

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 17-AA-731

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
(DHS-680-16)

(Argued October 29, 2019)

Decided September 11, 2020)

Before BLACKBURNE-RIGSBY, *Chief Judge*, THOMPSON, *Associate Judge*,
and WASHINGTON, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner Judy Bemah seeks review of a decision of the Office of Administrative Hearings (“OAH”) holding that she is not entitled to retroactive payment of benefits under the Supplemental Nutrition Assistance Program (“SNAP”), also known as food stamps, because any underpayment of benefits was due to Ms. Bemah’s failure to provide timely verification of eligibility information. Ms. Bemah argues that, under applicable law, she is entitled to retroactive payment of the amount of benefits she was underpaid from January through October 2016 because the underpayments were the result of error on the part of the District of Columbia Department of Human Services (“DHS”). For the reasons discussed below, we hold that DHS erred and Ms. Bemah is entitled to retroactive payment of the benefits she was underpaid as a result of that error. We therefore reverse and remand for further proceedings consistent with this opinion.

I. Factual and Procedural Background

Ms. Bemah began receiving food stamps in October 2015. On December 3, 2015, she also applied for Temporary Assistance for Needy Families (“TANF”)

benefits¹ by visiting a DHS service center and filling out a combined application for public benefits.² On her application, Ms. Bemah indicated that her daughter Safara Bemah, a member of her household, was working at Chick-fil-A. Ms. Bemah returned to the same DHS service center on December 8, 2015, to submit additional documentation in support of her application, including past pay stubs from Safara’s job, and she informed the DHS caseworker at that time that Safara was no longer employed. The caseworker told Ms. Bemah that she needed to provide a letter of termination from Chick-fil-A. The caseworker recorded Ms. Bemah’s December 8, 2015 visit in the DHS case notes, but did not indicate that Safara was no longer working or that she told Ms. Bemah to provide documentation of this.³ Safara attempted to obtain a letter of termination, but was unable to do so. Apparently, as a result of Ms. Bemah’s December 3 statement that Safara was working, DHS reduced Ms. Bemah’s food stamp benefits based on the reported increase in household income; however, despite Ms. Bemah’s December 8 statement that Safara was no longer working, DHS did not increase Ms. Bemah’s food stamp benefits (i.e., return them to their previous level) based on the reported decrease in household income.

In March 2016, Ms. Bemah completed a mid-year certification report, in which she checked “no” in response to the question “Did anyone stop work?”⁴ In

¹ “TANF is a federally-funded program that provides cash assistance to families with minor children and little or no income.” *Black v. District of Columbia Dep’t of Human Servs.*, 188 A.3d 840, 843 (D.C. 2018).

² The District offers a “Combined Application” that allows applicants to apply for food stamps, cash assistance (including TANF), Medicaid, and Healthcare Alliance/Immigrant Child Program.

³ Ms. Bemah argued before OAH that this oversight is symptomatic of a widespread problem of insufficient case documentation in DHS, as evidenced by a 2015 U.S. Department of Agriculture (“USDA”) assessment of DHS’s administration of the SNAP program in the District. In any event, DHS does not dispute that Ms. Bemah informed the caseworker on December 8, 2015 that Safara was no longer working.

⁴ It is unclear whether this answer was accurate, as the form did not specify the time period it encompassed, and no one in Ms. Bemah’s household had stopped working since Ms. Bemah reported Safara’s termination to DHS in December 2015. Ms. Bemah later stated that she checked “no” on the March 2016 form

August 2016, Ms. Bemah completed an annual application for food stamps, on which she indicated that no one in her household was working. In September, DHS sent Ms. Bemah a letter indicating that it was showing income for Safara in its system and it therefore required either recent pay stubs or verification of termination in order to determine Ms. Bemah's SNAP eligibility. In October, DHS sent Ms. Bemah a letter informing her that it was terminating her benefits due to her failure to provide information needed to determine eligibility. Ms. Bemah again attempted but was unable to obtain a termination letter; she then left a voice mail for her DHS caseworker asking for help, but did not hear back. In November 2016, a DHS employee spoke by phone with a Chick-fil-A manager, who confirmed that Safara had stopped working in December 2015 (and that Safara worked there for only one month, from November to December 2015). The Chick-fil-A manager also stated that the company does not provide termination letters. Based on this verification, DHS reinstated Ms. Bemah's food stamp benefits and paid her retroactively for October and November 2016; she began receiving payments again in early December 2016, and the retroactive payments for October and November were calculated to reflect the fact that Safara was not working during that time.

Meanwhile, Ms. Bemah had requested a fair hearing in October 2016 to challenge DHS's termination of her benefits, and Ms. Bemah's case came before an Administrative Law Judge ("ALJ") at OAH. In status hearings and written submissions, Ms. Bemah argued that DHS had conceded that Safara had not worked since December 2015, meaning that DHS was operating on incorrect information (i.e., that Safara was working) from January to September 2016; thus, DHS's calculation of benefits was too low, and Ms. Bemah was entitled to retroactive payment of the amount she was underpaid during that time. On June 13, 2017, the ALJ ruled in favor of DHS. Applying federal regulations that govern the administration of the food stamp program, the ALJ held that, because any underpayment to Ms. Bemah was due to Ms. Bemah's failure to provide timely verification that Safara was no longer working as of December 2015, Ms. Bemah was not entitled to retroactive payment of any amounts she was underpaid from January to September 2016.

II. Standard of Review

"This court must affirm an OAH decision when (1) OAH made findings of

because she still did not have a termination letter for Safara and she was "worried" that, if she checked "yes," her benefits would be cut off entirely."

fact on each materially contested issue of fact, (2) substantial evidence supports each finding, and (3) OAH's conclusions flow rationally from its findings of fact." *Williams v. District of Columbia Dep't of Pub. Works*, 65 A.3d 100, 104 (D.C. 2013) (citation and internal quotation marks omitted). Generally, we affirm an OAH decision "unless the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." *District of Columbia Dep't of Emp't Servs. v. Smallwood*, 26 A.3d 711, 714 (D.C. 2011).

III. Analysis

Congress created the food stamp program, now known as SNAP, in 1964 to help alleviate hunger in America. 7 U.S.C. § 2011 (2018); Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (1964).⁵ SNAP is a federal program that is funded by the USDA and administered by the states and the District of Columbia, consistent with federal law and federal guidelines. 7 U.S.C. §§ 2011, 2013, 2020, 2025 (2018); 7 C.F.R. §§ 271.1, 271.4, 272.2 (2020). DHS, the agency responsible for administering the program in the District, disburses food stamp benefits to District residents who apply and qualify for the program.⁶ Federal statutes and regulations govern DHS's administration of SNAP, including its verification procedures and disbursement of benefits. Having found no case law that is on point with this case, we look to the relevant regulations to resolve the question presented here: whether DHS erred in administering Ms. Bemah's SNAP benefits and, if so, whether she is entitled to retroactive payment of the benefits she was underpaid as a result of that error.

The ALJ held, in relevant part, that the controlling federal regulatory language was found in 7 C.F.R. § 273.15 (2020), and subsection (s)(1) of which provides that, "[w]hen the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was

⁵ See also U.S. Department of Agriculture, *SNAP Name Change*, https://fns-prod.azureedge.net/sites/default/files/SNAP_name_0.pdf.

⁶ See, e.g., District of Columbia Department of Human Services, *Important Info. & Facts about Food Stamps Supplemental Nutrition Assistance Program*, https://dhs.dc.gov/sites/default/files/dc/sites/dhs/service_content/attachments/SNAP-Food%20Stamp%20Program%20Fact%20Sheet%20%204.pdf <https://perma.cc/JG36-SQ3M>.

due, lost benefits shall be provided to the household in accordance with § 273.17.”⁷ He then observed that, under § 273.17 (2020), subsection (a)(1) provides that the “State agency shall restore to households benefits which were lost” in three situations: (1) “whenever the loss was caused by an error by the State agency,” or (2) the loss was caused “by an administrative disqualification for intentional Program violation which was subsequently reversed,” or (3) “if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits.” Applying these provisions to the facts, the ALJ held that Ms. Bemah was not entitled to restoration of lost benefits for January to September 2016. He concluded that the second and third criteria were not met because Ms. Bemah was never charged with an intentional program violation, and he found no authority in the regulations that entitled her to restoration of lost benefits. He then analyzed the first criterion. Citing § 273.12 (2020), he found that DHS “had the discretion to verify [Ms. Bemah’s] household income change ‘prior to taking action on [it],’” and “[t]hat is exactly what DHS did here.” *See* § 273.12(c)(1)(iii). And, citing § 273.2 (2020), he found that the change in income that Ms. Bemah reported did not take place at certification or recertification, and that DHS was therefore not required to send any notices to Ms. Bemah in response to the reported change. *See* § 273.2(c)(5). He concluded that the first criterion was not met because the underpayments were not due to agency error, but rather due to Ms. Bemah’s failure to provide verification of eligibility information.

We assume without deciding that the three criteria described in § 273.17(a)(1) are properly used to determine Ms. Bemah’s entitlement to retroactive payments.⁸ Even so, Ms. Bemah’s situation satisfies the first criterion specified in § 273.17(a)(1) – loss of benefits caused by agency error.⁹

⁷ While the events in question took place in 2015 and the OAH order was issued in 2017, the relevant federal regulatory language has not changed, and we therefore cite the 2020 versions of the regulations.

⁸ We note, however, that while § 273.15(s)(1) states that, when a household “has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17,” it does not specify the subsection of § 273.17 to which it refers.

⁹ We also acknowledge, but do not reach, the possibility that Ms. Bemah may additionally be entitled to retroactive payments under the third criterion of § 273.17(a)(1): the existence of a “statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits.”

The record indicates that Ms. Bemah's household is classified as a "simplified reporting household." Under § 273.12(a)(1), these households are subject to the procedures outlined in subsection (a)(5), which provides that the "agency must act on any change in household circumstances in accordance with paragraph (c) of this section." § 273.12(a)(5)(vi)(A). Paragraph (c), in turn, states that, when there are changes that may affect a household's eligibility or allotment, the "agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report." § 273.12(c).

While the OAH order cited § 273.12, it did not take note of this language in § 273.12(c) or acknowledge DHS's failure to comply with this requirement. On appeal, DHS concedes that it erred, i.e., that it did not provide notice and documentation regarding the change in question here: the fact that Safara was no longer working. But it argues that this failure did not contribute to her loss of SNAP benefits. As explained below, however, we conclude that this error contributed to the underpayments to Ms. Bemah.

Ms. Bemah reported to DHS in December 2015 that her daughter was no longer employed; she was verbally told that she had to obtain a termination letter from her daughter's employer, but she was unable to do so. In September 2016, when DHS notified her that her benefits would be cut off, she asked DHS for help in obtaining confirmation of her daughter's termination. In November 2016, a DHS employee obtained this confirmation through one phone call, and also obtained an explanation as to why Ms. Bemah had been unable to obtain a termination letter: the employer does not provide them. DHS determined that this phone call was adequate verification, thus triggering the reinstatement of Ms. Bemah's SNAP benefits from October 2016 forward. Hence, DHS was able to verify the relevant information with minimal time and effort, and it would be reasonable to infer that this involvement was occasioned by Ms. Bemah seeking DHS's help once it notified her that she may lose her benefits. Thus, it seems clear that, had DHS taken the required action under § 273.12(c) when Ms. Bemah first reported the change in income in December 2015 – documenting the reported change in the casefile, providing another change report form to her, and notifying her of the receipt of the change report – Ms. Bemah would have been on notice to submit the change report within ten days, *see* § 273.12(b)(1), and thus would have requested and utilized DHS's assistance in obtaining the required verification. And if Ms. Bemah had submitted the change form without the verification, that should have caused the agency receipt to say that the change report was incomplete

and to remind her that the verification was still due. *Cf.* 273.12(a)(4)(iii) (regarding DHS’s duty to give notice of an incomplete report). Section 273.12(c) says that the agency “shall . . . state that failure to provide verification shall result in increased benefits reverting to the original allotment.” § 273.12(c). Such a notice, the record suggests, would have prompted Ms. Bemah to do in December 2015 or January 2016 what she did in September 2016 after receiving written notice from the agency that it needed verification: call her caseworker and ask for help.

Because DHS failed to comply with these documentation and notice obligations, and consequently did not receive verification from Ms. Bemah at that time, it calculated her food stamp benefits from January to September 2016 based on incorrect information – i.e., that her household had more income than it actually did – and thus underpaid her. Accordingly, the lost benefits in this case were indeed due to DHS’s errors – meaning that Ms. Bemah satisfied the first criterion of § 273.17(a)(1) and was therefore entitled to retroactive payment of the underpaid amounts pursuant to § 273.15(s)(1).

Because OAH did not recognize DHS’s violations of the regulations, and therefore did not recognize these errors as a cause of the lost benefits from January to September 2016, its decision was not in accordance with law. We therefore reverse and remand for OAH to order retroactive payments to Ms. Bemah for any underpayment of benefits during this period.¹⁰

IV. Conclusion

For the foregoing reasons, we find that, under applicable federal regulations, Ms. Bemah was underpaid SNAP (food stamp) benefits from January to September 2016 due to agency error and is entitled to retroactive payment of lost benefits for that period. We reverse OAH’s decision and remand for further proceedings

¹⁰ In light of our holding, we do not reach Ms. Bemah’s alternative argument that she is entitled to retroactive payment of benefits under D.C. Code § 4-208.03(a) (2019 Repl.), which provides for retroactive payment to correct underpayments of public benefits – regardless of whether the underpayments were due to agency error. Nor do we reach DHS’s response that this provision of the D.C. Code is conflict-preempted by federal law. *See, e.g., Murray v. Motorola*, 982 A.2d 764, 771-72 (D.C. 2009); *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372-73 (D.C. 2000). This court has not had occasion to address § 4-208.03, and its scope and application are therefore yet to be determined.

consistent with this opinion.

So ordered.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies e-served to:

Presiding Administrative Law Judge

Jonathan H. Levy, Esquire

Loren L. AliKhan, Esquire

Solicitor General for the District of Columbia