

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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TP 25-00486

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, NOWAK, AND KEANE, JJ.

IN THE MATTER OF BRETT RAWLS, PETITIONER,

V

MEMORANDUM AND ORDER

BARBARA GUINN, AS ACTING COMMISSIONER,
NEW YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE, RESPONDENT.

NEIGHBORHOOD LEGAL SERVICES, INC., BUFFALO (LARRY E. WATERS, JR., OF
COUNSEL), FOR PETITIONER.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BEEZLY J. KIERNAN OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [Michael Siragusa, A.J.], entered March 17, 2025) to review a determination of respondent. The determination, among other things, affirmed the finding by the Erie County Department of Social Services that petitioner had committed an intentional program violation resulting in an overpayment of public assistance and an overissuance of Supplemental Nutritional Assistance Program benefits.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: In this CPLR article 78 proceeding transferred to this Court pursuant to CPLR 7804 (g), petitioner seeks to annul the determination of respondent that, inter alia, affirmed the decision of a social services agency, following an administrative disqualification hearing (see 18 NYCRR 359.7), finding that petitioner received an overpayment of public assistance and an overissuance of Supplemental Nutritional Assistance Program (SNAP) benefits as a result of an intentional program violation.

We conclude that substantial evidence supports respondent's determination that the agency established by clear and convincing evidence that petitioner committed an intentional program violation in obtaining public assistance payments and SNAP benefits (see 18 NYCRR 359.3; *Matter of Smith v Wing*, 1 AD3d 933, 933-934 [4th Dept 2003]; *Matter of Williams v Perales*, 156 AD2d 697, 697-698 [2d Dept 1989]; *Matter of Velasquez v Perales*, 151 AD2d 766, 767 [2d Dept 1989]). The agency established at the hearing that petitioner, knowing he was

required to disclose any employment and income, disclosed income from one employer but failed to disclose income from another employer (see *Smith*, 1 AD3d at 934; *Velasquez*, 151 AD2d at 767). Contrary to petitioner's contention, it is readily inferable from his conduct that he acted intentionally (see *Smith*, 1 AD3d at 934). The testimony of petitioner that he did not intentionally conceal his additional employment and income presented a credibility issue for respondent to resolve (see *id.*).

Finally, contrary to petitioner's further contention, we conclude that he is not entitled to attorneys' fees pursuant to the New York State Equal Access to Justice Act (CPLR art 86) inasmuch as he is not a prevailing party (see CPLR 8601 [a]; 8602 [f]; see generally *Matter of Glosenger v Perales*, 83 NY2d 984, 989 [1994]).