


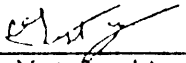
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<b>GLENN TOOMER,</b>	:	
<b>Petitioner,</b>	:	
<b>v.</b>	:	<b>Docket No:</b>
	:	<b>OSAH-DFCS-FSP-1649344-67-Baxter / Woodard</b>
	:	
<b>DHS, DIVISION OF FAMILY AND CHILDREN SERVICES</b>	:	<b>Agency Reference No.: 603482013</b>
<b>Respondent.</b>	:	

  
**FILED**  
**OSAH**  
**AUG 08 2016**

**INITIAL DECISION**

**I. Introduction**

  
\_\_\_\_\_  
Grant Mintz, Legal Assistant

Petitioner Glenn Toomer requested a hearing on May 25, 2016 after he received notification from Respondent that his household received an overpayment of Food Stamp Program benefits. The hearing on this matter was originally scheduled for July 1, 2016, but was continued at Mr. Toomer's request and held via telephone conference on July 20, 2016.

The hearing was conducted in accordance with 7 C.F.R. § 273.15. Glenda Cucher, Esq., Atlanta Legal Aid Society, represented Mr. Toomer at the hearing and Romeka Brown, a case manager with the Office of Inspector General, participated in the hearing on behalf of Respondent.

After carefully considering evidence presented at the hearing, and for the reasons provided below, Respondent's action is **REVERSED**.

The documentation referenced at the hearing is admitted into the record and referenced in this Decision as follows:

- ALJ Exhibit 1: Notice of Special Action dated June 10, 2016;
- Petitioner's Exhibit 1: Written Statement of Glenn Toomer date-stamped February 2, 2016;
- Petitioner's Exhibit 2: Record of enrollment generated by Summerour Middle School;
- Petitioner's Exhibit 3: Birth Certificate of "K.T.";
- Petitioner's Exhibit 4: Order for Legitimation and Temporary Order on Custody, Visitation & Child Support issued by the DeKalb County Superior Court.

- Respondent's Exhibit 1: National Accuracy Clearinghouse (NAC) Business Rules

## II. Findings of Fact

1.

Mr. Toomer previously received food stamp benefits in the amount of \$86.00 per month, for an assistance unit of one person. *Testimony of Romeka Brown; Testimony of Glenn Toomer.*

2.

The Gwinnett County Superior Court granted Mr. Toomer full physical and legal custody of his minor child, "K.T.," per an Order issued January 13, 2016. K.T. has lived with Petitioner continuously since the order was entered. *Petitioner's Exhibit 4; Testimony of Glenn Toomer.*

3.

Before he came to live with Mr. Toomer, K.T. was included in his mother's Food Stamp case in Florida. *Petitioner's Exhibit 1; Testimony of Glenn Toomer.*

4.

On or about January 28, 2016, Mr. Toomer submitted an application to DFCS to add K.T. to his food stamps assistance unit. Mr. Toomer disclosed to DFCS that K.T. was still a member of his mother's food stamp household. *Testimony of Romeka Brown; Testimony of Glenn Toomer; ALJ Exhibit 1.*

5.

DFCS asked Mr. Toomer to obtain a "Letter of Closure" from the Florida Department of Children and Families, showing that K.T. was no longer a member of his mother's food stamp assistance unit. Due to the confidential nature of food stamp cases, however, Mr. Toomer was unable to obtain a closure letter from DCF without the cooperation of K.T.'s mother. When he notified DFCS that he could not obtain the closure letter, DFCS advised him that it would accept a written statement providing that he had unsuccessfully attempted to obtain a closure letter from DCF and that K.F. was in his custody—along with the other records documenting his custody of K.T. that he had already provided—as sufficient verification. *Petitioner's Exhibits 1-4; Testimony of Glenn Petitioner's Exhibit 1; Testimony of Romeka Brown; Testimony of Glenn Toomer.Toomer.*

7.

After Mr. Toomer provided the requested written statement and other documentation to DFCS, he was approved to receive food stamp benefits for an assistance unit of two, consisting of himself and K.T. Mr. Toomer's household received monthly food stamp allotments of \$249.00 from February through April 2016. The parties do not dispute that K.T. continuously resided with Mr. Toomer during that time. *ALJ Exhibit 1; Testimony of Romeka Brown; Testimony of Glenn Toomer.*

8.

Unbeknownst to Mr. Toomer, DFCS failed to ensure that K.T. was removed from his mother's assistance unit in Florida, or to notify DCF that K.T. was no longer a member of his mother's assistance unit. As a result of DFCS' error, K.T.'s mother's assistance unit continued to receive food stamp benefits for K.T., even though he was not residing in her household. *Testimony of Romeka Brown; Testimony of Glenn Toomer.*

9.

In April 2016, Romeka Brown, a case manager with OIG, discovered that K.T. was never removed from his mother's household and that, as a result, K.T. received duplicate benefits in Florida and Georgia. She determined that Mr. Toomer's household received an overpayment of \$163.00 per month for the months of February, March, and April 2016, for a total overpayment of \$489.00. *Testimony of Romeka Brown.*

10.

Ms. Brown's determination that Mr. Toomer's household received an overpayment of food stamp benefits was based on the "Business Rules" of the National Accuracy Clearinghouse (NAC), which provide that, in the event of a dual issuance of food stamp benefits, "the 2nd certifying state **must** initiate the claim to recoup dual participation benefits according to program policies and procedures." Therefore, as Georgia was the second state to certify food stamp benefits for K.T., DFCS initiated the recoupment claim. *Respondent's Exhibit 1 (emphasis in original); Testimony of Romeka Brown.*

11.

In a Notice of Special Action dated June 10, 2016, DFCS notified Mr. Toomer that his household had received a \$489.00 overpayment of food stamp benefits during the months of February,

March, and April 2016 due to “inadvertent household error.”<sup>1</sup> *ALJ Exhibit 1*.

### III. Conclusions of Law

1.

The Food Stamp Program (currently referred to as the “Supplemental Nutrition Assistance Program” or “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. Congress implemented the Food Stamp Program in order to “safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households” and to “permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.” 7 U.S.C. § 2011. Respondent is the state agency responsible for administering the Food Stamp Program in Georgia. O.C.G.A. § 49-4-16.

2.

Federal laws governing the administration of the food stamp program require that State agencies “collect any overissuance of benefits issued to a household by

- (A) reducing the allotment of the household;
- (B) withholding amounts from unemployment compensation from a member of the household under . . . ;
- (C) recovering from Federal pay or a Federal income tax refund . . . ; or
- (D) any other means.

7 U.S.C. § 2022(b)(1). An “overissuance” means “the amount by which [benefits] issued to a household exceeds the amount it was eligible to receive.” 7 C.F.R. § 271.2. DFCS is obligated to collect an overissuance, even where it is attributable to agency error. 7 U.S.C. § 2022; 7 C.F.R. § 273.18. However, while DFCS is under a clear directive from Food and Nutrition Services (FNS), the federal entity charged with administering the Food Stamp Program, to collect overissuances, it retains “the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households[,]” subject to the standards in prescribed in 7 C.F.R. § 273.18. 7 C.F.R. § 271.4(b).

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<sup>1</sup> The Notice incorrectly indicated that the overpayment was attributable to household error. Respondent acknowledged at the hearing that the error was its own, not Mr. Toomer's. *Testimony of Romeka Brown*.

3.

The undersigned is required to “make an independent determination on the basis of the competent evidence presented at the hearing” and has the discretion to “make any disposition of the matter available to the Referring Agency.” Ga. Comp. R. & Regs. 616-1-2-.21(1); see also O.C.G.A. § 50-13-41(b). In rendering a decision, the undersigned must consider the applicable facts and law anew, without according deference or presumption of correctness to the referring agency’s action. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753 (2009).

4.

In the present case, it is undisputed that the purported overissuance of food stamp benefits accrued as the result of DFCS’s error. Although DFCS is required under federal law to recover overissuances, including those attributable to agency error, Mr. Toomer did not receive an overissuance as such term is defined in the governing law. As noted *supra*, federal regulations define overissuances as “the amount by which coupons issued to a household exceeds the amount *it was eligible to receive.*” 7 C.F.R. § 271.2 (emphasis added). Moreover, the federal requirement that State agencies recover overpayments attributable to agency error presumes that the household received food stamp benefits to which it was not entitled. See 65 Fed. Reg. 41,752. (“Three state agencies commented that using involuntary collection methods to recoup [agency error] claims is not good public policy since the households may not even have been aware of the error prior to the implementation of the involuntary collection actions . . . . We [FNS] recognize the commenters' concerns and are working with State agencies to reduce these types of errors. *However, a household with an [agency error] claim did, in fact, obtain more benefits than it was entitled to receive.*”) (emphasis added); see 7 C.F.R. § 271.2.

5.

The undersigned concludes that Mr. Toomer’s household did not obtain more benefits than it was entitled to receive. Mr. Toomer obtained food stamp benefits for himself and K.T. while K.T. actually resided in his household. See 7 C.F.R. § 273.1(b)(1)(ii). K.T.’s mother, on the other hand, continued to receive food stamp benefits for K.T., even though he no longer resided in her household. Under the recoupment policy proffered by DFCS, food stamp benefits would be collected from one household—which did not, by definition, receive an overissuance—while

the household that *did* receive an overissuance would be allowed to retain benefits to which it was not entitled. Such an outcome contravenes the federal requirement that states “collect any overissuance of benefits issued to a household.” 7 U.S.C. § 2011; 7 C.F.R. § 271.2. Moreover, DFCS’s interpretation frustrates the overall purpose of the Food Stamp Act by imposing hardship on households that actually require assistance. See 7 U.S.C. § 2022. Accordingly, DFCS’s determination that Mr. Toomer’s household was issued an overpayment was improper and it is not authorized to seek recoupment or recovery.


6.

Whether or not DFCS’s action comported with the Business Rules of the National Accuracy Clearinghouse is of no moment. The NAC Rules cannot be read to supersede an Act of Congress or the duly promulgated rules of the United States Department of Agriculture.

#### IV. Decision

Based on the foregoing Findings of Fact and Conclusions of Law, it is the Initial Decision of the undersigned that Respondent’s determination that Mr. Toomer’s household was issued an overpayment of food stamp benefits in the amount of \$489.00 and its decision to recoup or recover those benefits from Mr. Toomer’s household are **REVERSED**.

**SO ORDERED**, this 9th day of August, 2016.



**M. PATRICK WOODARD**  
Administrative Law Judge

RE: GLENN TOOMER, Petitioner

Docket No.: OSAH-DFCS-FSP-1649344-67-Baxter

MAIL TO:

GLENN TOOMER  
6359 LAUREL GREEN DR  
LITHONIA, GA 30058

GLENDA CUCHER  
ATTORNEY AT LAW  
246 SYCAMORE STREET  
SUITE 120  
DECATUR, GA 30030