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Appellant: [REDACTED]

For: Supplemental Nutrition Assistance Program

**DISMISSAL ORDER**  
(Untimely)

Agency: [REDACTED] County Community Services

Dockets: 237349

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On September 9, 2020, Human Services Judge Amy J. Chantry held a Prehearing Conference under Minnesota Statutes, section 256.0451, subdivision 5(a).

The following individuals attended the prehearing conference:

[REDACTED], Appellant;

[REDACTED], Welfare Fraud Program Coordinator, [REDACTED] County Community Services; and

[REDACTED], Welfare Fraud Investigator, [REDACTED] County Sheriff's Office.

The Human Services Judge, based on the evidence in the record and the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

## STATEMENT OF ISSUE

The issue raised is:

Whether [REDACTED]'s appeal of [REDACTED] County Community Services' May 13, 2020 Notice of Overpayment of Supplemental Nutrition Assistance Program benefits is time-barred because she failed to timely appeal.

Recommended Decision:

[REDACTED]'s appeal of [REDACTED] County Community Services' May 13, 2020 Notice of Overpayment of Supplemental Nutrition Assistance Program benefits is time-barred because she failed to timely appeal. Accordingly, the Human Services Judge recommends that the appeal be DISMISSED.

## PROCEDURAL BACKGROUND

1. On May 13, 2020, [REDACTED] County Community Services (Agency) sent [REDACTED] (Appellant) a Notice of Overpayment.<sup>1</sup> In the Notice of Overpayment, the Agency advised Appellant of its assessment of a Supplemental Nutrition Assistance Program (SNAP) overpayment totaling \$487.00, for January 1, 2020 through February 29, 2020.<sup>2</sup>
2. On August 14, 2020, Appellant filed an appeal with the State Appeals Office of the Agency's May 13, 2020 Notice of Overpayment.<sup>3</sup>
3. Upon the filing of Appellant's appeal, the State Appeals Office assigned Appellant's appeal to Human Services Judge Amy J. Chantry.
4. On September 9, 2020, Human Services Judge Chantry held a Prehearing Conference. During the Prehearing Conference, Human Services Judge Chantry clarified the basis of Appellant's appeal. Appellant attested that she was appealing the Agency's May 13, 2020 Notice of Overpayment. Human Services Judge Chantry then *sua sponte* raised the issue of the timeliness of the appeal request. Human Services Judge Chantry accepted the Agency's Exhibits 1 through 25<sup>4</sup> into the record. The record closed at the conclusion of the prehearing

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<sup>1</sup> Testimony (Test.) of [REDACTED]; Exhibits (Exs.) 1, 22.

<sup>2</sup> Test. of [REDACTED]; Exs. 1, 22.

<sup>3</sup> Exs. 1, 3.

<sup>4</sup>

Ex. 1 State Agency Appeals Summary;  
Ex. 2 Combined Application Form, January 8, 2020;  
Ex. 3 State Agency Appeal, Filed August 14, 2020;

conference.

## **FINDINGS OF FACT**

### **Appellant's January 8, 2020 CAF**

1. On January 8, 2020, Appellant executed a Combined Application Form (CAF) in support of her request for food and cash benefits on behalf of herself, her husband, [REDACTED] (Mr. [REDACTED]), and her two minor children.<sup>5</sup>
2. In completing her CAF, Appellant did not report that her father, [REDACTED] (Mr. [REDACTED]) lived with her, Mr. [REDACTED], and her two minor children in a home located at [REDACTED], [REDACTED], Minnesota [REDACTED].<sup>6</sup>
3. At the time of her CAF, Appellant was 21 years old.<sup>7</sup>
4. Appellant withdrew her request for cash benefits on January 9, 2020.<sup>8</sup>

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Ex. 4 MAXIS Case Notes and Unemployment Insurance Verification;  
Ex. 5 January 2020 SNAP Approval Notice;  
Ex. 6 February 2020 SNAP Approval Notice;  
Ex. 7 Fraud Prevention Investigation Referral and Summary of Findings;  
Ex. 8 Minnesota Department of Employment and Economic Development (DEED) Wage Records for Appellant;  
Ex. 9 DEED Wage Records for [REDACTED];  
Ex. 10 DEED Wage Records for [REDACTED];  
Ex. 11 Tax Returns for Appellant and [REDACTED];  
Ex. 12 2017 and 2018 Property Tax Statements for Residence Located at [REDACTED];  
Ex. 13 Property Tax Value, Sale, and Building Permits for Residence Located at [REDACTED];  
Ex. 14 Photographs of Residence Located at [REDACTED];  
Ex. 15 Transcribed Conversation between Detective [REDACTED] and [REDACTED];  
Ex. 16 Transcribed Conversation between Detective [REDACTED] and [REDACTED];  
Ex. 17 MAXIS Fraud Referral Case Note;  
Ex. 18 Verification Request Form;  
Ex. 19 MAXIS SNAP Closure Case Note and SNAP Closure Notice;  
Ex. 20 MAXIS Phone Call Case Note;  
Ex. 21 Unemployment Insurance Printout for [REDACTED];  
Ex. 22 MAXIS Overpayment Case Note;  
Ex. 23 Transcription of Voicemail from Appellant;  
Ex. 24 MAXIS Phone Call Case Note;  
Ex. 25 DHS Combined Manual Policies.

<sup>5</sup> Exs. 1, 3.

<sup>6</sup> Exs. 1, 3-4.

<sup>7</sup> Ex. 3.

<sup>8</sup> Exs. 1, 4.

## **Appellant's January 8, 2020 CAF Agency Interview**

5. On January 8, 2020, the Agency interviewed Appellant about the answers she provided on her CAF.<sup>9</sup> During her Agency interview, Appellant told the Agency that her family lived with Mr. [REDACTED] in his home located at [REDACTED], [REDACTED], Minnesota [REDACTED].<sup>10</sup> Appellant also told the Agency that Mr. [REDACTED]'s home contained two separate entrances and two separate kitchens.<sup>11</sup> Thus, based on Appellant's reports, the Agency determined that Mr. [REDACTED] did not constitute a member of Appellant's assistance unit and, as such, it would not deem his income to Appellant's household.<sup>12</sup>

## **The Agency's Approval of SNAP Benefits for Appellant's Household**

6. On January 22, 2020, the Agency advised Appellant that it approved her household for SNAP benefits totaling \$212.00, for January 8, 2020 through January 31, 2020.<sup>13</sup>

7. On January 22, 2020, the Agency advised Appellant that it approved her household for SNAP benefits totaling \$275.00, for February 1, 2020 through February 29, 2020.<sup>14</sup>

## **The Agency's February 27, 2020 Fraud Prevention Investigation Referral**

8. On February 27, 2020, the Agency made a referral to the [REDACTED] County Sheriff's Office to investigate Appellant's household composition and monthly income.<sup>15</sup> The Agency was concerned that Mr. [REDACTED] lived with Appellant, Mr. [REDACTED], and Appellant's two minor children.<sup>16</sup> The Agency was also concerned that if Mr. [REDACTED] lived with Appellant, his income would deem to her household due to being under the age of 22 years.<sup>17</sup>

9. The [REDACTED] County Sheriff's Office employs [REDACTED] as a detective.<sup>18</sup> The [REDACTED] County Sheriff's Office assigned Detective [REDACTED] to determine whether Appellant committed an intentional program violation by withholding or concealing her household's composition and income.<sup>19</sup>

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<sup>9</sup> Exs. 1, 4.

<sup>10</sup> Exs. 1, 3-4.

<sup>11</sup> Exs. 1, 3-4.

<sup>12</sup> Exs. 1, 3-4.

<sup>13</sup> Exs. 1, 4-5.

<sup>14</sup> Exs. 1, 4, 6.

<sup>15</sup> Exs. 1, 4, 7, 17.

<sup>16</sup> Exs. 1, 4, 7, 17.

<sup>17</sup> Exs. 1, 4, 7.

<sup>18</sup> Exs. 1, 7.

<sup>19</sup> Exs. 1, 7.

10. As part of the fraud prevention investigation (FPI), Detective █ determined that Mr. █ constituted a member of Appellant's SNAP unit and, thus, his income would deem to Appellant's household.<sup>20</sup>

11. Detective █ forwarded the results of the FPI to the Agency to determine whether it overpaid Appellant's household SNAP benefits.<sup>21</sup>

12. Upon receipt of the FPI results, the Agency recalculated the eligibility of Appellant's household for SNAP benefits by including Mr. █'s income as a SNAP unit member.<sup>22</sup>

13. In recalculating the eligibility for SNAP benefits, the Agency determined that the household's income exceeded the SNAP income limits for January 8, 2020 through January 31, 2020, and February 1, 2020 through February 29, 2020.<sup>23</sup>

14. On May 13, 2020, the Agency sent Appellant a Notice of Overpayment.<sup>24</sup> In the Notice of Overpayment, the Agency advised Appellant of its assessment of a SNAP overpayment totaling \$487.00, for January 1, 2020 through February 29, 2020.<sup>25</sup>

15. In its Notice of Overpayment, the Agency advised Appellant of her right to appeal the overpayment assessment within 90 days of the date of the notice.<sup>26</sup> The Agency further advised Appellant that if she wanted to appeal, she could write or call the Agency of the Appeals Division.<sup>27</sup> Finally, the Agency advised Appellant that should submit her written appeal request to the State Appeals Office as follows:

- Online: <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-0033-ENG>
- Write:

State Appeals Office  
Department of Human Services  
P.O. Box 64941  
St. Paul, Minnesota 55164-0941

- Fax: 651-431-7523

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<sup>20</sup> Exs. 1, 7.

<sup>21</sup> Exs. 1, 4, 22.

<sup>22</sup> Exs. 1, 4, 22.

<sup>23</sup> Exs. 1, 4-5.

<sup>24</sup> Test. of █; Exs. 1, 22.

<sup>25</sup> Test. of █; Exs. 1, 22.

<sup>26</sup> Test. of █; Ex. 22.

<sup>27</sup> Test. of █; Ex. 22.

- Call: Metro: 651-431-3600  
Greater Minnesota 800-657-3510<sup>28</sup>

16. On June 23, 2020, Appellant contacted the Agency regarding its May 13, 2020 Notice of Overpayment.<sup>29</sup> The Agency advised Appellant that it based its SNAP overpayment assessment on the FPI, in which Detective █ determined that Appellant and Mr. █ shared the same residence.<sup>30</sup> Appellant claimed that the Agency's overpayment assessment was "unfair and discriminated against poor people."<sup>31</sup> The Agency again advised the Appellant that she could appeal, if she disagreed with the Agency's overpayment assessment.<sup>32</sup> Following Appellant's telephone call, the Agency sent Appellant additional appeal information.<sup>33</sup>

17. On August 14, 2020, Appellant filed an appeal with the State Appeals Office of the Agency's May 13, 2020 Notice of Overpayment.<sup>34</sup> Appellant acknowledges that she filed her appeal 94 days from the date of the May 13, 2020 Notice of Overpayment.<sup>35</sup> Appellant does not remember if she read the May 13, 2020 Notice of Overpayment.<sup>36</sup>

## CONCLUSIONS OF LAW

1. **Jurisdiction.** A state agency hearing is available to any party applying for, receiving, or having received public assistance, medical care, or a program of social services granted by a state or county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid under Minn. Stat. § 256.045, subd. 3(a). A party may request a hearing on the loss of SNAP benefits or any other SNAP-related action by an agency that occurred in the past 90 days under 7 C.F.R. § 273.15(g)-(h).

2. **Prehearing Conferences.**

a. The Human Services Judge prior to a fair hearing appeal may hold a prehearing conference to further the interests of justice or efficiency and must include the person

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<sup>28</sup> Ex. 22.

<sup>29</sup> Test. of █; Ex. 4.

<sup>30</sup> Test. of █; Ex. 4.

<sup>31</sup> Test. of █; Ex. 4.

<sup>32</sup> Test. of █; Ex. 4.

<sup>33</sup> Test. of █; Ex. 4.

<sup>34</sup> Exs. 1, 3.

<sup>35</sup> Test. of █; Ex. 4.

<sup>36</sup> Test. of █; Ex. 4.

involved in the appeal.<sup>37</sup> A person involved in a fair hearing appeal or the agency may request a prehearing conference.<sup>38</sup> The prehearing conference may be conducted by telephone, in person, or in writing.<sup>39</sup> The prehearing conference may address the following:

- i. disputes regarding access to files, evidence, subpoenas, or testimony;
- ii. the time required for the hearing or any need for expedited procedures or decision;
- iii. identification or clarification of legal or other issues that may arise at the hearing;
- iv. identification of and possible agreement to factual issues; and
- v. scheduling and any other matter which will aid in the proper and fair functioning of the hearing.<sup>40</sup>

b. The Human Services Judge shall make a record or otherwise contemporaneously summarize the prehearing conference in writing, which shall be sent to both the person involved in the hearing, the person's attorney or authorized representative, and the agency.<sup>41</sup>

3. ***Analysis and Conclusion.*** There is no dispute that Appellant's appeal involves the Agency's assessment of a SNAP overpayment against Appellant's household. Thus, 7 C.F.R. § 273.15(g)-(h) applies to the timing of the filing of Appellant's appeal request. Under 7 C.F.R. § 273.15(g)-(h), Appellant must have filed her appeal within 90 days of the Agency's May 13, 2020 Notice of Overpayment. Here, the evidence establishes that Appellant filed her appeal on August 14, 2020, or 94 days after the May 13, 2020 Notice of Overpayment.

The evidence further establishes that Appellant failed to timely-file her appeal even though the Agency properly informed her of the right to appeal, the timing for filing an appeal, and the process for appealing. Thus, the evidence establishes that Appellant failed to file her appeal request within 90 days of the Agency's May 13, 2020 Notice of Overpayment. Moreover, 7 C.F.R. § 273.15(g)-(h), does not provide for any good cause exceptions to the 90-day appeal filing requirement. Therefore, because Appellant did not timely file her appeal, her appeal is time-barred. Accordingly, the Human Services Judge recommends that Appellant's appeal be DISMISSED.

#### **RECOMMENDED ORDER**

Based on all of the evidence, I recommend that the Commissioner of Human Services:

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<sup>37</sup> Minn. Stat. § 256.0451, subd. 5(a).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Minn. Stat. § 256.0451, subd. 5(b).

- DISMISS [REDACTED]'s appeal of [REDACTED] County Community Services' May 13, 2020 SNAP Notice of Overpayment as time-barred because the appeal request was not timely filed.

  
Amy J. Chantry  
Human Services Judge

September 15, 2020  
Date

**ORDER**

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

  
Ngoc Nguyen  
Co-Chief Human Services Judge

September 17, 2020  
Date

CC:

[REDACTED], Appellant  
[REDACTED] County Community Services  
[REDACTED], Minnesota Department of Human Services

## FURTHER APPEAL RIGHTS

**This decision is final unless you take further action.**

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action. If you disagree with this decision, you may:

- **Request the appeal be reopened.** This dismissal may be vacated and the appeal reopened if you make a written request showing good cause why this should be done. Examples of good cause include a personal injury, death or serious illness in your family, an emergency or obligation that prevented you or a witness from attending the hearing, lack of notice, excusable neglect or mistake, or other compelling reasons beyond your control. **The request must be in writing and be made within 10 working days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 13.
- **Request the appeal be reconsidered.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 24.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 7.