

STATE OF NEW YORK
COURT OF APPEALS

In the Matter of the Application of

TINA LEGGIO,

Petitioner-Appellant,

Index No. 10161/05
Supreme Court,
Suffolk County

For a Judgment Pursuant to Article 78
of the Civil Practice Law & Rules,

-against-

Docket No. 2016-05966
Appellate Division
Second Department

SHARON DEVINE, et al.,

Respondent-Respondent.

**MEMORANDUM OF LAW IN OPPOSITION TO
MOTION FOR LEAVE TO APPEAL**

BARBARA D. UNDERWOOD
Attorney General
State of New York
Attorney for Respondent
28 Liberty Street
New York, NY 10005
(212) 416-6073
(212) 416-8962 (f)

ANDREW W. AMEND
Senior Assistant Solicitor General
PHILIP V. TISNE
Assistant Solicitor General
of Counsel

Dated: August 16, 2018

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE	3
A. Relevant Statutory and Regulatory Background.....	3
B. Factual Background and Procedural History	6
REASONS FOR DENYING LEAVE.....	8
A. This Matter Presents a Narrow, Case-Specific Issue That Does Not Warrant This Court’s Review.....	9
B. The Primary Issue Raised by Petitioner Would Not Affect the Outcome Here, in Any Event.....	11
C. Petitioner’s Alternative Argument for Leave Also Fails.....	14
CONCLUSION.....	15

PRELIMINARY STATEMENT

Petitioner Tina Leggio seeks leave to appeal to this Court from a decision of the Appellate Division, Second Department, confirming a decision by the New York State Office of Temporary and Disability Assistance (OTDA),¹ which denied petitioner's application for benefits under the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamps program.

Leave should be denied. This individual benefits case does not raise any issue of statewide importance or any split in authority. *See* 22 N.Y.C.R.R. § 500.22(b)(4). Instead, it raises case-specific issues that are confined to the unique facts of petitioner's application for SNAP benefits. Any decision by this Court would thus affect only a small number of cases involving the same particular combination of circumstances, i.e., an application for household SNAP benefits by a custodial parent who (i) receives child support payments from a noncustodial parent (ii) to support

¹ Barbara Guinn is currently the Executive Deputy Commissioner of OTDA.

children who must be included in the custodial parent's SNAP household and (iii) who attend college at least half-time and who live at home and (iv) who fail to comply with the SNAP program's eligibility rules for students. Such fact patterns are not common, as the dearth of case law from this or any other jurisdiction attests. A decision by this Court would thus have only a minimal impact beyond this case. Discretionary review is therefore unwarranted.

Moreover, the primary issue that petitioner seeks to raise in this Court is immaterial to the outcome of this case because petitioner's claim for SNAP benefits was properly denied for other reasons. There was thus no error in the ultimate disposition of petitioner's application for benefits that would warrant this Court's discretionary review of this case.

Finally, petitioner fares no better with her alternative argument that leave is warranted to address her meritless claim that her college-student children should have been excluded from her household for SNAP purposes. Petitioner's argument is squarely foreclosed by the governing statutory and regulatory provisions, and she fails to show otherwise.

STATEMENT OF THE CASE²

A. Relevant Statutory and Regulatory Background

SNAP is a federal program that provides assistance to low-income households to buy food. *See* 7 U.S.C. § 2011. A household's eligibility for benefits is determined by the household's composition (i.e., the number of members in the household) and its income (i.e., the combined income of all household members, which is compared against a threshold amount to determine the household's SNAP eligibility and calculate its benefits). *See, e.g.,* Cong. Res. Serv., *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits* at 1-2 (2014). A highly detailed set of federal and state regulations governs how to determine household composition and income for the purposes of determining SNAP

² The full background of this case is set forth in the State's brief to the Second Department, as well as its opposition to petitioner's motion for leave in the Second Department. *See* Brief for State Respondent ("State Br.") at 3-10; *see also* Aff. in Opp. to Mot. for Reargument and Leave to Appeal ("App. Div. Leave Opp.") ¶¶ 4-11. The following summary is offered for the Court's convenience.

eligibility and awarding benefits. This case involves the rules governing both household composition and household income.

For purposes of determining a household's composition, federal and state SNAP regulations generally consider a "household" to be any group of individuals who live together and typically purchase food and consume meals together. *See* 7 C.F.R. § 273.1(a); 18 N.Y.C.R.R. § 387.1(x)(1). The regulations provide, however, that some individuals living together *must* be considered part of a single household, regardless of whether they regularly buy food and eat together. For instance, parents and their children under the age of 22 who live together must be considered part of the same household. *See* 7 C.F.R. § 273.1(b)(1)(ii); 18 N.Y.C.R.R. § 387.1(x)(2)(i)(c). This is true even if the child is not eligible to receive SNAP benefits—for example, if the child attends college at least half-time and lives at home but has not complied with the

SNAP program's eligibility requirements for such students.³ *See* 7 C.F.R. § 273.5(a)-(b); 18 N.Y.C.R.R. § 387.1(jj).

The SNAP regulations further provide that a household is eligible for benefits based on its net income, which is compared against an income threshold based on household size to determine what benefits, if any, the household is entitled to receive. *See* 7 C.F.R. § 273.10(e); 18 N.Y.C.R.R. § 387.15. A household's net income is defined as its total income "from whatever source," including child support payments, less deductions and exclusions enumerated by regulation. 7 C.F.R. § 273.9(b); *see also* 18 N.Y.C.R.R. §§ 387.11–387.12.

The pertinent regulations contain a variety of income exclusions and deductions. For instance, household income excludes any "[m]oneys received and used for the care and maintenance of a third-party beneficiary who is not a household member." 7 C.F.R.

³ A student who attends college at least half-time and who lives at home may be eligible to participate in the SNAP program in a variety of ways, including by being employed for a minimum of 20 hours per week. *See* 7 C.F.R. § 273.5(b)(5); 18 N.Y.C.R.R. § 387.1(jj)(1).

§ 273.9(c)(6); *see also* 18 N.Y.C.R.R. § 387.11(i) (same). By contrast, household income includes the income of household members who are ineligible to receive SNAP benefits due to their “noncompliance with a work requirement of [7 C.F.R.] § 273.7.”⁴ 7 C.F.R. § 273.11(c)(1); *see also* 18 N.Y.C.R.R. § 387.16(c)(1) (same).

B. Factual Background and Procedural History

The facts relevant to petitioner’s application for SNAP benefits are undisputed. At all relevant times, petitioner resided with her five children under the age of twenty-two.⁵ Petitioner received from her former spouse a monthly child support payment to support these five children. Two of these five children were ineligible to receive SNAP benefits because they were enrolled full-

⁴ 7 C.F.R. § 273.7 establishes certain work requirements with which each household member must comply to be eligible to receive SNAP benefits. Among other things, each household member must register for work and must accept a “bona fide offer of suitable employment.” 7 C.F.R. § 273.7(a)(1)(i), (vi); *see also* 18 N.Y.C.R.R. § 385.3 (parallel state regulation).

⁵ A sixth child who is twenty-two years old also lives with petitioner but was not included in her SNAP application and therefore is not pertinent to the issues in this litigation. *See* State Br. at 8.

time in college and had not complied with the program's eligibility rules for students. *See State Br.* at 8. *See supra* at 5-6.

In determining petitioner's household's eligibility for benefits, the local social services agency—the Suffolk County Department of Social Services (DSS)—included in household income the entire child support payment that petitioner received from her former spouse. DSS determined that the child support payments were properly counted as petitioner's income, rather than income of her children, and could not be excluded or deducted from household income under the SNAP regulations. Including the child support payments as household income meant that petitioner's household income exceeded the threshold to qualify for SNAP, and DSS accordingly denied petitioner's application for benefits. OTDA upheld the denial, and petitioner challenged that decision in this C.P.L.R. article 78 petition. *See State Br.* at 8-9.

The Second Department confirmed the denial of benefits, denied the petition, and dismissed the proceeding on the merits. *Matter of Leggio v. Devine*, 158 A.D.3d 803, 803 (2d Dep't 2018). The court disagreed with OTDA's position that child support payments

should be treated as parental income rather than income of the supported children. *See id.* at 804. But the court held that the child support payments should be included in petitioner's household income in any event pursuant to the SNAP rule that requires inclusion of the income of individuals who are ineligible for SNAP for failing to comply with the program's general work requirements. *See id.* at 805-06; *see also* 7 C.F.R. § 273.11(c)(1). The court denied petitioner's subsequent motion to reargue or for leave to appeal to this Court, *see Matter of Leggio v. Devine*, 2018 N.Y. Slip Op. 76233(U) (2d Dep't 2018), and petitioner timely moved this Court for leave to appeal.

REASONS FOR DENYING LEAVE

Leave should be denied because this case does not raise any issue of statewide importance or present a conflict with prior decisions of this Court or among the departments of the Appellate Division. *See* 22 N.Y.C.R.R. § 500.22(b)(4). Instead, this case raises a narrow issue bound up with the particular circumstances of this litigation. Such case-specific disputes do not meaningfully

contribute to the development of the law and thus do not warrant leave to appeal to this Court.

A. This Matter Presents a Narrow, Case-Specific Issue That Does Not Warrant This Court's Review.

This case raises only a narrow issue that is not likely to recur often: whether, for the limited purpose of determining eligibility for SNAP benefits, child support payments are chargeable as household income where those payments (i) are received from a noncustodial parent (ii) to support children who must be included in the SNAP household and (iii) who attend college at least half-time and who live at home and (iv) who fail to comply with the SNAP program's eligibility rules for students.

Given the highly specific SNAP-eligibility question presented here, any decision in this case will have very limited application. It will not have any significant impact on the administration of the SNAP program (or any other public benefits program). An application for SNAP benefits lacking the unique combination of facts present in petitioner's application would implicate different details of the SNAP rules and accordingly alter the SNAP-eligibility

analysis. For instance, an application that involved child support payments to support student children who were not ineligible for SNAP benefits, or who were not full-time live-at-home students, would raise different concerns about household composition and income and would turn on SNAP-eligibility questions not raised here. The specific eligibility question presented in this case is thus confined to the particular set of facts of petitioner's case.

There is accordingly little force to petitioner's principal argument that this Court's discretionary review is warranted to correct an error in the Second Department's reasoning, namely, its conclusion that the child support payments at issue here were properly included in petitioner's household income due to her student children's failure to comply with SNAP work requirements. See Petitioner-Appellant's Mem. of Law in Supp. of Mot. for Leave to Appeal to the Court of Appeals ("Leave Mot.") at 13-19.⁶ However

⁶ As petitioner correctly observes (*e.g.*, Leave Mot. at 5-6), OTDA disagrees with the interpretation of the SNAP regulations adopted by the court below. But correcting that purported error does not warrant the considerable expenditure of this Court's limited resources that would attend a discretionary second appeal in this case.

this Court might resolve that issue, its decision would have no substantial impact on future cases because the facts of petitioner’s application are rare and, in OTDA’s experience, the eligibility question presented here is unlikely to arise in other SNAP applications with any regularity.

Petitioner does not suggest otherwise. And indeed, the parties’ inability to cite a single judicial decision arising on this set of facts—from any federal court or any court of any of the fifty States that administer a SNAP program—strongly reinforces the obscurity of the issue presented here.

B. The Primary Issue Raised by Petitioner Would Not Affect the Outcome Here, in Any Event.

In addition to having little effect on future cases, a decision by this Court addressing the primary error invoked by petitioner would not affect the outcome of this particular case. That is because petitioner’s application for benefits was properly denied for other reasons.

Petitioner claims that the Second Department misapplied SNAP rules governing the income of college students under the age

of 22 who, like her children, live at home but fail to fulfill SNAP-eligibility requirements. According to petitioner, the Second Department's error resulted in the inclusion in her household income of the portion of the child support payments that she received to support her two SNAP-ineligible student children, which petitioner claims should have been excluded from household income as income of those children. But as OTDA explained below, those payments were correctly treated as household income in any event because, for the limited and specific purpose of determining SNAP eligibility, child support payments are properly considered income of the parent who receives them (here, petitioner), and not income of the supported children.⁷ See State Br. at 16-21; App. Div. Leave Opp. ¶¶ 14-27

⁷ Although petitioner's motion seeks to limit the issues that she may raise in this Court if leave is granted, see *Quain v. Buzzetta Const. Corp.*, 69 N.Y.2d 376, 379 (1987), that limitation would not prevent the Court from affirming the Second Department's order on the ground that the child support payments that petitioner received to support her ineligible student children were properly included in household income in determining SNAP eligibility because those payments were petitioner's income, not the income of petitioner's supported children. See *Matter of New York City Tr. Auth. v. State*,

To be sure, the Second Department took a different view of this issue; but that decision—which petitioner does not undertake to defend in her leave motion to this Court—was incorrect. Among other things, the Second Department incorrectly relied on overbroad statements from prior decisions that did not address whether child support payments constitute parental income or child income, let alone address that issue in the specific context of SNAP. *See Matter of Leggio*, 158 A.D.3d at 804-05; *see also* App. Div. Leave Opp. ¶¶ 14-27. OTDA reasonably and rationally interpreted the SNAP regulations as dictating that the child support payments in this case be treated as parental income, and that interpretation is entitled to deference. *See* State Br. at 17. As a result, the issue petitioner seeks to raise is ultimately immaterial to the outcome of this case, which provides an additional reason for denying leave.

89 N.Y.2d 79, 86 n.1 (1996) (respondent may raise any preserved issue that would support affirmance); *Parochial Bus Sys., Inc. v. Board of Educ. of City of New York*, 60 N.Y.2d 539, 545-46 (1983) (same).

**C. Petitioner’s Alternative Argument
for Leave Also Fails.**

Finally, petitioner fails in her alternative argument (Leave Mot. at 19-23) that leave is warranted to decide whether her ineligible student children should be considered non-household members under the SNAP rules. The SNAP statute and regulations unambiguously defeat petitioner’s argument, as OTDA’s brief below demonstrated, *see* State Br. at 12-16. Petitioner does not point to a single decision that has adopted her position, and OTDA has consistently rejected it in Fair Hearing decisions, *see* State Br. 14 & n.5.⁸ Simply put, the argument petitioner proposes for review is settled, and there is no need for clarification from this Court.

⁸ OTDA conceded error as to the sole Fair Hearing decision (No. 6479136L) adopting petitioner’s view that ineligible students should be treated as nonhousehold members (State Br. at 14-15), and the Second Department properly concluded that OTDA was not bound by that single erroneous administrative decision, *see Matter of Leggio*, 158 A.D.3d at 805.

CONCLUSION

Petitioner's motion for leave to appeal should be denied.

Dated: New York, NY
August 16, 2018

Respectfully submitted,

BARBARA D. UNDERWOOD
Attorney General
State of New York
Attorney for Respondent

By: 
PHILIP V. TISNE
Assistant Solicitor General

ANDREW W. AMEND
Senior Assistant Solicitor General
PHILIP V. TISNE
Assistant Solicitor General
of Counsel

28 Liberty Street
New York, NY 10005
(212) 416-6073

Reproduced on Recycled Paper