



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

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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

REMAND DECISION

OAL DKT. NO. HPW 4127-15 M.L.

AGENCY DKT. NO. GA413240 (HUNTERDON COUNTY BD. OF SOC. SVCS.)

Petitioner appeals Respondent Agency's action seeking recoupment of alleged Work First New Jersey/General Assistance ("WFNJ/GA") and Supplemental Nutrition Assistance Program ("SNAP"), f/k/a the Food Stamp Program, benefits over-issuances. The Agency asserts that Petitioner received both WFNJ/GA and SNAP benefits which he was not entitled to, due to unreported self-employment income exceeding the maximum permitted. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On May 19, 2015, the Honorable Susan M. Scarola, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents into evidence. The record was held open until May 28, 2015, to allow both parties time to submit certain documents. On June 18, 2015, the ALJ issued her Initial Decision affirming the Agency's determination.

Exceptions to the Initial Decision were filed by Petitioner on June 30, 2015.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I MODIFY the ALJ's Initial Decision, AFFIRM the Agency's determination regarding recoupment of Petitioner's WFNJ/GA benefits, REVERSE the Agency's determination regarding recoupment of Petitioner's SNAP benefits, and REMAND the matter back to the Agency to reevaluate Petitioner's SNAP eligibility for the periods 2010 through 2014, and any recoupment thereof.

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Here, the record indicates that Petitioner failed to disclose his self-employment income and resources at the time of his WFNJ/GA and SNAP application in 2010, and upon the recertifications thereafter, through the first half of 2014. See Initial Decision at 8, 13, 14. After Petitioner's income was discovered, the Agency determined that he had been ineligible for WFNJ/GA and SNAP benefits from the date of his initial application in 2010, and sought recoupment of those benefits. See *id.* at 5.

First, as the ALJ opined, it must be determined if Petitioner was indeed ineligible for WFNJ/GA and SNAP benefits before it can be determined that the Agency's recoupment action is appropriate. See *id.* at 8-9. I agree, and I will address Petitioner's WFNJ/GA eligibility and SNAP eligibility separately.

As it pertains to Petitioner's WFNJ/GA benefits, it is unclear from the record whether or not the Agency applied all the appropriate cost of business deductions allowed, pursuant to N.J.A.C. 10:90-3.9(d), when determining Petitioner's self-employment income. See Initial Decision at 4-5, 12-13. Regardless, it is clear from Petitioner's own records, and the ALJ found, that between 2010 and 2014, when Petitioner was receiving WFNJ/GA benefits, his business was failing, and pursuant to N.J.A.C. 10:90-3.9(d)(5), "[WFNJ/GA] [a]ssistance shall not be provided to subsidize a failing business." See Initial Decision at 7, 12-13. Accordingly, the ALJ found, and I concur, that Petitioner was ineligible for WFNJ/GA benefits for the periods 2010 through 2014, and the Agency must seek recoupment of those benefits. See *id.* at 14.

As it pertains to Petitioner's SNAP benefits, it does not appear from the record that the Agency made an income eligibility determination, for SNAP, independent of its WFNJ/GA eligibility determination. See Initial Decision at 4-5; see also Exhibit R-1 at 2. Additionally, the SNAP self-employment income regulations, set out in N.J.A.C. 10:87-7.2(a), -7.3(a), -7.5, do not have a "failing business" benefit disqualification such as that set out in the WFNJ/GA regulation, cited above. See Initial Decision at 13. Therefore, it is unclear from the record whether or not Petitioner was eligible for SNAP benefits for the periods 2010 through 2014, and whether recoupment is warranted. Accordingly, I modify the ALJ's Initial Decision to reflect this finding, and remand the matter back to the Agency to recalculate Petitioner's self-employment income for SNAP eligibility, for the periods at issue, and any recoupment that may result therefrom.

By way of comment, Petitioner is to provide the Agency with his 2010 through 2014 tax returns, in order to facilitate its SNAP overissuance analysis, as well as any other documents requested by the Agency needed for that purpose.

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By way of further comment, The Agency may still pursue an Intentional Program Violation claim for both the WFNJ/GA and SNAP matters, should it reach the determination that Petitioner's failure to provide income and resource information appears intentional. See N.J.A.C. 10:90-1.13(b), and N.J.A.C. 10:87-11.1, 11.2, -11.3.

By way of further comment, the record indicates that the petitioner requested a fair hearing contesting the recoupment of his Medicaid benefits. It should be noted that the Medicaid Program is not under the jurisdiction of this Division. However, a copy of the Initial and Final Decision will be forwarded to the Division of Medical Assistance and Health Services ("DMAHS") for review and resolution.

By way of further comment, I note that Petitioner raises facts in his Exceptions which were not presented to the ALJ at the May 28, 2015, plenary hearing, which is not permitted. See N.J.A.C. 1:1-18.4(c) (stating that, "Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions."). Be that as it may, I have reviewed Petitioner's Exceptions, and I find that the arguments made therein do not alter my decision in this matter.

Accordingly, the Initial Decision in this matter is hereby MODIFIED and the Agency's determination is AFFIRMED regarding recoupment of Petitioner's WFNJ/GA benefits, REVERSED regarding recoupment of Petitioner's SNAP benefits, and REMANDED back to the Agency based on the discussion above.

JUL 16 2015

Signed Copy on File
at DFD, BARA

Natasha Johnson
Director