

DISTRICT OF COLUMBIA
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██████████,
Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES,
Respondent.

Case No.: ██████████

FINAL ORDER

I. Introduction

On September 25, 2018, Petitioner, ██████████, filed a Request for a Hearing to appeal decisions by Respondent, the Department of Human Services (DHS), concerning Temporary Assistance for Needy Families (TANF) benefits. Petitioner represented herself in this matter and testified on her own behalf. Policy Analyst ██████████ appeared and testified for DHS.

After several status conferences, the parties determined that the issue in this case is Petitioner's eligibility for TANF benefits on behalf of her grandchildren from July 2018 through November 2018. An evidentiary hearing was held on February 14, 2019. I admitted into evidence Respondent's Exhibits 200 through 203, and Petitioner's Exhibits 100 through 106.¹

Based on the entire record in this case, I conclude that Petitioner met her burden of proving eligibility for TANF benefits on behalf of four grandchildren for the period beginning July 19, 2018, through November 30, 2018. DHS must promptly issue Petitioner's TANF household a \$2,866 underpayment.

¹ RX 203 (11/20/2018 TANF Benefit Change Notice) and PX 106 (Petitioner's custody case court documents) were submitted after the evidentiary hearing. I left the record open for the parties to submit these documents, and I admitted them into evidence without objection.

[REDACTED].” PX
100. [REDACTED] was an occasional visitor at Petitioner’s home.

9. On July 23, 2018, Petitioner visited the DHS Service Center and submitted the letters from [REDACTED] and [REDACTED] as part of her TANF/SNAP application.
10. Petitioner called the DHS Service Center several times in August 2018 but was unable to get definitive information about her TANF/SNAP application. A DHS investigator visited Petitioner’s home in September 2018 and talked with Petitioner and her grandchildren.
11. Petitioner spoke with another DHS caseworker in October 2018 and was informed that the children’s father told DHS that the children were living with him.
12. On September 25, 2018, Petitioner filed a fair hearing request with the Office of Administrative Hearings (OAH) to contest DHS’s failure to make an eligibility determination on her TANF/SNAP application.
13. On October 4, 2018, Petitioner attended the DHS Administrative Review Conference. The Hearing and Appeals Examiner determined that DHS failed to register Petitioner’s July TANF/SNAP application and notify Petitioner of an eligibility decision. RX 202.
14. On October 11, 2018, the Hearing and Appeals Examiner remanded the case to the [REDACTED] Service Center with instructions to “register the applications and complete the application process.” RX 202. The Examiner also instructed the Service Center to “follow the agency’s process to determine residency for [Petitioner’s five grandchildren] based on the fact that the customer claims the children reside with her and the father has an active case for them.” *Id.*
15. On October 19, 2018, the [REDACTED] Service Center Supervisor/Program Manager submitted the following response to the remand order.

The 07/20/18 TANF and Medicaid (for grandchildren) applications were denied due to her grandchildren being active in another case – SNAP was denied as income exceeded the allowable limit for the household. Ms. Lee came into the Ft. Davis office on 10/19/18 and applied for SNAP, TANF and Medicaid. The programs were registered and she was informed that she will receive notices for each program.

RX 202. The Service Center did not determine the residency of the grandchildren from July through October 2019. *Id.*

16. On November 20, 2018, DHS issued Petitioner a “TANF Benefit Change” notice. RX 203. The notice listed [REDACTED] as the eligible TANF household members. *Id.* The notice stated that, for the period of November 1, 2018 through November 30, 2018, Petitioner’s household size of one was eligible for a benefit amount of \$404; and for the period of December 1, 2018 through September 30, 2019, Petitioner’s household size of four was eligible for \$758 per month. *Id.* The notice did not explain how or why DHS determined that Petitioner had a household size of one for November 2018 and a household size of four from December 2018 forward.

17. On January 23, 2019, Petitioner attended her custody hearing at the Circuit Court [REDACTED], to seek court-ordered custody over her five grandchildren. PX 106. During the hearing, the judge stated:

From May [2018] to January [2019], the children were with their grandmother. As easy as [the father] kept the children [for a brief time in January], about a week and a half ago, he could have done this the whole time. They’re his children. Just pick them up. So I have to ask myself why didn’t [he]. ‘Cause [he] did in January, a week and a half ago. [He] could have done it back in June. So does that mean that that was an indifference or lack of – or a discharge of his duties? Yes.

Id., at H-43.

18. On February 28, 2019, the Circuit Court for Prince George’s County issued an order granting Petitioner primary physical custody over her five grandchildren. PX 106.

III. Conclusions of Law

A. Jurisdiction

OAH has jurisdiction over this case pursuant to D.C. Code § 2-1831.03(a)(2), which gives OAH authority to review appeals of decisions by DHS.

B. Statement of Issues

Petitioner does not dispute DHS’s determination regarding SNAP and medical assistance benefits. Petitioner does not dispute DHS’s determination regarding Petitioner’s household size and benefit amount for TANF purposes, beginning December 2018. Petitioner’s undisputed household size beginning December 2018 was four: [REDACTED]. Petitioner and [REDACTED] are excluded from the TANF group. Petitioner is optionally excluded as a caretaker relative – presumably to allow her eligible

grandchildren to qualify for benefits.² [REDACTED] is mandatorily excluded because he receives SSI.³ Therefore, with a household of four with no income, DHS determined that the household qualified for a benefit amount of \$785 beginning December 2018. Petitioner does not dispute this amount.

The contested issues in this case are whether Petitioner's household was eligible for TANF benefits from July through October 2018 and whether Petitioner's household received the correct benefit amount in November 2018.

B. Burden of Proof

The District of Columbia Administrative Procedure Act states that “the proponent of a rule or order shall have the burden of proof” in a contested case.⁴ The proponent of an order is the party seeking to change the status quo.⁵ In this case, Petitioner was an initial TANF applicant and seeks new or additional benefits for the months of July through November 2018. Therefore, Petitioner seeks to change the status quo and has the burden of proving by a preponderance of the evidence that her household size of four was eligible for TANF from July through November 2018.

C. Analysis of Petitioner's TANF eligibility from July through October 2018

Under District of Columbia law, “[w]hen a relative applies for TANF in behalf of a child living in such relative's home and the child's parents are maintaining a home elsewhere, the Mayor shall determine whether the child is in fact deprived of parental care and support.”⁶ If so, the relative may be eligible for TANF on behalf of the child.

² D.C. Code § 4-205.15(d).

³ D.C. Code § 4-205.15(e)(1).

⁴ D.C. Official Code § 2-509(b).

⁵ *See Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 139 (1997).

⁶ D.C. Code § 4-205.23(a).

Petitioner applied for TANF on behalf of her biological grandchildren on July 19, 2018⁷; and the children's father resided in another home. Whether Petitioner was eligible for TANF on behalf of her grandchildren from July through October 2018 involves two questions: (1) were the children living with Petitioner, and (2) were the children deprived of parental care and support?

Regarding the first question, DHS reasonably defines "living together" or "living with" as "sharing a home except for temporary absences."⁸ An absence is temporary when (1) "the caretaker continues to exercise responsibility for care and control of the child," (2) "the family has definite plans to unite," and (3) the absence "has lasted, or is expected to last, 90 days or less."⁹ Petitioner's credible testimony and reliable evidence sufficiently prove that Petitioner's grandchildren have lived with her (i.e. they have shared the same home) since June 2018, and that the children's stay with Petitioner was not a temporary absence from their father.

First, Petitioner provided written statements from her friends, [REDACTED], [REDACTED], verifying the children's residence with Petitioner since June 2018. The statements are hearsay evidence, in that neither [REDACTED] were present at the evidentiary hearing, and their written statements were admitted for the truth of the matter asserted (i.e. the grandchildren have lived with Petitioner since June 2018). But, hearsay evidence is admissible at administrative hearings before OAH, and I find the evidence reliable.¹⁰ The statements are handwritten and signed, and statements of this nature are the type of evidence DHS routinely relies upon to verify that a child lives with a TANF applicant.¹¹ Petitioner credibly testified that a DHS caseworker specifically instructed Petitioner to obtain the statements as proof that her

⁷ The application was date-stamped July 20, 2018. However, the DHS caseworker unlawfully denied Petitioner's application on July 19, 2018. Therefore, I credit July 19, 2018 as the application date. *See* D.C. Code § 4-205.19 ("Application for public assistance *shall be accepted* from, or on behalf of, any person who believes himself or herself eligible for public assistance") (emphasis added); Economic Security Administration (ESA) Policy Manual, Pt. III, Ch. 1, § 1.3 ("IMA staff *must accept all applications* presented at a Service Center during regular business hours.") (emphasis added).

⁸ ESA Policy Manual, Pt. IV, Ch. 1, § 1.11. The ESA Policy Manual is not legal authority. But I defer to the agency's policy so long as the policy is consistent with, and reasonably interprets, applicable law.

⁹ ESA Policy Manual, Pt. IV, Ch. 1, § 1.15.

¹⁰ 1 DCMR 2821.12.

¹¹ ESA Policy Manual, Pt. IV, Ch. 5, § 5.8.2 (listing "statement from non-relative" as an acceptable form of "living with" verification).

grandchildren lived with her. And, DHS did not object to the statements' admission into evidence. So, I give substantial weight to the statements from Petitioner's friends.

Second, Petitioner provided a court order granting Petitioner primary physical custody of her five grandchildren.¹² Petitioner also submitted a partial transcript of the January 23, 2019, custody hearing in which the judge stated that “[f]rom May [2018] to January [2019] the children were with their grandmother.”¹³ This seven-month period was not a temporary absence from the father, primarily because the period was well beyond the 90-day maximum limit for a temporary absence. In sum, Petitioner's testimony and evidence proves by a preponderance of the evidence that Petitioner's grandchildren have lived with her since June 2008.

The next question is whether the testimony and evidence establish that the children were deprived of parental care and support. Under District law, DHS must determine whether the children were deprived of parental care and support when a relative applies for TANF on behalf of a child.¹⁴ But at the February 14, 2019, evidentiary hearing, DHS offered no testimony or evidence to show that the agency considered the issue. Following the ARC, the [REDACTED] Service Center received instructions to “follow the agency's process to determine residency for [Petitioner's grandchildren] based on the fact that the customer claims the children reside with her and the father has an active case for them.”¹⁵ In the response, DHS provided no analysis, simply concluding that TANF was “denied due to [Petitioner's] grandchildren being active in another case.”¹⁶ DHS provided no analysis of the children's residency and did not analyze whether the children were deprived of parental care and support or should have been included in their father's TANF case.

The record in this case is sufficient to support a conclusion that Petitioner has been the children's caretaker since June 2008 and that the children were deprived of parental care and support since that time. For a relative to be deemed the “caretaker” of a child, the relative “must be responsible for the day-to-day care of the child,” including “physical care, supervision, and

¹² PX 106.

¹³ *Id.* at H-43.

¹⁴ D.C. Code § 4-205.23(a).

¹⁵ RX 202.

¹⁶ *Id.*

making decisions about the child.”¹⁷ As discussed above, the children have lived with Petitioner since June 2008; therefore, Petitioner has been responsible for their day-to-day care and wellbeing.

Further, Petitioner was granted primary physical custody of her five grandchildren precisely because the children’s father chose not to take the children into his home following the death of the children’s mother. After noting that the children resided with Petitioner from May 2018 through January 2019, the judge stated, “[a]s easy as [the father] kept the children [for a brief time in January], about a week and a half ago... [he] could have done it back in June. So does that mean that that was an indifference or lack of – or a discharge of his duties? Yes.” Based on this evidence, I conclude that the children were not receiving care and support from their father while they were living with Petitioner since June 2018. Rather, Petitioner has had primary care of her grandchildren since June 2018 and has provided for their daily needs since that time.

In conclusion, Petitioner’s grandchildren have lived with Petitioner since June 2018, and since that time they have been deprived of parental care and support. Therefore, DHS should have processed Petitioner’s July 19, 2018 TANF application to determine the proper benefit amount for the four eligible grandchildren.

D. Analysis of Petitioner’s TANF benefit amount from June 2018 through November 2018

To be eligible for TANF payments, the household must have a net income below the Standard of Assistance for relevant household size.¹⁸ Petitioner’s TANF household, since the date of application, has consisted of four members: [REDACTED]

[REDACTED]. As a caretaker relative, Petitioner is optionally excluded to prevent her income from disqualifying her eligible grandchildren or lowering their TANF benefit amount.¹⁹

[REDACTED] is mandatorily excluded because he received SSI.²⁰

The Standard of Assistance for a household of four is \$870.²¹ In this case, the four eligible grandchildren receive no income. Therefore, the group’s income is below the Standard of

¹⁷ ESA Policy Manual, Pt. IV, Ch. 5, § 5.6.

¹⁸ See 29 DCMR § 5814.4-7.

¹⁹ See D.C. Code § 4-205.15(d); ESA Policy Manual, Pt. IV, Ch. 1, § 1.4.

²⁰ D.C. Code § 4-205.15(d).

²¹ D.C. Code § 4-205.15(e)(1).

Assistance for a group of four, and the group is eligible to receive TANF benefits at the Payment Level for a household of four.²²

The Payment Level increases on October 1 of every year – the start of the District of Columbia government fiscal year (FY) – to reflect the rate of inflation or a percentage increase mandated by the D.C. Code.²³ The FY 2018 Payment Level for a household of four was \$703 per month.²⁴ The D.C. Code required an increase of 11.8% on October 1, 2018, the start of FY 2019.²⁵ Therefore, the FY 2019 Payment Level for a household of four was \$785.²⁶

The following chart shows the amount Petitioner’s household should have received for the months of July 2018 through November 2018, versus the amounts received:

<u>FY 2018</u>	<u>Eligible</u>	<u>Actual</u>	<u>FY 2019</u>	<u>Eligible</u>	<u>Actual</u>
July: ²⁷	\$294	\$0	October:	\$785	\$0
August:	\$703	\$0	November:	\$785	\$404
September:	\$703	\$0			

For November 2018, DHS determined that Petitioner had a household size of one, resulting in a benefit amount of \$404. But, DHS did not explain why Petitioner only qualified for a household size of one in November. Therefore, I conclude that Petitioner should have qualified for a household size of four in November, resulting in a payment of \$785. Since Petitioner only received \$404 in November, she received an underpayment of \$381 for that month.

²² See D.C. Code § 4-205.52; 29 DCMR § 7200.2.

²³ D.C. Code § 4-205.52(d-1).

²⁴ 29 DCMR § 7200.2 (providing a chart with payment levels made after October 1, 2017, the start of FY 2018).

²⁵ See D.C. Code § 4-205.52(d-1)(1)(C).

²⁶ $\$703 + (\$703 \times 0.118) = \$785.95$ (rounded down to \$785)

²⁷ For TANF, the “amount payable for the initial month shall be prorated by multiplying the amount payable if payment were made for the entire month by the ratio of the days in the month including and following the date of application to the total number of days in a month.” D.C. Code § 4-208.01(a). In this case, July is calculated as follows: $\$703 \times (13/31) = \294.80 (rounded down to \$294), where \$703 is the amount payable for an entire month, 13 is the number of days from July 19 (the date of application) to July 31, and 31 is the number of days in July.

Adding the underpayments for each month from July through November 2018 equals a total underpayment amount of \$2,866.²⁸ Therefore, DHS must promptly issue Petitioner's household a TANF underpayment of \$2,866.²⁹ To the extent this Final Order allows two households to receive payments on behalf of the same children, DHS must seek overpayments from the children's father, who presumably received TANF payments when the children were not living with him.

V. Order

Based on the above findings of fact, conclusions of law, and the entire record in this matter, it is this **13th** day of **March, 2020**:

ORDERED, that Petitioner is eligible to receive TANF payments on behalf of her four eligible grandchildren from the period of July 19, 2018 through November 30, 2018; and it is further,

ORDERED, that Respondent must promptly issue Petitioner's household a TANF underpayment of \$2,866; and it is further

ORDERED, that any party may ask for reconsideration or relief from this Order as described below, and it is further

ORDERED, that any party may appeal this Order by following the instructions below.

Wanda R. Tucker
Administrative Law Judge

²⁸ \$294(July) + \$703(Aug.) + \$703(Sept.) + \$785(Oct.) + \$381(Nov.) = \$2,866

²⁹ See 29 DCMR § 5817.3.

After an administrative law judge has issued a Final Order, a party may ask the judge to change the Final Order and may ask the District of Columbia Court of Appeals to change the Final Order. There are important time limitations described below for doing so.

HOW TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO CHANGE THE FINAL ORDER

Under certain limited circumstances and within certain time limits, a party may file a written request asking the administrative law judge to change a final order. OAH Rule 2828 explains the circumstances under which such a request may be made. Rule 2828 and other OAH rules are available at www.oah.dc.gov and at OAH's office.

A request to change a final order does not affect the party's obligation to comply with the final order and to pay any fine or penalty. If a request to change a final order is received at OAH **within 10 calendar days** of the date the Final Order was filed (**15 calendar days** if OAH mailed the final order to you), the period for filing an appeal with the District of Columbia Court of Appeals does not begin to run until the Administrative Law Judge rules on the request. **A request for a change in a final order will not be considered if it is received at OAH more than 120 calendar days of the date the Final Order was filed (125 calendar days if OAH mailed the Final Order to you).**

HOW TO APPEAL THE FINAL ORDER TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a Petition for Review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Room 115
Washington, DC 20001

The Petition for Review (and required copies) may be mailed or delivered to the Court of Appeals, and must be received there within 30 calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2). There is a \$100 fee for filing a Petition for Review. Persons who are unable to pay the filing fee may file a motion and affidavit to proceed without the payment of the fee when they file the Petition for Review. Information on petitions for review can be found in Title III of the Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at www.dcappeals.gov.