



DEPARTMENT OF HUMAN SERVICES

Division of Family Development
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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 1149-15 A.M.

AGENCY DKT. NO. C254011 (CAMDEN COUNTY BOARD OF SOC. SVCS.)

Petitioner appeals from Respondent Agency's action seeking recoupment of an overpayment of Work First New Jersey/General Assistance ("WFNJ/GA") benefits, and Emergency Assistance ("EA") benefits, from April 2010 through October 2012, and from January 2014 through October 2014. The Agency is seeking recoupment of Petitioner's WFNJ/GA benefits and EA benefits because, due to administrative error, the Agency provided Petitioner with these benefits when he was not eligible to receive such benefits. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On April 9, 2015, the Honorable Robert Bingham II, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On April 27, 2015, the ALJ issued an Initial Decision, which reversed the Agency's action.

Exceptions to the Initial Decision were filed by the Agency on May 5, 2015.

As the Director of the Division of Family Development, Department of Human Services ("DHS"), I have reviewed the ALJ's Initial Decision and the record, and I REJECT the ALJ's Initial Decision and AFFIRM the Agency's determination.

Pursuant to N.J.A.C. 10:90-3.21(a), "Overpayment means a financial assistance payment (including [EA]) received by an eligible assistance unit for the payment month(s) which exceeds the amount for which the unit was eligible."

An overpayment of WFNJ benefits is subject to recoupment, "regardless of fault, including overpayments caused by administrative action or inaction" N.J.A.C. 10:90-3.21(a)(1). The Agency is to take action to recover the overpayment "by the end of the quarter in which the overpayment is first identified." N.J.A.C. 10:90-3.21(a)(12).

Here, the record shows that on October 17, 2003, Petitioner was convicted for distribution of (or possession with the intent to distribute) a controlled and dangerous substance within a school zone. See Initial Decision at 2-3. Therefore, pursuant to N.J.A.C. 10:90-18.6(b)(1)(ii)(3), Petitioner was ineligible for WFNJ/GA benefits and EA benefits. However, due to administrative error, the Agency provided Petitioner with WFNJ/GA benefits and EA benefits, from April 2010 through October 2012, and from January 2014 through October 2014, when he was not eligible to receive such benefits. See Initial Decision at 2. As a result, Petitioner received an overpayment of benefits, to which he was not entitled, and the Agency must now seek recoupment of those benefits, regardless of fault. See N.J.A.C. 10:90-3.21(a)(1). Additionally, the ALJ found that the Agency provided sufficient proof of the overpayments. See *id.* at 7-8.

Further, I disagree with the ALJ's finding that the Agency should be estopped from recovering WFNJ/GA benefits and EA benefits issued due to agency error. See Initial Decision at 8-14. Specifically, the ALJ cites to a New Mexico Supreme Court case to advance his equitable estoppel argument, which is not controlling law in New Jersey, and not binding upon the Agency. See *id.* at 10-12. Rather, I find that "equitable estoppel does not lie against a government entity as it does a private individual," and therefore, equitable estoppel is not available to Petitioner to prevent the Agency from application of the recoupment regulation set out in N.J.A.C. 10:90-3.21. See *Burlington County Board of Social Services v. T.B.*, HPW 951-05, Initial Decision (May 3, 2006), adopted, *Dir.* (May 11, 2006); see also Initial Decision at 9.

Based on the foregoing, I find that the overpayments of WFNJ/GA benefits and EA benefits made to Petitioner are due and owing, in full, and recoupment of those benefits by the Agency is appropriate. Further, the Agency will initiate recovery of the overpayments in accordance with N.J.A.C. 10:90-3.21.

By way of comment, the Agency submitted documentation with its Exceptions that were not presented at the hearing before the ALJ. The Agency is reminded that this is not appropriate. See N.J.A.C. 1:1-18.4(c) ("Evidence not presented at the hearing shall not be submitted as part of an exception"). Be that as it may, I have reviewed the Agency's Exceptions, and I find that the arguments made therein do not alter my decision in this matter.

By way of further comment, the Agency is reminded of its responsibilities in representation and presentation of a matter at a plenary hearing before an ALJ, pursuant to N.J.A.C. 10:90-9.12(b).

Accordingly, the Initial Decision is REJECTED and the Agency's action is AFFIRMED.

Signed Copy on File

at DFD, BARA

MAY 27 2015

Natasha Johnson

Director