

THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

████████████████████
Petitioner,



DOCKET No.: ██████████
OSAH-DFCS-FSP ██████████
Walker-Russell

AUG 12 2014

: Agency Reference No.: 000459289

DHS,
DIVISION OF FAMILY AND
CHILDREN SERVICES,

Jenna Judy
Jenna Judy, Legal Assistant

Respondent.

INITIAL DECISION

Appearances: For Petitioner: Glenda K. Cucher, Pro Bono Attorney,
Atlanta Legal Aid Society, Inc.
For Respondent: Wally Brakefield, Senior SNAP Administrator

I. INTRODUCTION:

Petitioner, ██████████, appeals the Georgia Department of Human Services' (Respondent's) March 2014, allotment of his benefits under the Supplemental Nutrition Assistance Program ("SNAP") (formerly known as "Food Stamps") for failure to timely submit his renewal application. Specifically, Petitioner appeals Respondent's decision to close his case and terminate his SNAP benefits from March 1, 2014, through March 20, 2014, and prorate his SNAP benefits upon receipt of Petitioner's late-filed renewal application. The facts of the case are not disputed by the parties. The parties contest the application of Title II of the Americans with Disabilities Act ("ADA") to Petitioner's appeal under the Senior SNAP program. The parties were provided an opportunity to present sworn testimony and documentary evidence at the hearing held on July 22, 2014. For the reasons given below, Respondent's decision is **REVERSED** and **REMANDED**.¹

II. FINDINGS OF FACT:

The Administrative Law Judge has carefully considered the entire available evidence, and based upon the preponderance of the relevant and credible evidence in this case, makes the following findings of fact:

¹ The record was held open until August 1, 2014, for the parties to submit a Proposed Order, including Findings of Fact and Conclusions of law. Petitioner submitted his Proposed Order on Thursday, July 31, 2014, via facsimile. Respondent has failed to submit a Proposed Order in this matter.

1.

Petitioner, a seventy three (73) year old male, was diagnosed with chronic paranoid schizophrenia and began receiving SSI for this disability in 1979. Since 1980, he has been classified by the Georgia Department of Vocational and Rehabilitative Services as being too severely disabled to qualify for vocational rehabilitation. Petitioner has received SNAP benefits intermittently through Respondent's DeKalb county office since 1976. During the entire time that Petitioner has received SNAP benefits, he has never been late in submitting his renewal application until March 2014. (*Testimony of Petitioner*).

2.

The parties agree that Petitioner's renewal application for benefits under the Senior SNAP program was due to be received by Respondent on February 28, 2014, and was received on March 21, 2014. On January 10, 2014, and February 12, 2014, Respondent mailed notices informing Petitioner that the deadline for him to submit his renewal application to Respondent for continued benefits under the Senior SNAP program was February 28, 2014. On February 28, 2014, Respondent had not received Petitioner's renewal application and sent Petitioner a notice of termination of SNAP benefits. Respondent closed Petitioner's SNAP case on February 28, 2014, without any further contact with Petitioner. (*Testimonies of Wally Brakefield and Petitioner*).

3.

The January 10, 2014, February 12, 2014, and February 28, 2014, notices were the only attempt by Respondent to contact Petitioner prior to the closure of his SNAP case and termination of his benefits and were the same notice protocol given to all SNAP participants. During the renewal process, Respondent did not make telephone contact with Petitioner prior to closing his SNAP case. (*Testimonies of Wally Brakefield and Petitioner*).

4.

Respondent received Petitioner's renewal application on March 21, 2014, and reinstated Petitioner's SNAP benefits on March 24, 2014. Petitioner's full SNAP benefit amount for March 2014 was \$53.² Petitioner received \$17 in SNAP benefits for the month of March 2014, which is a prorated amount from March 21, 2014, the date that Respondent received Petitioner's renewal application.³ Petitioner requests that Respondent distribute the additional sum of \$36, as full payment of March 2014 benefits. (*Testimonies of Wally Brakefield and Petitioner*).

² After the annual review, Respondent raised Petitioner's SNAP benefit amount from \$44 monthly to \$53 monthly, based on documentation of increased continuing medical costs. (*Testimonies of Wally Brakefield and Petitioner*).

³ Wally Brakefield is the Senior SNAP Administrator for the DeKalb County region. Mr. Brakefield testified at the hearing that Respondent closed Petitioner's SNAP case on February 28, 2014, because he failed to timely submit the renewal application. Mr. Brakefield further stated that Respondent did not *reduce* Petitioner's SNAP benefits, but prorated the benefits from March 21, 2014, the date that Respondent received Petitioner's renewal application. (*Testimony of Wally Brakefield*).

5.

Petitioner concedes that he failed to timely submit his renewal application. Petitioner gave credible and undisputed testimony that he had extreme environmental stressors from December 2013 through February 2014, which caused an exacerbation of the schizophrenia symptoms of his mental illness and made it impossible for Petitioner to focus on renewing his SNAP benefits in a timely manner. The most prominent of these stressors was a dispossession action that was served on Petitioner on December 23, 2013, and an eviction warrant that was issued against Petitioner in February 2014, the month of his renewal application. Due to his chronic paranoid schizophrenia, the extreme stress of responding to the dispossession proceeding made it impossible for Petitioner to divide his time properly between responding to the dispossession and timely responding to the SNAP renewal application. (*Testimony of Petitioner*).

III. CONCLUSIONS OF LAW:

1.

Respondent bears the burden of proof in this matter. OSAH Rule 616-1-2-.07. The evidentiary standard is preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

The preponderance of the evidence standard requires Respondent to show that it is “more likely than not” that Petitioner failed to supply the necessary information to the agency to recertify his participation in the SNAP/Food Stamps Program. *Bourjaily v. United States*, 483 U.S. 171, 176 (1987). Mere speculation by the Respondent cannot satisfy this burden. *Stanco v. Toia*, 399 N.Y.S.2d 471, 472 (App. Div. 1977).

Georgia Senior SNAP Program

3.

The Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program) is governed by the Food and Nutrition Act of 2008. 7 U.S.C. § 2011-2036(a); 7 C.F.R. § 271-285; and the *Economic Support Services Manual, Volume III, of the Georgia Department of Human Services (“Food Stamp Manual”)*. The Georgia Senior SNAP Program is an elderly simplified application project designed to reinvent the SNAP process for elderly households who have traditionally proven to be stable households with fixed income, and few reportable changes in household composition and deductions. This segment of the population faces barriers to participation in the SNAP program due to the complexities of the application process and problems associated with age such as transportation, mobility and disability. The Senior SNAP program is designed to increase the efficiency of the SNAP program; improve delivery of SNAP benefits to eligible households, and to raise the levels of nutrition among low-income households

and individuals who are elderly. *Food Stamp Manual*, Volume III-FS MT-35-05/13, at Page 3725-1.

Processing Food Stamp Reviews

4.

A review of the AU circumstances is required for the continuation of food stamp benefits. The review process includes filing an application, having an interview (if required), and providing required information. Notification is sent to the AU regarding its eligibility status. *Food Stamp Manual*, Volume III-FS MT-35-05/13, at Page 3710-1. An Assistance Unit (AU) must complete the review process in the last month of the current POE in order to receive uninterrupted benefits. The date of the review application is the date the form is received by the county office. *Food Stamp Manual*, Id. at Page 3710-6.

5.

If the AU files a timely or untimely application and the application was denied for failure to return verification, and/or the SOP has expired, but verification was returned within 30 days following the last month of the current POE, prorate the benefits from the date the verification is received and all review requirements are met. Process that case within 5 work days after receipt of the verification. *Food Stamp Manual*, Volume III-FS MT-35-05/13, at Page 3710-7.

Title II of the Americans with Disabilities Act (“ADA”)

6.

Title II of the ADA, 42 U.S.C.S. § 12101, *et seq.*, provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity. 42 U.S.C.S. § 12132. Respondent incorporates the requirements of the ADA in its Food Stamps Manual at Volume III – FS MT 1 – 01/01, pages 3025-1, *et seq.* Respondent’s ADA policy states that all individuals with disabilities must be provided with “meaningful access” to the Food Stamp Program, which it defines as, “the opportunity to benefit from all available resources, services and activities to the same extent as that given to persons without disabilities.” (*Food Stamp Manual*, at Page. 3025-2).

7.

Disability – The ADA definition of “disability” differs from the understanding of a disability that has traditionally been employed by the agency. By “disability” the ADA does not necessarily mean a condition, which makes it impossible for a person to be employed. Rather, a person “with a disability” is one who meets any one of the three following criteria: the individual has a physical or mental impairment that substantially limits one or more of that person’s major life activities; the individual has a record of such impairment; or the individual is regarded as having such an impairment. *Food Stamp Manual*, Volume III-FS MT 1-01/01, at Page 3025-2.

8.

The ADA requires that, when necessary, a public entity such as DFCS must provide “reasonable accommodation” to an individual with a disability. By providing an accommodation, the agency insures that the individual with a disability is able to participate in all programs and receive all benefits and services for which that individual is otherwise eligible. Providing a reasonable accommodation may take many forms including, but not limited to, policy or procedural modifications, deferral from certain activities, provision of auxiliary aids, **extensions of deadlines** and the granting of hardship waivers. *Food Stamp Manual*, at Page 3025-3. In this matter, the requirements of the ADA apply to Respondent’s administration of the Senior SNAP Program. Petitioner is a qualified individual with a disability and Petitioner filed his renewal application late because of his mental disability, resulting in a loss of benefits to which he was otherwise entitled. However, Respondent has failed to extend the deadline for Petitioner’s renewal application and provide his full March 2014 benefits in violation of the ADA requirements to extend deadlines for individuals with disabilities who require such an accommodation.

9.

“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.” 28 C.F.R. § 35.130(b)(7)(1994). Respondent argues that since many of its participants are disabled, an individual modification assessment of each recipient would be impossibly voluminous and would alter detrimentally the administration of the Senior SNAP program. Upon careful review, I find Respondent’s argument to be unpersuasive. Respondent has failed to present any evidence to establish that allowing an extension of the deadline for Petitioner to submit his renewal application would fundamentally alter the nature of the Senior SNAP Program, or that any other Senior SNAP recipient, other than Petitioner, has requested accommodation for his or her disability.

In this matter, Petitioner’s SNAP benefits are administered by the Senior SNAP program, as he is qualified by age and income. However, Petitioner’s mental illness, which rendered him unable to fully avail himself of his March 2014 SNAP benefits, is unrelated to his age. Petitioner has been diagnosed as chronically paranoid schizophrenic since he was thirty-eight (38) years old. Therefore, we look to the ADA to determine whether this one-time deadline extension for his renewal application would be a reasonable modification of the policy in order to accommodate Petitioner’s disability.

10.

Under the ADA, the determination of whether a particular modification is “reasonable” involves a fact-specific, case-by-case inquiry that considers such factors as the effectiveness of the modification in light of the nature of the disability, and the cost to the organization that would

implement it. It is a factual issue whether a proposed modification is reasonable and should be implemented, or whether it is a fundamental alteration which the state may reject. *Mary Jo C. v. New York State and Local Retirement System, et al.*, 707 F.3d 144, 153 (2d Cir. 2013)(finding waiving the filing deadline for an application for retirement benefits was a reasonable modification to accommodate Petitioner's disability, when the late filing was due to an acute recurrence of a long-standing mental illness).

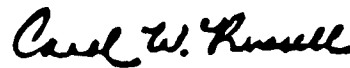
11.

In this matter, Petitioner seeks a one-time extension of his renewal application deadline to accommodate the acute symptoms of his mental illness which prevented his filing timely. Like the Plaintiff in *Mary Jo C., supra*, the acute symptoms of mental illness which caused Petitioner to file the application late also rendered him unable to request an extension prior to the expiration of his certification period. Petitioner's disability is well-known to the Respondent. Nevertheless, the only contact Respondent had with Petitioner prior to closing his case was two (2) form letters. Respondent's ADA policy contemplates the extension of deadlines as an accommodation to allow disabled individuals access to all available resources to which they are otherwise entitled. In this matter, the extension of the filing deadline would allow Petitioner full access to his March 2014 benefits to which he is entitled. Accordingly, Respondent has failed to demonstrate by a preponderance of the evidence that Petitioner's claim under the ADA would fundamentally alter the nature of the Senior SNAP Program.

IV. INITIAL DECISION:

For all of the foregoing reasons, Respondent's decision to close Petitioner's Senior SNAP case and terminate his benefits from March 1, 2014, through March 20, 2014, and prorate his SNAP benefits is **REVERSED**. Petitioner received \$17 in prorated benefits for the month of March 2014. He was entitled to an amount of \$53. Accordingly, this case is **REMANDED** for Respondent to distribute to Petitioner the additional sum of \$36, as full payment of his March 2014 Senior SNAP benefits.

SO ORDERED, August 12, 2014



CAROL WALKER-RUSSELL,
Administrative Law Judge