

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

K [REDACTED] N [REDACTED],
Petitioner,

v.

DHS, DIVISION OF FAMILY AND
CHILDREN SERVICES,
Respondent.

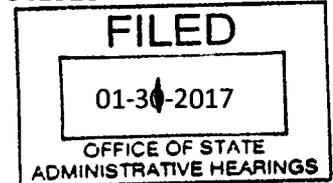


FILED
OSAH

Docket No.: [REDACTED]
[REDACTED]-OSAH-DFCS-FSP-60-Malihi

JAN 31 2017 Agency Reference No.: 841325013

Kasey Salter
Kasey Salter, Legal Assistant



INITIAL DECISION

I. Introduction

Petitioner K [REDACTED] N [REDACTED] appeals Respondent's decision to terminate his participation in the "Georgia Senior Supplemental Nutrition Assistance Program" ("Senior SNAP"). The hearing in this matter was conducted pursuant to 7 C.F.R. § 273.15 on January 18, 2017. Mr. N [REDACTED] represented himself at the hearing and Odell Horne, a DFCS caseworker, appeared on behalf of Respondent. For the reasons stated herein, Respondent's action is **REVERSED**.

II. Findings of Fact

1.

Mr. N [REDACTED] receives food stamp benefits for an assistance unit (AU) of one. (Testimony of Odell Horne; Testimony of K [REDACTED] N [REDACTED]).

2.

Respondent formerly determined that Mr. N [REDACTED] qualified for simplified application and reporting requirements under Senior SNAP. (Testimony of Odell Horne).

3.

Respondent terminated Mr. N [REDACTED]'s participation in Senior SNAP based on its determination that Mr. N [REDACTED] received earned income. Specifically, based on information

obtained from Mr. N [REDACTED] during the renewal process, Respondent concluded that Mr. N [REDACTED] received \$700 per month working as a “self-employed electrician,” and was therefore ineligible for continued participation in Senior SNAP. (Testimony of Odell Horne).

4.

The caseworker who spoke with Mr. N [REDACTED] during the renewal process and determined that he received income as a self-employed electrician did not testify at the hearing. Moreover, Respondent did not tender case notes, Mr. N [REDACTED]'s renewal application, or other documentation pertinent to Mr. N [REDACTED]'s food stamp eligibility into evidence.

5.

Mr. N [REDACTED] testified that he did not work as a self-employed electrician. He acknowledged that his sister gave him \$700 per month and that he occasionally helped her out by performing electrician services. (Testimony of K [REDACTED] N [REDACTED]).

III. Conclusions of Law

Based on the above findings of fact, the undersigned makes the following conclusions of law:

1.

As this matter concerns Respondent's termination of Mr. N [REDACTED]'s participation in Senior SNAP, the burden of proof is on Respondent. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is by a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

The Supplemental Nutrition Assistance Program (SNAP) is governed by the Food and Nutrition Act of 2008. 7 U.S.C. § 2011 et seq.; 7 C.F.R. § 271.1 et seq. Respondent has issued guidelines for the Food Stamp Program in its Economic Support Services Manual, Volume III

(hereinafter Food Stamp Manual) To qualify for assistance, an individual must meet financial eligibility requirements regarding gross income and net income.

3.

Eligible households may qualify for simplified application and reporting requirements under Senior SNAP, “an elderly simplified application project designed to reinvent the SNAP process for elderly household who have traditionally proven to be stable households with fixed income, and few reportable changes in household composition and deductions.” Economic Support Services Manual, Volume III, Section 3725); see 7 C.F.R. § 273.23. In order to qualify for Senior SNAP, all household members must be at least sixty years old, have no earned income, and receive fixed income such as supplemental security income, or veteran’s administration benefits. Id.; see also 7 C.F.R. 273.12(a)(5)(iii) (“The State agency must not require the submission of periodic reports by households certified for 12 months or less in which all adult members are elderly or have a disability with no earned income.”). In the present case, Respondent terminated Mr. N [REDACTED]’s participation in Senior SNAP based on its determination that he received earned income.

4.

According to federal regulations governing administration of SNAP, earned income includes:

The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. . . .

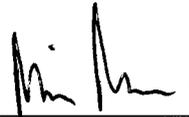
7 C.F.R. § 273.9(b)(1)(ii). Based on the evidence presented at the hearing, the Court does not conclude that Mr. N [REDACTED] received \$700 per month pursuant to a self-employment enterprise. There is insufficient evidence in the record for the undersigned to conclude that Mr. Nollie

receives this monthly sum in exchange for his services as an electrician, rather than as a gift from his sister.

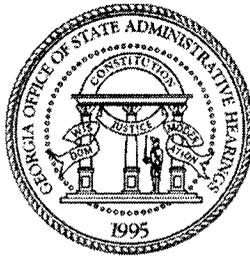
IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is the Initial Decision of the undersigned that Respondent's termination of Mr. N [REDACTED]'s participation in Senior SNAP is **REVERSED**.

SO ORDERED this 31st day of January, 2017.



Michael Malihi, Judge



NOTICE OF INITIAL DECISION

Attached is the Initial Decision of the administrative law judge. A party who disagrees with the Initial Decision may file a motion with the administrative law judge and/or an application for agency review.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Initial Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kasey Salter - 404-463-1034; Email: ksalter@osah.ga.gov; Fax: 404-818-3751; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing an Application for Agency Review

A party who seeks review by the referring agency must file an application for agency review within 30 days after service of the Initial Decision. O.C.G.A. §§ 50-13-17(a), -41(e). An appeal may result in a reversal of the Initial Decision. 7 C.F.R. § 273.15(q). **In nearly all cases, agency review is a prerequisite for judicial review.** O.C.G.A. § 50-13-19(a).

The application for agency review must be filed with: **Office of General Counsel, Attn: Appeals Reviewer, Georgia Department of Human Services, 2 Peachtree Street NW, 29th Floor, Atlanta, Georgia 30303.** Copies of the application for agency review must be served upon all parties of record and filed simultaneously with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. If a timely application for agency review is not filed and the referring agency does not review the Initial Decision on its own motion, the Initial Decision will become the Final Decision of the referring agency by operation of law. O.C.G.A. §§ 50-13-17(a), -41(e).