advance notice and an opportunity to be heard before the stringent disqualification penalties, and requirements to repay benefits improperly used or obtained, are imposed. It is clear from the record in this matter that the required process for bringing an ADH of an alleged IPV, in accordance with N.J.A.C. 10:87-11.5, did not occur in this case. Accordingly, I find that the Agency's adverse action notice, dated September 16, 2019, terminating Petitioner's SNAP benefits effective October 1, 2019, is null and void. As this matter should not have proceeded as an ADH for a determination of an IPV, I make no finding on the underlying facts brought by the Agency in this matter. The Initial Decision is modified to reflect these findings.

Accordingly, the Initial Decision in this matter is MODIFIED, and the Agency's determination is hereby REVERSED, as outlined above.

Officially approved final version.

Natasha Johnson
Assistant Commissioner

