

No. 17-AA-731



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DISTRICT OF COLUMBIA COURT OF APPEALS

JUDY BEMAH,

Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES,

Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF
THE OFFICE OF ADMINISTRATIVE HEARINGS

BRIEF OF PETITIONER JUDY BEMAH

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QUESTION PRESENTED

In December 2015, Ms. Bemah informed the relevant District agency that her household income had dropped to zero. It is undisputed that this drop entitled Ms. Bemah to an immediate increase in food stamp benefits. The question presented is whether the District erred in failing to immediately offer to assist in verifying the household's decreased income, and, when it verified that decreased income many months later, in failing to retroactively reimburse Ms. Bemah for the interim benefits shortfall that she experienced.

STATEMENT OF THE CASE

After the District's Department of Human Services (DHS) denied her request to retroactively recalculate several months of Supplemental Nutrition Assistance Program (SNAP, more commonly known as food stamps) benefits based on her family's lack of income, Petitioner Judy Bemah filed a request for a fair hearing with the Office of Administrative Hearings (OAH). During proceedings before OAH, Ms. Bemah argued that both D.C. Code § 4-208.03(a) and 7 C.F.R. § 273(15)(s)(1) entitled her to correction of the underpayment.

On June 13, 2017, the ALJ denied Ms. Bemah's request for benefits covering the months before DHS obtained verification of her family's income. Petitioner's Appendix (Pet. App.) 98, 100-01. Ms. Bemah petitions for review from the denial of that request.

FACTUAL AND LEGAL BACKGROUND

A. Food Stamps

The federal food stamp program provides income-eligible households with “an opportunity to obtain a more nutritious diet through issuance to them of an allotment [that can be] used only to purchase food from retail food stores.” 7 U.S.C. § 2013(a). The food stamp program is the nation's most important anti-hunger program, serving approximately 42 million recipients in Fiscal Year 2017—about 1 out of every 8 residents of the United States. The program is arguably even more

critical to public life in the District of Columbia, where about 1 in 6 residents were recipients in Fiscal Year 2017—123,000 in total. Almost a quarter of these District recipients are in working families. Nearly 40 percent are in families with members who are elderly or have disabilities. And nearly 60 percent are in families with children.¹

Food stamps are thus a critical part of the safety net for the District. This case concerns an important part of the administration of that program—the right to reimbursement for recipients who receive less than the proper allotment for a period of time. As further detailed below, both District of Columbia and federal law generally entitle recipients of food stamps to the retroactive restoration of benefits, for periods of up to one year. At issue in this case is the scope of that entitlement—and thus whether some of D.C.’s poorest residents will receive benefits “true ups” when it is determined that they received less than the amount of nutritional assistance that they were actually eligible to receive.

The program is administered at the federal level by the United States Department of Agriculture, which is authorized to issue governing regulations. 7 U.S.C. § 2013(c). It is simultaneously administered at the state level: participating

¹ The statistics related in this paragraph are all drawn from a website maintained by the Center on Budget and Policy Priorities, and are based on that organization’s analysis of U.S. Department of Agriculture data. See https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_district_of_columbia.pdf.

states (including the District of Columbia) are responsible for developing and implementing state plans, including a process of certifying applicants and determining their eligibility for benefits. 7 U.S.C. § 2020(d), (e)(2); 7 C.F.R. § 271.4(a). These plans must then be approved by the Department of Agriculture. *See* 7 C.F.R. § 272.2(e).

The regulations at issue in this case are primarily contained in Part 273 of Title 7 of the Code of Federal Regulations, entitled “Certification of Eligible Households,” which describes “the eligibility criteria to be applied by State agencies and related processing requirements and standards” governing prospective and current SNAP recipients. 7 C.F.R. § 271.1(b). Food stamps are issued to a “household” containing one or more individuals. 7 C.F.R. § 273.1(a). Households may be “resource eligible” for SNAP on the basis of their financial and other means, 7 C.F.R. § 273.8, or they may qualify for “categorical eligibility” based on their receipt of another type of public benefits, 7 C.F.R. § 273.2(j)(2). State agencies are required to verify a number of eligibility standards, such as income, expenses, residency, and disability in connection with an initial benefits application. 7 C.F.R. § 273.2(f)(1). Verification is also required during a recipient’s annual recertification, 7 C.F.R. § 273.2(f)(8)(i), and may be required when changes are reported over the course of the year, 7 C.F.R. § 273.2(f)(8)(ii).

B. Factual History

Judy Bemah is a District of Columbia resident who has been receiving food stamps since 2015, when she was forced to leave her job as a clinical nurse after suffering two accidents. In late 2015, she applied to receive TANF benefits, which are also administered by DHS, as well as food stamps. Pet. App. 36.

On December 3, 2015, the day Ms. Bemah filed her TANF application, her daughter Safara was working at Chick-fil-A, where she earned \$644.82 on a biweekly basis. Pet. App. 40. At some point in the next five days, Safara lost her job at Chick-fil-A, and the household's income fell to \$0. On December 8, 2015, Ms. Bemah returned to the DHS service center to provide verification for her TANF application, including Safara's recent pay stubs. Pet. App. 96. Ms. Bemah told the caseworker about the job loss and was told she had to obtain a termination letter for verification. Ms. Bemah and Safara tried to obtain a termination letter, but Chick-fil-A refused to provide one. Pet. App. 36.

In March 2016, Ms. Bemah completed a food stamps mid-certification report. In response to a question on the form that asked if anyone in the household had stopped working, she answered "no." She gave this answer because she had not been able to obtain a termination letter and feared her benefits would be cut off entirely without verification of the change. Pet. App. 96. Indeed, that is what happened several months later: in September 2016, Ms. Bemah completed a food

stamps recertification, and DHS requested verification of Safara's income or job loss. Ms. Bemah asked Chick-fil-A for a termination letter but was again refused. Although Ms. Bemah tried to explain the situation to her caseworker, the family's benefits were cut off on October 3, 2016. Pet. App. 97.

Ms. Bemah requested a fair hearing regarding her benefits termination, and DHS personnel subsequently reached out to Chick-fil-A for confirmation of Safara's job loss. In November 2016, nearly a year after Ms. Bemah reported the job loss, the agency received the verification through a call from a Chick-fil-A catering manager. Pet. App. 7-8, 12, 59, 61. The manager confirmed both that Safara had left work in December 2015 and that the company did not provide termination letters. Pet. App. 61. The agency then reinstated and recalculated Ms. Bemah's allotment and reimbursed her for underpayments for October and November 2016. Pet. App. 97. Ms. Bemah requested the retroactive restoration of the benefits that she was eligible for dating back to Safara's job loss in December 2015, but DHS refused.

C. Procedural History

Ms. Bemah filed a fair hearing request on October 14, 2016, and the case was assigned to an Administrative Law Judge (ALJ). On February 17, 2017, Ms. Bemah filed a Motion for Summary Adjudication, arguing that both District and federal law require DHS to correct the underpayment for the period when her benefit amount

did not reflect Safara's lack of income. With respect to District law, she pointed to D.C. Code § 4-208.03(a). That provision, entitled "Underpayment Corrections," states that "When a recipient of public assistance receives a payment or series of payments in an amount less than that for which the recipient is eligible, the underpayment *shall be corrected retroactively* for not more than 12 months" (emphasis added). She likewise contended that federal regulations, specifically 7 C.F.R. § 273.15(s)(1) and 7 C.F.R. § 273.17, required that she be given full benefits retroactive to her initial report of the income change. The District asserted that its own statute was preempted by federal law and that the federal regulations applied only in narrow circumstances not present here.

On June 13, 2017, the ALJ issued a Final Order. The Order did not mention D.C. Code § 4-208.03(a), and thus did not address the Council's mandate that an underpayment of public assistance benefits "*shall be corrected retroactively* for not more than 12 months" when discovered (emphasis added). With respect to federal law, the ALJ initially observed that 7 C.F.R. § 273.15(s)(1) requires the restoration of lost benefits "in accordance with 7 C.F.R. § 273.17." The ALJ then examined the language of section 273.17(a)(1) and concluded that the requirements of that provision were not met, reasoning that the lost benefits were not due to "agency error" because the District agency appropriately "request[ed] verification" from Ms. Bemah, and "did not have to increase [Ms. Bemah's] benefits before receiving the

verification.” Pet. App. 100. The ALJ did not address the other provisions of section 273.17 that bear on entitlement to retroactive reimbursement. The Final Order denied Ms. Bemah’s motion for summary adjudication, granted the District’s cross-motion for summary adjudication, and affirmed the underlying agency order.

Ms. Bemah timely petitioned for judicial review.

SUMMARY OF THE ARGUMENT

The ALJ committed serious errors of law in rejecting Ms. Bemah’s application for a retroactive restoration of public assistance benefits.

I. D.C. law entitles Ms. Bemah to precisely the retroactive restoration of benefits that she requested. The controlling D.C. statute could hardly be more clear. Under D.C. Code § 4-208.03(a), “[w]hen a recipient of public assistance receives a payment or series of payments in an amount less than that for which the recipient is eligible, the underpayment *shall be corrected retroactively* for not more than 12 months” (emphasis added). That is exactly what happened here. Ms. Bemah was eligible to receive food stamp support at a level reflecting the fact that her household had no income. It is undisputed that she did not receive benefits at that level and, instead, received benefits at a lower level based on income that, in fact, her household did not receive during the period at issue. Ms. Bemah now seeks

reimbursement for a period of less than 12 months. The ALJ's failure to mention the applicable District statute or to apply D.C. law to this case requires reversal.

II. The D.C. Code is also fully aligned with federal law. Both the District and the ALJ erred in treating a single sub-provision of the federal regulation—7 C.F.R. § 273.17(a)(1)—as the only one relevant to Ms. Bemah's claim. They thus treated her claim as though it rises or falls solely on whether the District made an “error” that caused the underpayment. In fact, 7 C.F.R. § 273.15(s)(1) directs that whenever “a household . . . has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with [7 C.F.R.] § 273.17”—that is, *all* of § 273.17. Thus, provisions that neighbor 7 C.F.R. § 273.17(a)(1)—in particular, 7 C.F.R. § 273.17(a)(2) and (b)—are equally relevant to Ms. Bemah's reimbursement request. And those provisions expressly contemplate the retroactive repayment of benefits for periods of up to 12 months, *regardless* of whether agency error caused the initial underpayment.

In any event, Ms. Bemah would be entitled to restoration of benefits even under Section 273.17(a)(1). Contrary to the ALJ's conclusion, the District agency committed errors that caused Ms. Bemah to be underpaid. The agency failed to follow the requirements of federal law when Ms. Bemah initially reported Safara's job loss in December 2015. Federal law required the agency to document the reported change in Ms. Bemah's household income and—critically—to inform Ms.

Bemah about the agency's own legal obligation to assist her in verifying Safara's job loss. The agency told Ms. Bemah only that it wanted verification, but did not record her reported income drop and did not inform her that the agency was required to help her verify that fact. Those failings were a cause of the underpayments experienced by Ms. Bemah's household.

III. Ms. Bemah's proposed construction of District and federal law is also consistent with the surrounding regulatory scheme and the policies embodied in the establishment of the federal food stamps program. Read as a whole, the clear intent of the federal regulations is to ensure that beneficiaries receive as much as (but no more than) they are entitled to, without excessive focus on the cause of an underpayment (or overpayment).

STANDARD OF REVIEW

This Court reviews the interpretation of District and federal law adopted by an ALJ of the OHA without deference. "The proper construction of a statute raises a question of law, and [this Court's] review is *de novo*." *Washington v. District of Columbia Department of Public Works*, 954 A.2d 945, 948 (D.C. 2008). "Because the OAH is simply an all-purpose adjudicatory body, without a particular subject-matter focus, its legal interpretations do not command deference." *United Dominion Management Co. v. District of Columbia Rental Housing Commission*, 101 A.3d

426, 430 (D.C. 2014) (citing *Williams v. District of Columbia Department of Public Works*, 65 A.3d 100, 104 (D.C. 2013)).

ARGUMENT

I. DISTRICT OF COLUMBIA LAW REQUIRES RETROACTIVE CORRECTION OF MS. BEMAH'S UNDERPAYMENT

D.C. Code § 4-208.03(a), entitled “Underpayment Corrections,” requires that “[w]hen a recipient of public assistance receives a payment or series of payments in an amount less than that for which the recipient is eligible, or does not receive payments for which the recipient is eligible, the underpayment shall be corrected retroactively for not more than 12 months.” This statute entitles Ms. Bemah’s household to retroactive food stamp payments reflecting the difference between what it received based on income incorrectly attributed to Safara and the amount for which it was eligible with no income. Before OAH, the District did not dispute either that Ms. Bemah’s household was eligible for higher benefits than it received or that the plain language of the statute entitled her to retroactive benefits. The ALJ’s ruling, however, did not mention D.C. Code § 4-208.03(a). Both the failure to address this argument and the failure to hold that the statute entitles Ms. Bemah to relief were error.

It is undisputed that Ms. Bemah’s household income fell to zero once Safara lost her job at Chick-Fil-A in December 2015. It is undisputed that a household that has no income is eligible to receive a higher level of food stamp benefits than a

household that earns hundreds of dollars per week (as Safara did before she was terminated). It is also undisputed that Ms. Bemah is a recipient of public assistance and that she seeks less than 12 months of benefits. D.C. Code § 4-208.03(a) requires nothing else before DHS must make retroactive payments – not a mistake by the agency, not perfect compliance with verification or other processing requirements by the recipient. According to the plain text of the provision, when a recipient receives a payment lower than she *is* eligible for, “the underpayment *shall* be corrected retroactively.” *Id.* (emphasis added).

In its brief before OAH, the District did not dispute that this is where the text leads. Instead, it made the extraordinary argument that its own statute is invalid because it conflicts with federal law. It argued that “District Codes do not trump governing Federal laws and regulations that, ‘so thoroughly occupy the legislative field as to make reasonable the inference that Congress left no room for the States to supplement it.’” Pet. App. 79 (quoting *Murray v. Motorola, Inc.*, 982 A.2d 764, 772 (D.C. 2009)). The District provided no explanation as to how a court could infer that there was “no room” in the federal scheme for D.C. Code § 4-208.03(a), despite the fact that food stamps are administered through a cooperative federal-state scheme that “delegate[s] broad authority to participating states.” *Allen v. Department of Health and Social Services*, 203 P.3d 1155, 1161-62 (Alaska 2009).

The ALJ's Order did not discuss this argument either. As Ms. Bemah explained in her brief below, the District's law is not preempted.

Application of D.C. Code § 4-208.03(a) – something the ALJ did not attempt to do – by itself would resolve this case in Ms. Bemah's favor.

II. FEDERAL LAW REQUIRES RETROACTIVE REPAYMENT OF MS. BEMAH'S UNDERPAYMENT

Rather than apply District law, the ALJ relied solely on federal regulations. This was error for the reasons noted above, and it is also error because the ALJ misinterpreted federal law, which, on its own, also entitles Ms. Bemah to retroactive payments.

7 C.F.R. § 273.15(s)(1) requires that when a “hearing authority determines that a household . . . has been issued a lesser allotment than was due, lost benefits *shall* be provided to the household in accordance with § 273.17” (emphasis added). The ALJ did not dispute that Ms. Bemah's household received a lower allotment than it was “due” by virtue of its lack of income. The ALJ instead focused only on the portion of the regulation that requires retroactive benefits to be “provided to the household *in accordance with § 273.17,*” Pet. App. 98 (emphasis added by ALJ), treating that language to mean that a recipient is “entitled to reimbursement” only if prerequisites set out in § 273.17 are met. Critically, moreover, the ALJ honed in on a single subsection of § 273.17—§273.17(a)(1). Reciting only that subsection, but not others that equally address the restoration of benefits, he held that Ms. Bemah is

not entitled to reimbursement because, he concluded, none of three scenarios described in § 273.17(a)(1) applies to Ms. Bemah's case.

This was both a misreading of § 273.17 as a whole and a misapplication of subsection (a)(1) specifically. Section 273.17, entitled "Restoration of Lost Benefits," establishes a number of requirements and procedures that state agencies must follow in the case of a loss of benefits. Not all of the regulation's provisions apply to every case – and a restoration can therefore take place fully in "accordance with" § 273.17 even if none of the scenarios described in subsection (a)(1) has occurred. Even assuming (a)(1) applies, however, Ms. Bemah is entitled to restoration of benefits because her household's loss of benefits was caused by agency error.

A. Ms. Bemah is entitled to retroactive payments regardless of fault or date of verification

In focusing exclusively on subsection (a)(1), the ALJ failed to recognize that § 273.17 offers a number of scenarios under which benefits must be restored. Some of those are described in (a)(1) – scenarios in which the agency is obligated to recognize on its own when there has been an underpayment due to its own error or there is a statutory requirement for restoration and act accordingly. Subsection (a)(2) offers an alternative path, providing for repayment of benefits that are "found by any judicial action to have been wrongfully withheld" (as they should have been in Ms. Bemah's case). The ALJ's Order, which focused only on (a)(1), failed to recognize

that restoration of lost benefits in Ms. Bemah's case could take place "in accordance with" (a)(2), and thereby with § 273.17 as a whole, upon the ALJ's determination of the essentially uncontested fact that Ms. Bemah was entitled to a higher food stamp benefit than she actually received.

Restoration of lost benefits here would likewise have been fully "in accordance with" multiple other provisions of § 273.17. Ms. Bemah "notified the State agency" of the "loss to [her] household," and DHS "determine[d] that a loss of benefits ha[d] occurred," pursuant to § 273.17(b). When she did not "agree with the amount to be restored as calculated by" DHS, she requested a fair hearing, pursuant to § 273.17(c). Had the ALJ recognized that she received a lower allotment than she was due, he could have ordered DHS to "[c]omput[e] the amount to be restored" in accordance with § 273.17(d) and to utilize a "[m]ethod of restoration" in accordance with § 273.17(f). Although certain provisions of § 273.17 simply do not apply to this case – for example, subsections (e), which concerns disqualifications for intentional program violations, and (g), which applies when there has been a change in household composition – that does not prevent restoration of Ms. Bemah's benefits from taking place "in accordance with" the portions of the regulation that do apply.

The ALJ also cited § 273.12(c)(1) for the proposition that "[b]ecause DHS had no verification of [Ms. Bemah's] change in household income between January

and September 2016, [she] is not entitled to reimbursement for those months.” Pet. App. 98. The timelines established in § 273.12(c)(1), however, in no way foreclose Ms. Bemah’s claim. Section 273.12, entitled “Reporting requirements,” governs the time within which an agency must take action on a household’s reported income change, including “changes reported by a household outside of a periodic report,” 7 C.F.R. § 273.12(a)(5)(vi), as occurred in Ms. Bemah’s case in December 2015. “For changes which result in an increase in a household’s benefits . . . the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported.”² 7 C.F.R. § 273.12(c)(1)(i). If the state agency requires verification for an income change, however, and the household does not “provide the required verification within 10 days after the change is reported but does provide the verification at a later date, then the timeframes specified in paragraph[] (c)(1)(i) . . . for taking action on changes shall run from the date verification is provided rather than from the date the change is reported.” 7 C.F.R. § 273.12(c)(1)(iii).

The ALJ took this to mean that DHS cannot be required to provide retroactive benefits to Ms. Bemah for any months prior to when her income change was verified.

² “For example, a \$30 decrease in income reported on the 15th of May would increase the household’s June allotment. If the same decrease were reported on May 28, and the household’s normal issuance cycle was on June 1, the household’s allotment would have to be increased by July.” 7 C.F.R. 273.12(c)(1)(i).

This misreads the regulation. To begin with, it is not clear that the timeframes in § 273.12 even apply to the retroactive restoration of benefits available under §§ 273.15(s)(1) and 273.17. No provision of § 273.12 is mentioned in either § 273.15 or § 273.17 – and there is no reason one should be, as the timeframes governing an agency’s internal processing deadlines are unrelated to hearing procedures and retroactive awards.³ But even if the regulation applies here, it does not limit a recipient’s ability to obtain wrongfully withheld benefits retroactively. Section 273.12(c) provides “timeframes” within which DHS *must* act when “taking action on changes” going forward, 7 C.F.R. § 273.12(c)(1)(iii), but it does not purport to limit a recipient’s *eligibility* for increased benefits or underpayment corrections. That is all the more true because the timeframes provided to DHS are phrased in terms of taking action to increase benefits “no *later* than” the allotment following a report or verification, not no sooner. 7 C.F.R. § 273.12(c)(1)(i) (emphasis added). Section 273.12 does not bar a claim for retroactive benefits prior to verification.

³ Similarly, this timeframe does not conflict with D.C. Code § 4-208.03(a) – the retroactive correction of benefits at a level at which the recipient has subsequently been verified as eligible is in no way inconsistent with a change in the prospective level of benefits taking effect “no later than” 10 days post-verification.

B. Ms. Bemah’s loss of benefits was caused by DHS error.

The ALJ also erred in concluding that Ms. Bemah had failed to demonstrate a right to restoration of benefits under § 273.17(a)(1). That provision commands that a state agency “shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency.”

Here, the agency committed a string of errors that not only resulted in underpayment of benefits, but even led the agency to completely cut off Ms. Bemah’s access to food stamp benefits altogether, even though her household had *no income* whatsoever. Thankfully, that final draconian step was swiftly corrected, but it serves to underscore the pervasive nature of the errors that the District committed in handling Ms. Bemah’s case.

So far as Ms. Bemah’s present reimbursement claim is concerned, the agency made two key mistakes, each of which violated the agency’s obligations under federal law. It failed to (1) document Safara’s reported job loss; and (2) inform Ms. Bemah of the agency’s obligation to help her obtain verification of the job loss if she could not. The second error, in particular, was decisive. When the agency finally contacted Chick-Fil-A directly in the fall of 2016, it swiftly received confirmation that Safara had been terminated—just as Ms. Bemah had reported months before. But for DHS’s errors, Ms. Bemah would have received the full amount of benefits for which she was eligible all along.

When a beneficiary reports any change of income to a state agency, the agency is required to document that report, regardless of the effect of the change of income on food stamps benefits. 7 C.F.R. § 273.12(c) (agency “*shall* document [a] reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report”) (emphasis added). This documentation must occur on “*the date a change is reported,*” including in the course of a “personal visit.” *Id.* (emphasis added). This requirement supports the proper functioning of the food stamps program by ensuring that appropriate records are kept and that agencies respond swiftly to reports that may call for an increase or decrease in a household’s benefits allotment, or may indicate that the household is no longer eligible to receive food stamps (such as where the household’s economic circumstances have improved).

It is undisputed that on December 8, 2015, Ms. Bemah visited a DHS service center and told a DHS caseworker that Safara had ceased working at Chick-fil-A. But DHS never documented the change: neither its Case Action Update/Display summarizing Ms. Bemah’s December 8th visit, Pet. App. 44, nor its Notice History Summary for Ms. Bemah, Pet. App. 46, reflects any documentation of Ms. Bemah’s report that Safara had stopped working and her household income fallen to \$0. As a result, a DHS representative erroneously stated before the ALJ that the agency had

“no indication” of the job loss before Ms. Bemah’s fair hearing request in November 2016. Pet. App. 17.

This failure to document Ms. Bemah’s report led to a second error, which directly caused the underpayment to Ms. Bemah. Based on Ms. Bemah’s report which the agency failed to document, the agency was entitled to verify the reported income change “in accordance with the verification requirements of § 273.2(f)(8)(ii).” 7 C.F.R. § 273.12(c)(1)(iii). The agency asked Ms. Bemah to verify the change, but violated 7 C.F.R. § 273.2(c)(5), which states that the agency “shall provide each household at the time of . . . recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process,” and that the required notice “*shall also inform the household of the State agency’s responsibility to assist the household in obtaining required verification* provided the household is cooperating with the State agency as specified in (d)(1) of this section” (emphases added).⁴

DHS did neither. There is no indication in the record that the agency ever notified Ms. Bemah of its own obligation to help her obtain verification. The

⁴ The cross-referenced subsection concerning household cooperation makes clear that only a flat refusal to cooperate is disqualifying, and that an agency “shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification.” 7 C.F.R. § 273.2(d)(1). This provision is irrelevant here because Ms. Bemah has never been accused of having refused to cooperate with the determination of eligibility.

undisputed facts, rather, are that the agency requested that Ms. Bemah herself verify Safara's job loss on several occasions, and then "cut off [Ms. Bemah's] Food Stamps effective October 3, 2016" when she was unable to obtain verification from Chick-Fil-A. Pet. App. 97. It was not until November 2016—eleven months after Ms. Bemah first reported the change, when her food stamps benefits were \$0, and after she had already requested a fair hearing—that DHS undertook any effort to help her obtain verification. DHS obtained satisfactory verification—a phone call from a Chick-fil-A Catering Manager confirming Safara's termination—through seemingly little effort, demonstrating that, but for the agency's failure to inform and assist Ms. Bemah in December 2015, she would have obtained her proper level of benefits promptly. Pet. App. 7-8, 12, 59, 61.

The ALJ nonetheless concluded that the agency had complied with its legal obligations, reasoning that (i) "Petitioner did not request such assistance until September 2016," and (ii) the obligation to provide assistance with verification attaches only to an initial benefits application. Pet. App. 101. Those conclusions are unsound.

The ALJ's initial rationale turns federal law on its head. With respect to obtaining assistance with verification, the regulations do not impose any initial burden on a household. They instead require the *agency* to "inform the household of the *State agency's responsibility* to assist the household in obtaining required

verification.” 7 C.F.R. § 273.2(c)(5) (emphasis added). That allocation of legal responsibility is crystal clear in the language of the regulation. It is sensible too. The agency is far better positioned than a family in need to know the scope of the agency’s responsibility and capacity to assist with verification.

The ALJ’s second rationale is equally erroneous. It is true that 7 C.F.R. § 273.2(c)(5) applies as a general matter to initial applications.⁵ But 7 C.F.R. § 273.2(f)(8)(ii), as noted, provides that “changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification.” And one of the procedures that applies at initial certification is the agency’s duty to inform the household that the agency must assist in obtaining required verification. 7 C.F.R. § 273.2(c)(5).

The agency failed to so inform Ms. Bemah, and that error caused a loss of benefits that should not have occurred. Agency error, therefore, supplies additional grounds for reversing the ALJ’s decision. *See* 7 C.F.R. § 273.17(a)(1).

III. FEDERAL POLICY COMPELS THIS INTERPRETATION

The purpose of the federal food stamps program is to “permit low-income households to obtain a more nutritious diet . . . by increasing food purchasing power

⁵ The ALJ cited 7 C.F.R. § 273.2(f)(5) in this passage. That appears to be a typographical error, as it is 7 C.F.R. § 273.2(c)(5) that sets out the agency’s obligation to provide assistance in obtaining verification.

for all eligible households who apply for participation.” 7 U.S.C. § 2011. The provisions discussed throughout this brief can easily be harmonized by recognizing that they are all directed towards one goal: to ensure that food stamps recipients receive no more and no less than the amount for which their income makes them eligible. Federal food stamps regulations establish numerous mechanisms used to adjust benefits both prospectively and retroactively when circumstances change or when new information becomes available that allows a more accurate calculation of what an allotment is, should be, or should have been. The procedures for recovering underpayments described in the previous section go hand in hand with those that require recipients to repay overpayments.

Thus, a recipient who receives too *high* a level of benefits generally must reimburse the program for overpayments—and must do so even if the recipient was not at fault for those overpayments. 7 C.F.R. § 273.18. Likewise, a recipient who receives too *low* a level of benefits generally is entitled to retroactive restoration of benefits. 7 C.F.R. § 273.15(s)(1); 7 C.F.R. § 273.17(a)-(b). This regulatory focus squares with the purpose of the program, which is to provide critically needed assistance to some of the most economically vulnerable members of our community, many of whom lack the time, resources, or training to perfectly navigate administrative systems. The regulations thus appropriately require retroactive restoration of benefits when agency errors are shown to have caused the

underpayment, but do not restrict reimbursement *solely* to cases where an agency erred. Rather, when a court or agency adjudication determines that benefits were “wrongfully withheld,” or an agency determines *on its own* that “a loss of benefits has occurred,” restoration is required. 7 C.F.R. §273.17(a)(2) & (b). Local law equally—and plainly—entitles a recipient of public assistance to restitution in these circumstances. *See* D.C. Code § 4-208.03(a).

In addition to the provisions referenced in the previous section, the food stamps regulations indicate the importance of restoring the rightful amount of past payments through the inclusion of requirements such as that wrongfully withheld “[b]enefits shall be restored even if the household is currently ineligible,” 7 C.F.R. § 273.17(a)(3), and that retroactive benefits will be restored “if the State agency fails to take action on a change . . . within [specified] time limits,” 7 C.F.R. § 273.12(c). Moreover, even § 273.18, which sets out detailed procedures for recovering benefits that were overpaid, requires State agencies to refund households that have overpaid on an overpayment claim—providing yet another mechanism to ensure that the state has paid, and the household has received, the proper amount. 7 C.F.R. § 273.18(h)(1). These mechanisms provide the context in which 7 C.F.R. §§ 273.15(s)(1) and 273.17 are properly interpreted: to ensure that recipient has all the benefits for which she was eligible, no more and no less. Ms. Bemah’s request for

nine months of retroactive reimbursement is thus fully aligned with the requirements of law and considerations of sound public policy, and should be granted.

CONCLUSION

For the foregoing reasons, the ALJ's decision should be reversed, and this matter should be remanded to OAH for the issuance of an order requiring DHS to correct Ms. Bemah's underpayment retroactive to December 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Petitioner's Brief to be filed electronically with the District of Columbia Court of Appeals and to be served through the Court's Appellate E-Filing System, this 15th day of August 2018, on:

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