
In Re: S.C.
Cite as 6 *N.J.A.R.* 333

**IN THE MATTER OF
S.C.**

Decided July 27, 1981

Initial Decision

SYNOPSIS

Petitioner contests her food stamp entitlement allotment as fixed by the local welfare agency, which acted on the basis of loans which petitioner received but which the agency claims the petitioner had not repaid.

The administrative law judge assigned to the case found that petitioner had received amounts of money from an acquaintance beginning in June of 1980. This money was conceded by both petitioner and the acquaintance to be loans rather than gifts and was determined to be a loan by the judge. Accordingly, the judge concluded that these loans should have been excluded as income when computing food stamp benefits.

ERRICKSON, ALJ:

Petitioner contests the correctness of a decision of the Sussex County Welfare Board (SCWB) fixing her food stamp entitlement, effective March 1, 1981, at \$20 per month. Respondent SCWB contends that petitioner is entitled to only \$20 in food stamps as the result of loans which she received which, in large part, have not been repaid and for which there is, allegedly, no prospect of repayment.

UNDISPUTED FACTS:

I **FIND** the following to be relevant facts which, as stipulated to or otherwise not contested within the record, reveal the contextual setting of the dispute:

Petitioner, who is head of a household consisting of herself and one child, applied and was approved for \$83 in monthly food stamp benefits for October and November 1979. After a recertification process, she received \$55 in food stamps for December 1979, at which time her entitlement was closed for failure to verify income. Petitioner reapplied and was awarded monthly food stamp benefits of \$95 during October and November 1980. In December 1980, the benefits were

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reduced to \$81, after which her benefit increased to \$110 for January 1981 as the result of changes in regulations. A check for \$110 was issued for February. Mailing of that check, however, was delayed by SCWB until late in February and was later voided when petitioner did not seek to cash it until early March. Accordingly, petitioner received no food stamp benefits for February.

When petitioner was required to go through the recertification process for food stamps for March and April, her benefits were fixed at \$20 monthly. This was the result of a decision by SCWB to designate as countable income \$300 monthly which she had received from a friend. No food stamps were issued for May, since petitioner had requested a fair hearing. Petitioner, who was due for recertification prior to receiving benefits for June 1981, did not go through the process and has not received any further food stamps.

The central issue presented in the case is whether the agency was correct in entering the \$300 monthly "loans" as countable income when calculating petitioner's monthly food stamp entitlement for March, April, and May 1981. The arithmetical process of computation is not challenged. At issue also is whether petitioner is entitled to benefits for February and whether her due process rights were adhered to when her benefit was fixed at \$20 for March through May 1981.

TESTIMONY OF WITNESSES:

An income maintenance worker employed by SCWB testified that the mailing of petitioner's February check was delayed by the agency until an investigator completed his report on the circumstances of loans received by petitioner. She testified that, after the investigation was completed, she contacted the man from whom petitioner had received loans and learned that she had received loans totaling \$3,574. She testified that the man told her that he had lent the petitioner the money out of sympathy and humanitarianism, and that he wanted to get the money back, but did not know if he ever would. She testified that on the basis of this information and the fact that no repayments or repayment schedule had been submitted or appeared possible, since the petitioner's expenses exceeded her income, SCWB concluded that the "loans" were, in reality, gifts. She testified further that they were then counted together with the \$60 weekly support payments by petitioner's ex-husband as income in the recertification process, thus making petitioner eligible for only \$20 of food stamps monthly for March through May 1981. The income maintenance worker testified

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that when petitioner, at a later date, brought in a repayment schedule of \$10 per week, SCWB decided not to alter its position, but to allow the matter to be settled by the fair hearing process already under way.

This testimony concerning SCWB's position was fully corroborated by testimony of other SCWB workers and supervisors, including its Administrative Supervisor of Income Maintenance. The Administrative Supervisor testified that his interpretation of the regulations was that each individual loan must be reported together with a loan agreement and reasonable repayment schedule, that petitioner, in view of limited resources and her expenses, had no visible means of repaying the loans, and that the word "loan" is a misnomer if there is no prospect of its repayment.

Petitioner testified that she reported each loan faithfully as she received it, that she promptly submitted a repayment schedule of \$10 per week when one was requested, that when her entitlement was reduced, she requested an emergency fair hearing which was not provided, and that her delay in receipt of her February food stamps was the combined result of delay in issuance by SCWB and slow postal service. Petitioner contends that she is entitled to reissuance of her February entitlement and to the exclusion of the loans as income in calculations of her food stamp entitlement thereafter.

FINDINGS OF FACT:

On the basis of the preponderance of credible evidence within the record, I **FIND** the following to be additional relevant facts which, in arriving at a determination, are considered together with the uncontroverted facts set forth above.

1. Petitioner received, from an acquaintance, amounts of money beginning in June 1980. These monies, totaling over \$3,500, were considered by both petitioner and the acquaintance, to be loans rather than gifts. I **CONCLUDE** that they were loans. This conclusion is grounded on the testimony of petitioner and on the documents she submitted to SCWB wherein the acquaintance who lent the money, noted that \$60 had been repaid, and referred to them only as "loans." Therein, he stated that they were for food, rent and necessities, "not in exchange for any services promised or rendered. . ." and were accepted by her "with the understanding that she would [repay] at least \$10.00 a week when she does get a job. . ."
2. Petitioner, prior to reduction of her food stamp benefits, had

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not accompanied her reporting of the loans with copies of written agreements or repayment schedules.

3. When SCWB raised the issue of no repayment schedule, petitioner, in May 1981, submitted a signed repayment schedule which provided for weekly repayments of \$10.
4. Petitioner, who is currently unemployed, has not, to this date, provided SCWB with data which signifies that, until she gains future employment, the repayment schedule of \$10 per week is possible. This finding is grounded on the testimony of SCWB workers who verified that, aside from welfare, petitioner's only reported income since October 1980 has been \$60 weekly from court ordered support payments from her ex-husband.
5. Petitioner was not given written adverse action notification of reduction of benefits prior to the issuance of the \$20 food stamp benefits for March 1981.
6. Petitioner's February food stamps entitlement was unilaterally held up by SCWB on the basis that she had been receiving the loans since November 1980. When the food stamps were released and mailed, petitioner did not receive them until March. That delay and refusal to reissue them are attributable to SCWB's unilateral decisions. No adverse action notice preceded SCWB's unilateral action.
7. Counsel for petitioner approached SCWB at 3:00 p.m. on July 1, the day prior to the second day of hearing, and requested that the entire lengthy file of petitioner be photocopied. SCWB refused to copy the entire file at public expense, but offered to copy any pertinent documents without charge.

DISCUSSION AND CONCLUSIONS:

Counsel's long delay in asking permission to review petitioner's file until an hour prior to the end of the working day on July 1 was dilatory. SCWA's refusal to copy, at public expense, the entire file was reasonable. Petitioner's counsel then refused to examine the file and select the relevant documents. Angry outbursts from both parties ensued. In any event, adequate time to examine the file was granted at the fair hearing. Accordingly, I **CONCLUDE** that no due process of discovery was denied petitioner.

Petitioner's food stamps for February were unilaterally withheld by SCWB action and, when released, were received in March when they were, without reissue, void. That action, accompanied by refusal to

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reissue them, was totally attributable to SCWB and constituted a reduction of benefits without adverse action notice. Accordingly, I **CONCLUDE** that the reduction of benefits without written adverse action notice was contrary to regulations.

By contrast, petitioner was due for recertification prior to issuance of her March benefits. The recertification process obviated any need for adverse action notice, since all data were reexamined and a notice of entitlement was issued. Accordingly, I **CONCLUDE** that it was not required that petitioner be issued an adverse action notice prior to its determination of her reduced benefit for March. Her due process rights in this respect were not abridged. It remains to determine the correctness of SCWB's argument that petitioner's loans were gifts, by reason of her inability to repay them on a regular basis. In this regard, it is noted that petitioner, from June 1980 until May 1981, had repaid only \$60, far less than the \$10 weekly rate of repayment.

Regulations cited by SCWB are as follows:

N.J.A.C. 10:82-3.2(B)9

- ii. Personal loans are exempt when such loans are evidenced by a document, signed by the client and the lender, which states the amount of the loan and terms of repayment.

N.J.A.C. 10:82-4.13

- (c) Nonobligatory contributions, other than those identified in *N.J.A.C.* 10:82-3.2(b)8 (occasional gifts), shall be recognized as unearned income only when made in cash to one or more members of the eligible unit (see also *N.J.A.C.* 10:82-2.4). This does not apply to LRRs who have an evaluated capacity to support.

N.J.A.C. 10:82-4.14

Income received at regular intervals

- (a) Income received at regular weekly or monthly intervals shall be recorded as monthly income.

N.J.A.C. 10:87-2.21(a)5

- vi. Liquid resources and loans: The CWA shall verify liquid resources and whether or not moneys received by the household are loans whenever such items are questionable (see subparagraph i. of this paragraph).
 - (1) When verifying that income is exempt as a loan, a legally binding agreement is not required. A simple statement signed by both parties which indicates that the payment is a loan and must be repaid shall be sufficient verification.
 - (2) If the household receives payments on a recurrent or

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regular basis from the same source but claims the payments are loans, the CWA may also require that the provider of the loan sign an affidavit which states that repayments are being made or that payments will be made in accordance with an established repayment schedule.

While it appears facially apparent that the cited regulations, *N.J.A.C.* 10:82-802(B)9, *N.J.A.C.* 10:82-4.13 and *N.J.A.C.* 10:82-4.14 would have applicability, they are not in this case relevant because of their specific exclusion under *N.J.A.C.* 10:87-1,15 here reproduced in its entirety:

10:87-1.5 Purpose of the New Jersey Food Stamp Manual

The purpose of this manual is to outline the policies and procedures applicable to the certification and/or recertification of those who apply for food stamps. The policies and procedures of this manual shall be used to determine eligibility and issuance for food stamp benefits for all households *regardless of eligibility requirements of other assistance programs.* [Emphasis supplied.]

I **CONCLUDE**, therefore, that the cited regulations from *N.J.A.C.* 10:82 are inapplicable to this dispute.

Although petitioner repaid only \$60 from June 1980 through May 1981, it must be noted that the agreement specified that she would repay the loans at \$10 per week *when she got a job.* Since the agreement did not specify repayment except while she was employed, I **CONCLUDE** that she is not in violation of the repayment agreement. I further **CONCLUDE** that the controverted money petitioner received from her acquaintance met the test of the regulations to qualify as loans.

DETERMINATION:

It is well settled that agency rules, as with statutes, shall be construed in accord with the common meaning of the words used in those rules.

In this instance, the rules specify that money received as a personal loan is exempt when evidenced by a document stating the amount of the loan and the terms of repayment. While SCWA's position is logical that a loan without visible means of repayment may be questioned, its decision that petitioner did not receive loans is not countenanced by the applicable regulations. It is those regulations which must control. Since they are silent as to restrictions on terms of repayment and visible means of repayment, it is **DETERMINED**

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that petitioner received loans that should have been excluded as income when computing her food stamp benefits for March through May 1981. This determination is consistent with the regulation that recognizes that a county welfare agency may require "an affidavit which states that repayments are being made *or that payments will be made* in accordance with an established repayment schedule." *N.J.A.C.* 10:87-2.21(a)5vi(2)

In view of the above determination and conclusions, it is **ORDERED** that SCWA:

1. will reissue and send to petitioner food stamps in the amount of \$110 for the month of February 1981;
2. will recompute petitioner's food stamp entitlement for March through May, excluding the aforementioned loans as income, and will issue food stamps equal to the difference between that which she did receive during that three-month period and that which she should have received.

Having reviewed the initial decision and any exceptions or replies submitted, I hereby amend the decision of the administrative law judge in the above-captioned case.

**After reviewing this Initial Decision,
the Division of Public Welfare on September 22, 1981,
issued the following Final Decision:**

According to facts presented, petitioner did receive money from a friend with the stipulation that such would be repaid at some time in the future. Accordingly, the funds at issue are exempt from consideration in the computation of food stamp eligibility and benefit entitlement. However, the petitioner made no attempt to cash the February ATP and no basis exists for reissuance of an ATP for February.

The agency is directed to recompute benefit entitlement for the period March 1981 through May 1981 and restore lost benefit.