

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Families First Program

New Jersey Supplemental Nutrition Assistance Program

Updates Relating to Aging and Expungement of NJ SNAP and WFNJ Benefits

Proposed Repeal and New Rule: N.J.A.C. 10:88-4.2

Proposed Amendments: N.J.A.C. 10:87-2.26, 9.11, and 11.20; and 10:88-1.2, 1.3, 1.4, 2.3, 3.1, 4.1, 6.2, and 6.3

Proposed Repeals: N.J.A.C. 10:88-4.3 and 4.4

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12; 7 U.S.C. §§ 2011 et seq.; and 7 CFR Part 271.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-149.

Submit comments by January 6, 2023, to:

Miguel Mendez, Administrative Practice Officer
Division of Family Development
PO Box 716
Trenton, New Jersey 08625-0716
or through email: DFD-Regulations@dhs.nj.gov

The agency proposal follows:

Summary

As the Department of Human Services (Department) is providing a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes amendments, repeals, and a new rule at N.J.A.C. 10:87 and 10:88 to bring the chapters up to date with current requirements of the Federal Supplemental Nutrition Assistance Program (SNAP), 7 U.S.C. §§ 2011 et seq., and the current Federal regulations promulgated thereunder, 7 CFR Part 271, particularly as these Federal laws relate to the expungement of unused SNAP benefits. The proposed changes also codify the elimination of the aging process for both New Jersey Supplemental Nutrition Assistance Program (NJ SNAP) benefits and cash benefits. The proposed changes extend current timeframes for expungement of cash benefits so that procedures and timelines are consistent across the programs. The proposed amendments at N.J.A.C. 10:87 (the NJ SNAP Manual) parallel the proposed amendments at N.J.A.C. 10:88 (the Families First Program) to ensure programmatic consistency.

The proposed amendments at N.J.A.C. 10:87 establish consistency with amendments proposed at N.J.A.C. 10:88. Specifically, the proposed amendments at N.J.A.C. 10:87-2.26(b)1 update the rules on mailing Families First cards to correspond with current provisions at N.J.A.C. 10:88-2.3, by removing the prohibition of mailing the card. Proposed amendments at N.J.A.C. 10:87-9.11, which address procedures for expungement of electronic NJ SNAP benefits, incorporate by reference, the new expungement processes codified at new N.J.A.C. 10:88-4.2. Proposed amendments at N.J.A.C. 10:87-11.20, which address claims against SNAP households, parallel proposed amendments at N.J.A.C. 10:88-4, and delete references to reactivated and stale (aged) accounts.

At N.J.A.C. 10:88-1.2, the authority for the Families First Program has been amended to broadly reference Federal and State laws; both statutes and rules govern the program.

At N.J.A.C. 10:88-1.3(a)3 and 2.3(c)11, the term “aging” is deleted and replaced with the term “expungement” because benefits will no longer be aged prior to expungement, but instead will remain available until the

expungement time limit is reached. Similarly, other sections throughout the proposed amendments have been revised by eliminating references to “aging” and/or replacing “aging” with “expunge,” as appropriate.

At N.J.A.C. 10:88-1.4, definitions of the terms “benefit,” “expungement,” and “inactive account” have been added because these terms were not been previously defined and are used throughout the chapter. The definition of “aging” has been deleted because aging of benefits has been eliminated. The definition of “Supplemental Nutrition Assistance Program” has been amended to parallel the definition in the final Federal regulation governing benefit expungement at 7 CFR 271.2.

At N.J.A.C. 10:88-2.3(c)11 and 4.1, code references have been updated, as appropriate.

At N.J.A.C. 10:88-3.1(d), references to “food stamps” have been deleted. Chapter 87, Food Stamp Manual, was renamed New Jersey Supplemental Nutrition Assistance Program (NJ SNAP) Manual by administrative change. See: 44 N.J.R. 1529(a).

The proposed amendments, new rule, and repeals at N.J.A.C. 10:88-4.1, 4.2, 4.3, and 4.4 eliminate the aging of NJ SNAP and cash benefits prior to their expungement. Benefits will remain readily available to households until they are expunged.

New N.J.A.C. 10:88-4.2 eliminates all references to the aging of NJ SNAP and cash benefits and addresses only expungement of NJ SNAP and cash benefits. Federal law requires expungement of unused SNAP benefits in inactive accounts and the Federal timeframe for expungement of these benefits has been changed from 12 months to nine months (7 U.S.C. § 2016). Federal regulations at 7 CFR Part 274 (7 CFR 274.2(i)1i), published at 85 FR 52025, define nine months as 274 days. New N.J.A.C. 10:88-4.2(a) reflects these Federal requirements. Additionally, new N.J.A.C. 10:88-4.2(a) pertains to cash benefits. The timeframe for expunging unused cash benefits is extended from three months to nine months, so that procedures and timelines are consistent across the cash assistance and NJ SNAP programs. In conformance with 7 CFR 274.2(i)1i, new N.J.A.C. 10:88-4.2(a) replaces aging warning notices with a warning notice to households prior to the expungement of benefits. New N.J.A.C. 10:88-4.2(b) provides for the expungement of benefits where all members of the household are deceased.

In the regulatory provisions governing claims, N.J.A.C. 10:88-6.2(d) has been deleted as it references an obsolete Federal form. Recodified N.J.A.C. 10:88-6.2(d) provides for offsetting any SNAP claim balance by the amount of any benefits that have been expunged, as required at Federal regulations at 7 CFR 273.18(c)1i1iD.

At N.J.A.C. 10:88-6.3, the section heading is changed to reflect the elimination of the aging process in the Work First New Jersey cash benefits program, and subsection (a) has been added to state that expunged cash benefits must be used to offset cash claims.

Social Impact

The Department anticipates that the proposed amendments, repeals, and new rule will have a positive impact on SNAP and cash benefit recipients, as well as administering agencies. By eliminating the suspension or “aging” of unused SNAP benefits after six months, SNAP benefits will remain readily available to recipients for an additional three months, for a total of nine months. This will provide recipients with more time to use accrued SNAP benefits and avoid the administrative burden associated with reopening a suspended case with aged benefits. Eliminating the aging and expungement of cash benefits after three months and extending the timeframe for expungement of unused cash benefits to nine months, will provide cash recipients with more time to use accrued benefits before they are permanently expunged.

Economic Impact

The economic impact of the proposed amendments, repeals, and new rule is expected to be primarily positive. Eliminating benefit aging will result in SNAP benefits remaining readily available for spending for an additional three months, and cash benefits remaining readily available for spending for an additional six months, before they are expunged. After nine months of account inactivity, SNAP and cash benefits older than nine months are expunged. Shortening the timeframe for expungement of SNAP benefits from 12 months to nine months may have a negative economic impact, as some clients may lose access to benefits several months sooner, but clients receive warning notices before benefits are

expunged, and any negative economic impact is expected to be negligible. The nine month timeframe for SNAP benefits is required by Federal law.

Federal Standards Statement

The proposed amendments, repeals, and new rule implement the Federal requirements at 7 U.S.C. § 2016 and 85 FR 52025. The Department has reviewed the applicable Federal laws and regulations and that review indicates that the proposed amendments, repeals, and new rule do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments, repeals, and new rule will not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments, repeals, and new rule will not have an impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments, repeals, and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, repeals, and new rule impose no reporting, recordkeeping, or other compliance requirements on small businesses and, thus, a regulatory flexibility analysis is not required. The proposed amendments, repeals, and new rule govern client access to cash and NJ SNAP benefits through electronic benefit transactions and make parallel changes to the NJ SNAP Manual.

Housing Affordability Impact Analysis

The proposed amendments, repeals, and new rule will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules govern a public assistance program designed to certify eligibility for the Families First Program.

Smart Growth Development Impact Analysis

The proposed amendments, repeals, and new rule will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules govern a public assistance program designed to certify eligibility for the NJ SNAP program.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Human Services has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:88-4.2, 4.3, and 4.4.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 87

NEW JERSEY SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (NJ SNAP) MANUAL

SUBCHAPTER 2. THE APPLICATION PROCESS

10:87-2.26 Normal processing standard

(a) (No change.)

(b) An opportunity to participate consists of issuing benefits to the household's Families First account in accordance with any staggered issuance procedure [which] **that** has been established by a CWA. The Families First card is the standard method of distributing NJ SNAP program benefits, serving also to provide cash benefits for Temporary Assistance for Needy Families and Debt Reduction Act child support bonus payments to eligible households.

1. At the time that a CWA certifies a household's eligibility to receive benefits, the State's automated case file and issuance system (also known as FAMIS), creates a Families First account on the Families First automated account network. A Families First card shall be made available to the household not later than 30 days after the application for NJ SNAP benefits, if eligible. The CWA then contacts the household for an initial training session and the selection of a Personal Identification Number (PIN). [In no event shall the Families First card be mailed to the payee.]

2.-3. (No change.)

(c) (No change.)

SUBCHAPTER 9. CERTIFICATION-RELATED PROCEDURES

10:87-9.11 Procedures for [recovery] **expungement** of electronic NJ SNAP benefits

[(a)] Unused NJ SNAP benefits will remain accessible to the household until they are [removed] **expunged** from the EBT [database] **account pursuant to N.J.A.C. 10:88-4.2.**

[1. Households that have not accessed their EBT NJ SNAP benefits for five months will be notified via a system-generated notice. The CWA shall notify those households that they have not used any of their NJ SNAP benefits for five months and that their NJ SNAP case will be placed in suspended status at six months, if they do not use their NJ SNAP benefits during the next month. No notice will be generated when the case is placed in suspension status.

2. All unused NJ SNAP benefits will be aged off of the EBT account and cancelled on FAMIS. Aged NJ SNAP benefits will continue to be held off-line by FAMIS for possible reinstatement during the one-year timeframe.

3. Benefits that have not been accessed by the household for 12 months shall be expunged. The CWA shall notify the household if their benefits are moved off-line and shall make the benefits available within 48 hours upon the household's request.]

SUBCHAPTER 11. INCORRECT ISSUANCE

10:87-11.20 Claims against households

(a)-(o) (No change.)

(p) Collection methods for claims are as follows:

1. (No change.)

2. Rules on collecting benefits from EBT accounts are as follows:

i. The CWA shall allow a household to pay its claim using benefits from its EBT account in accordance with N.J.A.C. 10:88-6.2. The CWA shall comply with the following EBT claims collection and adjustment requirements:

(1) For collecting from active [(or reactivated)] EBT benefits, the CWA needs written permission, which may be obtained in advance and done in accordance with (p)2iii below; or oral permission for one time reductions with the CWA sending the household a receipt of the transaction within 10 days. The retention rates described at (v) below apply to this collection.

(2) For collecting from [stale] **expunged** EBT benefits, the CWA shall mail or otherwise deliver to the household, written notification that **expunged benefits will be applied to any** [the CWA intends to apply the benefits to the] outstanding claim [, and give the household at least 10 days to notify the CWA that it does not want to use these benefits to pay the claim]. The retention rates described at (v) below apply to this collection.

(3) (No change.)

ii.-iii. (No change.)

3.-9. (No change.)

(q)-(y) (No change.)

CHAPTER 88

FAMILIES FIRST PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:88-1.2 Authority

(a) The operation of a public assistance EBT system is authorized by both Federal [regulation] and State [statute] **laws and rules.**

- (b) (No change.)
- (c) Federal [regulations] **law** concerning EBT [are] **may be found at 7 U.S.C. § 2016 and 7 CFR Part 274.**
- (d)-(f) (No change.)

10:88-1.3 Properties of Families First accounts

- (a) Families First accounts have the following properties:
 - 1.-2. (No change.)
 - 3. Account balances which are not used by a recipient in the month of issuance shall be carried forward into the following month. [The accounts shall be accessed] **A recipient shall access their account** periodically in order to avoid [account aging] **benefit expungement**, pursuant to N.J.A.C. 10:88-[4]4.2.
 - 4.-5. (No change.)

10:88-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...
 [“Aging” means the procedure of terminating or suspending a household’s Families First account, and closing or suspending the household’s public assistance case, when the household has not accessed the Families First account for three months.]

...
“Benefit” means the value of cash or NJ SNAP assistance provided to a household through an EBT card.

...
“Expungement” means permanent removal of benefits from a Families First account.

...
“Inactive account” means an account where the household has not taken any action that affects the balance of the account, such as making a purchase, return, or cash withdrawal.

...
 [“Supplemental Nutrition Assistance Program (SNAP)” means the Federally funded assistance program authorized by the Food Stamp Act of 1964 that enables individuals and households to purchase food items to maintain nutritionally adequate diets. Eligibility is determined and benefits are issued by the states.]

...
“Supplemental Nutrition Assistance Program (SNAP)” means the program operated pursuant to the Food and Nutrition Act of 2008.

SUBCHAPTER 2. RECIPIENT TRAINING

10:88-2.3 Card issuance.

- (a)-(b) (No change.)
- (c) The payee shall receive training on the following items:
 - 1.-10. (No change.)
 - 11. The [“aging”] **expungement** process, as specified [in] at N.J.A.C. 10:88-4.2 [and 4.3].
- (d)-(e) (No change.)

SUBCHAPTER 3. CARD UTILIZATION

10:88-3.1 Obtaining benefits

- (a)-(c) (No change.)
- (d) [Food stamp] **NJ SNAP** benefits shall not be converted into cash.
- (e)-(g) (No change.)

SUBCHAPTER 4. INACTIVE ACCOUNTS [(AGING)] AND EXPUNGEMENT OF BENEFITS

10:88-4.1 Overview

The Families First system shall [suspend or terminate] **expunge** Families First cash and NJ SNAP [accounts that have not been accessed] **benefits** in accordance with N.J.A.C. 10:88-4.2 [and 4.4, as appropriate].

10:88-4.2 Expungement of Families First NJ SNAP and cash benefits

(a) **NJ SNAP and cash assistance benefits that are 274 days old or older shall be expunged from the EBT account when the EBT account has been inactive for 274 days.**

1. At least 30 days prior to the expungement of NJ SNAP or cash benefits, the Department shall provide a household with a written pre-expungement notice informing the household that the EBT account is inactive and the date that benefits will be expunged should the account remain inactive. The notice shall also include the steps necessary to prevent the expungement.

2. On the 274th day of account inactivity, any benefits on the EBT account that are older than 274 days will be expunged. Any benefits on the account that are under 274 days old will remain available on the account until the benefit reaches the 274th day.

3. Should the account subsequently become active, the expungement timeline for the remaining unexpunged benefits will reset until the account has been inactive for another 274 days.

(b) Benefits may be immediately expunged without notice in situations where it has been verified that all recipient members of the household are deceased.

SUBCHAPTER 6 FISCAL PROCEDURES

10:88-6.2 NJ SNAP claims

- (a) (No change.)
- (b) Any payments made using Families First **NJ SNAP** benefits should be reported on line 15 of the FNS-209, Status of Claims Against Households report.

(c) (No change.)
 [(d) The CWA shall secure and retain an FNS-135, Affidavit of Return or Exchange of Food Coupons, signed by the household.]

[(e)] (d) CWAs [may] **shall** offset Families First **NJ SNAP** benefits that [are about to be] **have been** expunged against outstanding **NJ SNAP** claims [if the CWA is able to secure the household’s written permission prior to expunging the benefits from the account]. This collection would then be reported on line [15]3(b) of the FNS-209 report.

10:88-6.3 [Aged Families First cash benefits] **WFNJ cash claims**

(a) **CWAs shall offset Families First cash benefits that have been expunged against outstanding cash claims.**

(b) [Aged] **Expunged** Families First cash benefits shall be credited on the CWA’s fiscal reports.

(a)

DIVISION OF FAMILY DEVELOPMENT

Child Support Program

Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Proposed Amendments: N.J.A.C. 10:110-1A.1, 3.1, 3.3, 9.5, 11.2, 12.2, 13.1, 14.2, 15.2, 20.3, and 20.4

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

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