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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 **15277-24 C.R.**

AGENCY DKT. NO. **S933772009 (HUDSON COUNTY DEPT OF FAM SVCS)**

Petitioner seeks recovery of Work First New Jersey ("WFNJ") and Supplemental Nutrition Assistance Program ("SNAP") benefits which had been allegedly stolen from his Electronic Benefits Transfer ("EBT") card. Respondent Agency asserts that Petitioner's request for replacement of benefits was denied for failing to timely submit the requisite claim form. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On January 7, 2025, and on February 5, 2025, pre-hearing conferences were held with the parties. During the February 5, 2025 conference, the ALJ requested that the Agency case worker appear to testify as to their telephone conversations with Petitioner. On February 27, 2025, the Honorable Aurelio Vincitore, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents. The case worker was not present to provide testimonial evidence, as requested. The record was held open for the submission of additional documentation by Petitioner, however, none was received and the record was closed on March 3, 2025. On March 17, 2025, the ALJ issued an Initial Decision, reversing the Agency's determination.

At the outset, it should be noted that there is no federal or State regulation which allows the Agency, or the State, to restore SNAP benefits that are lost due to skimming or cloning of an EBT card. N.J.A.C. 10:87-9.8(a) specifically states that SNAP benefits shall not be replaced once they are posted to a household's Families First account. Similarly, N.J.A.C. 10:88-5.1, which governs the Families First Programs and the replacement of benefits, dictates that SNAP benefits shall not be replaced once they are posted to a household's Families First account.

However, due to the prevalence of the issue of electronic theft and skimming of benefits, Congress addressed this ongoing problem when it enacted the Consolidated Appropriations Act, 2023. In December 2022, as part of the Consolidated Appropriations Act, 2023 ("the Act"), Congress enacted provisions intended to prevent SNAP EBT benefit fraud within the Consolidated Appropriations Act, 2023, H.R. 2617, 117th Cong. § 501(b) (2023) and, thereafter, the Consolidated Appropriations and Extensions Act, 2025, P.L. 118-83. Section 501(b) of the 2023 Act directs the United States Department of Agriculture ("USDA") to require States "to replace benefits that are determined by the State agency to have been stolen through card skimming, card cloning, or similar fraudulent methods."

As a result of this new law, states became able to replace benefits, within certain parameters, stolen by means of electronic theft or skimming, which occurred between October 1, 2022, and September 30, 2024. The timeframe for replacement of benefits has now been extended to December 20, 2024. The allowable replacement amount is the lesser of the total benefits stolen or two allotments (two months of benefits). *Id.* at sec. 501(b)(2)(A). Further, under the Act, states were required to develop and submit plans to the Food and Nutrition Service ("FNS") for the replacement of electronically stolen SNAP benefits. *Id.* at sec. 501(b)(1).



New Jersey's State Plan for implementing the new law for replacement of electronically stolen SNAP benefits was approved by FNS on May 23, 2023, and went into effect on July 1, 2023. Additionally, in late June 2023, the New Jersey Legislature appropriated funds for the replacement of State SNAP supplements stolen through unauthorized transactions as a result of some form of electronic theft or fraud. See Fiscal Year ("FY") Appropriations Act, P.L. 2023, c.74, FY Appropriations Act, P.L. 2024, c. 22. As such, SNAP benefits recipients may submit a claim for the replacement of lost benefits, alleged to have occurred by means of electronic theft or fraud, within the designated time frames. See generally Division of Family Development Instruction ("DFDI") No. 24-10-02. For benefits stolen after July 1, 2023, a cardholder has "thirty-days from the date they discovered the theft to submit a request (for replacement)." Ibid.

It is within the above stated law that the facts of this case must be examined. Here, on May 1, 2024, Petitioner became aware that his WFNJ and SNAP benefits had been stolen and, the following day, he informed the Agency. See Initial Decision at 2-3. Petitioner testified that he asked what additional steps needed to be taken to replace his benefits, and was advised that he could continue to check with the Agency to find out if anything had changed. See Initial Decision at 3. Thereafter, Petitioner phoned the Agency, from May 2, 2024 to May 10, 2024, a total of fifteen times in an attempt to learn how to restore his stolen benefits. See Initial Decision at 3; see also Exhibit P-1. The ALJ found Petitioner credible when he testified that he was never informed that he needed to complete any paperwork detailing the theft of his benefits and requesting their replacement. See Initial Decision at 2-3. During August 2024, Petitioner discovered a relevant form, EBT-20, available on DFD's website, which he completed and filed with the Agency on August 19, 2024. Ibid. The Agency denied Petitioner's request for replacement on the same date, citing that the request for replacement of stolen benefits must be completed within thirty days of the discovery of the theft of benefits. Ibid.; see also Exhibit R-1 and DFDI No. 24-10-02. However, the requirement is that a request for replacement of benefits must be filed within thirty days of the discovery of fraudulent usage of the EBT card. See Initial Decision at 2-3; see also DFDI No. 23-08-02. Based upon the circumstances presented in this matter, the ALJ concluded that Petitioner informed the Agency of the theft of his benefits via telephone, and that the Agency failed to inform Petitioner of the EBT-20 form, the importance of its completion, or to assist Petitioner in completing the necessary form. See Initial Decision at 4. Accordingly, the ALJ found that the Agency failed to fulfill its legal obligation to secure Petitioner's affidavit of facts and circumstances as required by regulation and DFD policy. Ibid.; see also N.J.A.C. 10:90-7.5 and DFDI No. 23-08-02. As such, the ALJ ordered that the Agency consider Petitioner's August 19, 2024, EBT-20 form as timely filed and that same shall be investigated regarding the allegations of electronically stolen WFNJ and SNAP benefits. Ibid. I agree.

No Exceptions to the Initial Decision were filed.

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, I concur with the ALJ's decision, and hereby adopt the Findings of Fact and Conclusion of Law in this matter.

Accordingly, based upon the foregoing, I hereby ADOPT the Initial Decision in this matter and REVERSE the Agency's determination.

Officially approved final version. April 22, 2025

Natasha Johnson
Assistant Commissioner

