To be argued by:
BETH C. ZWEIG
15 minutes requested

STATE OF NEW YORK
COURT OF APPEALS

----------x

In the Matter of TINA LEGGIO,

Petitioner-Appellant,

No. APL-2018-00208

- against -

SHARON DEVINE, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance, and JOHN O'NEILL, as Commissioner of the Suffolk County Department of Social Services,

Respondents-Respondents.

----------x

APPELLANT'S REPLY BRIEF

BETH C. ZWEIG, of Counsel to
Jeffrey Seigel, Director
NASSAU/SUFFOLK LAW SERVICES
COMMITTEE, INC.
1757 Veterans Highway - Suite 50
Islandia, New York 11749
(631) 232-2400 ext. 3337
Fax no. (631) 232-2489
Attorney for the Petitioner-Appellant

Date: July 1, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

New York

INTRODUCTION

The issue in this appeal is whether child support payments used exclusively for the maintenance of a college student who resides in the household but is ineligible to participate in the Supplemental Nutrition Assistance Program (here after "SNAP") are properly excluded from the income calculation used to determine the household's SNAP benefits. The State Respondent affirmed the social services district's determination to discontinue SNAP benefits for the Appellant, Tina Leggio, and her three young children because the State Respondent incorrectly held that all child support income, including the pro-rata share of child support which was used exclusively for the care and maintenance of Ms. Leggio's two college student-children who were ineligible to participate in the SNAP program, counted against Ms. Leggio's SNAP household for purposes of eligibility.

The sole dispute between the Appellant, Tina Leggio, and State Respondent is whether the child support is income to the parent or the child. State Respondent concedes Ms. Leggio's point that, if the child support is income to the child, as the Appellate Division, Second Department correctly concluded, SNAP regulations uncontrovertibly require this child support to be excluded from the household income used to determine SNAP eligibility. The Appellate Division, Second Department correctly determined that child support was income to the child but

incorrectly concluded that the income of the SNAP ineligible college students counts against the SNAP household's eligibility. Appellant now replies to State Respondent's Memorandum of Law of dated May 8, 2019.

ARGUMENT

I. THE APPELLATE DIVISION CORRECTLY HELD THAT CHILD SUPPORT IS INCOME TO THE CHILD.

A. New York State Law Treats Child Support As Income to the Child, Not the Parent.

New York State Social Services Law already provides that child support is the property of the child. Pursuant to Social Services Law § 111-h (4), "[a]ny and all moneys paid into the support collection unit pursuant to an order of support made under the family court act or the domestic relations law, where the petitioner is not a recipient of public assistance, shall upon payment into such support collection unit be deemed *for all purposes* to be the property of the person for whom such money is to be paid." (Emphasis added). Child support collected through the Child Support Collection Unit of the local social services district, which also issues SNAP benefits, is the property of the person for whom such money is paid – i.e. the child, not the petitioner parent.

Because the words "for all purposes" are not defined in the statute, they should be given their plain meaning. When interpreting a statute, courts should give "effect to the plain meaning" of unambiguous words in the statute (*Raynor v*

Landmark Chrysler, 18 N.Y.3d 48, 56 [2011] [citation omitted]; *Simon v Usher,* 17 N.Y.3d 625, 628 [2011] [citation omitted]; *Canales v Pinnacle Foods Grp. LLC,* 117 A.D.3d 1271, 1272-73 [3d Dept 2014]; *Lewis Family Farm, Inc. v New York State Adirondack Park Agency,* 64 A.D.3d 1009, 1013-14 [3d Dept 2009]).

The rules of statutory construction require that the words "be given their usual and commonly understood meaning" (NY Stat Law § 232; see also *Rosner v Metro. Prop. & Liab. Ins. Co.,* 96 N.Y.2d 475, 479-80 [2001]). Social Services law § 111-h (4) makes clear that for the purposes of the county department of social services, responsible for both child support collection and SNAP issuance in New York State, the support is owed to the child. There is no need for further inquiry or agency deference where the words of a statute clearly resolve the question.

State Respondent's treatment of child support as income to the parent is arbitrary and capricious, and contrary to the weight of law, because it contravenes how local social services districts already attribute child support income pursuant to Social Services § 111-h (4). It would be arbitrary and capricious for child support income to be treated differently when collected via different mechanisms: if support collected through the local social services district's Support Enforcement Unit is statutorily defined as the child's property, while the same social services district treats support income as income to the parent when directly paid.

The Appellate Division, Second Department correctly held that child support

is countable as income to the child, not the parent. *Matter of Leggio v. Devine*, 158 A.D.3d 803 [2d Dept 2018]. In addition to Social Services Law cited above, precedent also shows that the support obligation is to the child and not to the custodial parent. A-5. In *Modica v. Thompson*, the Appellate Division, Second Department reasoned that the "support obligation [is] to the child, not the payee spouse." *Modica v. Thompson,* 300 A.D.2d 662, 663 [2d Dept 2002]. In *Commissioner of Social Services v. Grifter*, the Appellate Division, Second Department dismissed a petition to vacate a child support order holding that "placement of a child in foster care does not serve to extinguish the parental duty of support", and that the "order of support is in favor of the child, not the mother, the Commissioner, or the foster parent". *Matter of Commissioner of Social Servs. v. Grifter,* 150 Misc.2d 209, 212 [Fam Ct, NY County 1991]. "A custodial parent, a foster parent or the Commissioner of Social Services are no more than conduits of that support from the noncustodial parent to the child" *id.*

Because the support obligation is in favor of the child, New York expressly recognizes that the child holds a property interest in those child support payments. In New York, an attorney's lien by the custodial parent against child support funds is unenforceable because the custodial parent lacks a property interest in those funds. *Shipman v. City of New York Support Collection Unit*, 183 Misc. 2d 478, 485 [Sup Ct, Bronx County 2000]. "The child support amount awarded to the

custodial parent is not merely for reimbursement of the custodial parent...instead, the funds are awarded to the custodial parent in trust for the support and maintenance of the minor children" *Id.*, *citing Richards v. Richards*, 86 A.D.2d 77 [4th Dept 1982]; *Matter of Parker v. Stage*, 43 N.Y.2d 128 [1977]. "Although the custodial parent and/or the support collection unit receive the money, an ownership interest in the funds is not obtained by the custodial parent or the support collection unit". *Id.* at 486, *citing Sue Davidson, P.C., v. Naranjo*, 904 P.2d 354 [Wyo. 1995], *Law Office of Tony Center v. Baker*, 185 Ga.App. 8909, 366 S.E.2d 167 [1988].

This Court also has held that the right to child support rests with the child and not the custodial parent. (E.g. *Roe v. Doe*, 29 N.Y.2d 188 [1971] [in establishing an emancipation doctrine, the Court recognized that the child has the right to support and may thus forfeit her right to support]; *Matter of Parker,* 43 N.Y.2d 128 [1977] [the Department of Social Services could not compel a parent to support a child who would otherwise become a public charge when the child had abandoned the parental home].)

Additionally, the rules exempting certain personal property from seizure for satisfaction of a money judgment also indicate the Legislature's intention that child support be identifiable as the child's income, rather than the parent's income. C.P.L.R. 5205 (d) (3) provides that exempt personal property includes "payments pursuant to an award in a matrimonial action...for the support of a child, where the

child is the judgment debtor". By identifying the child as the judgment debtor, C.P.L.R. 5205 (d) (3) awards funds for child support to the child instead of the custodial parent. *See Shipman* at 487.

While the child holds a property interest in a child support award, the custodial parent has a right to enforce the child's property interest" *In re King*, 233 B.R. 176, 29 Colo. Bankr. Ct. Rep. 119 [1999] [table; text at 1999 WL 83927 (1999)], *citing In re Anders,* 151 B.R. 543, 546 [Bankr.D.Nev.1993]). The string of cases cited by State Respondent, including *Forman v. Forman*, 17 N.Y.2d 274 [1966], *Schneider v. Schneider*, 17 N.Y.2d 124 [1966], and *Drake v. Drake*, 89 A.D.2d 207 [4th Dept 1982], stand for the proposition that the custodial parent has the legal right to enforce the child's property interest in child support. Yet the parent's legal standing to enforce the child's property interests does not alter the child's property or ownership interest in those funds. For all these reasons, the legal framework in New York already identifies child support as income to the child for whom it was ordered. This Court need not look beyond the statutory framework provided and alter the decision already rendered on this matter by the Appellate Division.

B. Respondent Is Not Entitled to Deference Where It Fails To Abide Its Own Precedent.

State Respondent asserts that deference must be afforded to the administrative agency's interpretation of who has property interests in child

support income because courts are required to defer to an agency's rational interpretation of its own regulations, citing *Andryeyeva v. New York Health Care, Inc.*, 2019 N.Y. Slip Op. 02258 at *5 [2019]. *See* State Respondent's Brief at 26-42. In *Andreyeyva*, the Court reasoned that "[w]hen an agency adopts a construction which is then followed for 'a long period of time,' such interpretation 'is entitled to great weight and may not be ignored'....when set forth in official statements, an agency's consistent interpretation reflects an enduring body of informed administrative analysis...and provides a reviewing court with the agency's interpretive position, as well as a measure of the enduring quality of the administrative judgment." *Andryeyeva* at *5. [internal citations omitted].

No such deference is due to the agency in the present case because Social Services Law § 111-h (4) clearly identifies child support as income to the child and the State Respondent has not held a consistent, enduring position on this issue, as *Andreyeyva* would require. In fact, State Respondent repeatedly has held that child support is income to the child for purposes of the SNAP household's eligibility and benefit level in its administrative hearing decisions[1]. (*See* Decision After Fair Hearing (DAFH) #7758129M, July 5, 2018 [relying on 7 CFR 273.5(d) and 273.11(d), providing for the exclusion of ineligible college students' income in

[1] Administrative fair hearing decisions issued by the State Respondent subsequent to 2010 are available online using the reference number at: https://otda.ny.gov/hearings/search/ (accessed June 24, 2019).

determining the SNAP household's income, to find that "while the Agency would appropriately exclude [the ineligible college student] from the SNAP household, it would be improper to budget child support income paid on her behalf in the calculation of Appellant's SNAP benefits"]; DAFH #6375353N, July 29, 2013 [reversing the local social services district's SNAP determination to count child support that was received for the benefit of the ineligible college student who resided in the SNAP household]; DAFH #7856769P, December 21, 2018, [State Respondent determined that, where the child support was for the benefit of two children in the household, only one of whom was an ineligible college student, the "[child support] income of the ineligible student should not be counted [in the SNAP budget]. The agency should only have budgeted half of this child support income"].)

Thus, the "decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious" *Matter of Charles A. Field Delivery Serv. [Roberts],* 66 N.Y.2d 516, 517 [1985]. "[A]n agency that deviates from its established rule must provide an explanation for the modification so that a reviewing court 'can determine whether the agency has changed its prior interpretation of the law for valid reasons, or has simply overlooked or ignored its prior decision.'" *In re Fifth Ave. LLC v. New York State Div. of House &*

Community Renewal, 109 A.D.3d 159, 163 [1st Dept 2013], *citing Matter of Terrace Ct., LLC v. New York State Div. of House & Community Renewal,* 18 N.Y.3d 446, 453 [2012]. "Absent...an explanation, failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary." *Matter of Richardson v. Commissioner of New York City Department of Social Services,* 88 N.Y.2d 35, 40 [1996]; *See also In re 2084-2086 BPE Assocs.,* 15 AD.3d 288 [1st Dept 2005], *Matter of Civic Association of the Setaukets v. Trotta,* 8 AD.3d 482 [2d Dept 2004], *Matter of Klein v. Levin,* 305 AD.2d 316 [1st Dept 2003]. The State Respondent has not held a consistent position on whether child support is countable to the child in its administration of the SNAP program and is due no deference with regard to its currently articulated policy position on this matter.

II. THE APPELLATE DIVISION MADE A REVERSABLE ERROR OF LAW IN DETERMINING THAT THE INCOME OF AN INELIGIBLE COLLEGE STUDENT IS COUNTABLE TO THE SNAP HOUSEHOLD.

The Appellate Division's conclusion that the ineligible college student's child support income is countable against the SNAP household blatantly contravenes federal SNAP regulations. Federal SNAP regulations provide that the income of ineligible college students "shall not be considered available to the household with whom [the student] resides". 7 CFR 273.11(d) (as cross referenced in 7 CFR 273.5(d)). State Respondent *agrees with the Appellant* that SNAP regulations uncontrovertibly require the child support to be excluded from the

SNAP household's budget for purposes of calculating a SNAP eligibility once the child support is identified as income to the SNAP-ineligible students. State Respondent's brief at 55-58, *see also* Appellant's brief at 15-19. Appellant now asks that this Court reverse the Appellate Division's error of law by excluding the income of an ineligible college student from the SNAP household's countable income for purposes of SNAP budgeting, consistent with federal regulations.[2]

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Appellate Division as to the counting of income to ineligible students in the SNAP household, uphold the judgment of the Appellate Division treating child support payments as income to the child, annul the determination of OTDA, and grant the petition.

---

[2] In light of the agreement of the parties on this point, Appellant sees no need for the Court to reach the alternative argument that the ineligible students' pro rata share of the child support income must be excluded from the household's countable SNAP income on the grounds that payments intended for the care and maintenance of a non-household member must be excluded (*see* Appellant's brief at 19-22; Respondent's brief at 48-55).

STATE OF NEW YORK
COURT OF APPEALS

----------X

In the Matter of TINA LEGGIO,

Petitioner-Appellant,

- against -

Certification Pursuant to 500.13(c)

SHARON DEVINE, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance, and JOHN O'NEILL, as Commissioner of the Suffolk County Department of Social Services,

No. APL-2018-00208

Respondents-Respondents.

----------X

As required by Rule 500.13(c)(1), I certify that printed text of the body of the brief contains 2,390 words.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Islandia, New York
July 1, 2019

BETH C. ZWEIG, of Counsel to
Jeffrey Seigel, Director of
NASSAU/SUFFOLK LAW SERVICES COMMITTEE, INC.
Attorney for the Petitioner-Appellant
1757-50 Veterans Memorial Highway,
Islandia, NY 11749
(631) 232-2400 ext. 3337