No. APL-2018-00208

To be argued by:
PHILIP V. TISNE
15 minutes requested

State of New York
Court of Appeals

In the Matter of the Application of

TINA LEGGIO,

Petitioner-Appellant,

v.

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,

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

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PRELIMINARY STATEMENT

Petitioner Tina Leggio challenges a determination by the New York State Office of Temporary and Disability Assistance (OTDA), which denied her application for benefits under the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program. Although the Second Department confirmed the denial of benefits, its reasoning was flawed. The court wrongly denied deference to OTDA's rational interpretation of its own regulations and relied on alternative grounds—advanced by neither party—that conflict with those regulations. This Court should thus affirm the judgment below, but for different reasons.[1]

SNAP eligibility determinations turn on the application of a highly complex set of federal and state statutes and regulations. These provisions serve to identify low-income households' food-purchasing power to determine their need for SNAP assistance.

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[1] This Court's authority to affirm a judgment on such alternative grounds is well established. *See*, *e.g.*, *Mitchell v. New York Hosp.*, 61 N.Y.2d 208, 213 n.2 (1984); *Parochial Bus Sys. v Board of Educ. of City of N.Y.*, 60 N.Y.2d 539, 544-46 (1983); *accord* Arthur Karger, *The Powers of the New York Court of Appeals* § 11:4, at 382-83 (rev. 3d ed. 2005).

OTDA, the expert agency responsible for SNAP in New York, rationally interpreted those provisions here in a way that furthers that purpose. The Second Department violated bedrock rules of administrative law by rejecting OTDA's interpretation.

The specific regulatory issue is whether child support payments that petitioner receives for two of her children—who are under age twenty-two and live at home, but are ineligible for SNAP because they attend college and do not comply with special SNAP college-student eligibility rules—should be treated as petitioner's income, or instead as her children's, for SNAP purposes. OTDA reasonably interpreted its regulations to treat the payments as petitioner's income, not her children's. That interpretation reflects the reality that petitioner, not her children, is assigned and receives the payments, and has vast discretion over how to use them—including to buy food for the household. And it makes sense, in calculating how much money a household has available to purchase food, to allocate child support payments to the person who controls whether those payments are, in fact, used to purchase food for the household.

OTDA's regulatory interpretation is thus rational and consistent with the underlying provisions—and therefore entitled to deference. The Second Department, however, rejected it on the mistaken view that state law principles from other contexts required OTDA to treat child support payments as income of the supported children under SNAP. But the Second Department misstated the state law principles it invoked, and in any event, OTDA was not required to apply those principles in the distinct context of SNAP. This Court should therefore uphold OTDA's interpretation and affirm the denial of benefits on that basis.

Further, this Court should reject petitioner's argument that the child support at issue here qualifies for an income exclusion for payments received by households for the benefit of third parties who are not members of the household. SNAP statutory and regulatory provisions *require* petitioner's children to be included as members of her household as long as they are under age twenty-two and live at home, regardless of their ineligibility for SNAP as college students. OTDA therefore rightly declined to exclude the child support from petitioner's household income.

To be sure, a different result would be in order if the disputed child support were income of petitioner's children rather than petitioner: in that case, the payments would have to be *excluded* from household income, not *included* in household income, under special rules governing the income of SNAP-ineligible college students. The Second Department misread those rules in affirming OTDA's benefits denial on alternative grounds. But that error is ultimately immaterial because OTDA rationally determined that the disputed child support is *petitioner's* income, not her children's. And, because OTDA also rationally determined that petitioner's children were members of her household, its denial of benefits should be confirmed.

QUESTIONS PRESENTED

(1) Did OTDA rationally interpret its SNAP regulations to mean that child support payments paid to a parent are income of that parent for the purpose of determining household income under SNAP?

(2) Did OTDA rationally decline to apply the SNAP income exclusion for payments for the care of a third-party beneficiary who is not a household member to child support payments that petitioner received for her children, who are members of her household?

(3) If petitioner's child support payments are income of her ineligible-student children, rather than petitioner, did the Second Department err by holding that those payments must be included in petitioner's household income, rather than excluded as the SNAP regulations would require in that circumstance?

STATEMENT OF THE CASE

A. Statutory and Regulatory Scheme Governing Supplemental Nutrition Assistance Program (SNAP) Benefits

SNAP is a federal program designed to alleviate "hunger and malnutrition" by providing assistance to low-income households "to obtain a more nutritious diet." 7 U.S.C. § 2011. Although established by federal statutes and regulations and overseen by the U.S. Department of Agriculture (USDA), SNAP is administered locally by participating States according to operating procedures set forth in state law. *See* 7 C.F.R. § 272.3. These state procedures must comply with federal program requirements, *see* 7 U.S.C. § 2014(b), but absent a federal requirement, States have "broad discretion in deciding how they operate the program,"[2] *Supplemental Nutrition Assistance Program: Review of Major Changes in Program Design*

[2] In some matters, the SNAP statute expressly provides States with options for implementation; in matters not specifically addressed by federal statute, regulations, or policy guidance, States have discretion as to the best way to deal with specific policy issues. See *infra* at 35-37.

and Management Evaluation Systems, 81 Fed. Reg. 2,725, 2,729 (Jan. 19, 2016).

OTDA is the state agency responsible for supervising the administration of SNAP in New York, which is implemented locally by fifty-eight social services districts. *See* Social Services Law (SSL) §§ 29, 95. OTDA provides social services districts with rules and procedures for use in implementing SNAP in their local districts. Those rules and procedures are set out in state regulations, *see* 18 N.Y.C.R.R. pts. 385, 387; various written guidance issued by OTDA, such as the Supplemental Nutrition Assistance Program Source Book; and fair hearing decisions issued by OTDA that review benefits determinations by local social services districts.

1. Calculation of SNAP benefits

SNAP benefits are distributed to eligible "households." 7 U.S.C. § 2014(a). As relevant to this appeal, a household's eligibility is determined largely by its size and "net income." *See* Cong. Research Serv., *Supplemental Nutrition Assistance Program*

(SNAP): A Primer on Eligibility and Benefits 2-8 (2018).[3] Each year, federal administrators develop a food plan—called the Thrifty Food Plan—that reflects the amount of food necessary to provide adequate nutrition; they then assign costs associated with that food plan. These Thrifty Food Plan amounts, which vary by household size, are the maximum amount of SNAP benefits that a household can receive. Households are expected to spend thirty percent of their net income on food; if thirty percent of a household's monthly net income is not sufficient to cover the cost of food for a household of its size based on the Thrifty Food Plan, SNAP makes up the difference in the form of benefits. Thus, the higher a household's net income, the smaller its SNAP benefit. Conversely, households with no net income receive the maximum SNAP benefit based on the Thrifty Food Plan benefit amount for the household size.

For example, for fiscal year 2019, the administratively determined monthly food allotment for a household of six members based on the Thrifty Food Plan is $914. If a six-person household

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[3] For sources like this one, that are available on the internet, full URLs are available in the Table of Authorities.

has $500 a month to spend on food—that is, if thirty percent of the household's monthly net income is $500—the household will receive $414 in SNAP benefits. If the household's net income increases, its benefits will decrease, and ultimately go to zero when thirty percent of its net income equals or exceeds $914.[4] *See* USDA, *Supplemental Nutrition Assistance Program (SNAP) Fiscal Year (FY) 2019 Maximum Allotments and Deductions* (eff. Oct. 1, 2018).

a. Household composition

Under the federal SNAP statute, a household generally consists of any group of individuals "who live together and customarily purchase food and prepare meals together for home consumption." 7 U.S.C. § 2012(m). In addition to this general rule governing household composition, the SNAP statute creates special rules for specific situations. *See id.*; *see also* 7 C.F.R. § 273.1(a);

[4] SNAP benefits are funded one hundred percent by the federal government, but States receive a fifty percent reimbursement from the federal government for their administrative costs in operating the program. *See* Food & Nutrition Serv. (FNS), USDA, *Supplemental Nutrition Assistance Program State Activity Report Fiscal Year 2016* at 4, 11 (2017).

18 N.Y.C.R.R. § 387.1(x). Under those special rules, some individuals living together *must* be considered part of the same household, regardless of whether they regularly buy and prepare food together.

As relevant here, parents and their children under the age of twenty-two who live together must be considered part of the same household regardless of whether they buy food and prepare meals together.[5] *See* 7 U.S.C. § 2012(m)(2); 7 C.F.R. § 273.1(b)(1)(ii); 18 N.Y.C.R.R. § 387.1(x)(2)(i)(c).

b. Household member eligibility

Once a household's composition is established, each household member must comply with applicable SNAP eligibility requirements to participate in the program. For instance, most

[5] Federal regulations afford participating States discretion to establish their own policies governing household composition in situations "not clearly addressed" by the federal regulations. 7 C.F.R. § 273.1(c); *see also Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 65 Fed. Reg. 64,581, 64,583 (Oct. 30, 2000) (noting that this provision was intended to allow participating states discretion to use their own "prudent judgment" when determining household composition).

household members between sixteen and sixty years of age must comply with SNAP work requirements. *See* 7 C.F.R. § 273.7; 18 N.Y.C.R.R. § 385.3. Some household members, however, are exempt from the SNAP work requirements, including any household member who is a "student enrolled at least half-time in any recognized school, training program, or institution of higher education." 7 C.F.R. § 273.7(b)(1)(viii); 18 N.Y.C.R.R. § 385.3(a)(1)(viii).

Although exempt from the SNAP work requirements, such college students must nevertheless comply with separate eligibility criteria to participate in SNAP. *See* 7 C.F.R. § 273.5; 18 N.Y.C.R.R. § 387.1(aj). Under those criteria, a college student will qualify for benefits only if she satisfies at least one condition from a list set out in the regulations. *See* 7 C.F.R. § 273.5(a); 18 N.Y.C.R.R. § 387.1(aj). A college student may be SNAP-eligible, for example, if she is paid to work at least twenty hours per week, participates in a federally financed work study program, or participates in on-the-job training. *See* 7 C.F.R. § 273.5(b)(5)-(7); 18 N.Y.C.R.R. § 387.1(aj)(1), (6)-(7).

c. Household net income

Once its membership is determined and the eligibility of its members is established, a household will be eligible for SNAP benefits based on the household's "net income." The SNAP statute and regulations set out a detailed process for calculating household net income, which begins by totaling the income of each of the household's members. *See* 7 C.F.R. § 273.10(e)(1)(i)(A); 18 N.Y.C.R.R. § 387.15(a)(1). The SNAP statute defines income for this purpose broadly to include all payments to the household "from whatever source." 7 U.S.C. § 2014(d); *see also* 7 C.F.R. § 273.9(b); 18 N.Y.C.R.R. § 387.10(b). Federal regulations provide a non-exhaustive list of examples of payments that constitute income under this broad standard, including "[s]upport or alimony payments made directly to the household from nonhousehold members," 7 C.F.R. § 273.9(b)(2)(iii); 18 N.Y.C.R.R. § 387.10(b)(3)(iii).

Once a household's total income is determined, that figure is reduced by statutorily enumerated exclusions and deductions to determine the household's net income. *See* 7 U.S.C. § 2014(d); 7 C.F.R. § 273.10(e)(1); 18 N.Y.C.R.R. § 387.15(a). Among other

things, the statute provides an exclusion for any "[m]oneys received and used for the care and maintenance of a third-party beneficiary who is not a household member." 7 U.S.C. § 2014(d)(6); *see* 7 C.F.R. § 273.9(c)(6); 18 N.Y.C.R.R. § 387.11(i). Congress enacted this exclusion to cover such payments as, "for example, a relative's pension check that goes to and is cashed by the household and then is used to support that relative in an institution." H.R. Rep. No. 95-464, at 36 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1978, 2013.

d. Ineligible household members and non-household members

When a person is living with a household group that receives SNAP benefits, the calculation of the benefits payable to the household requires a determination of two separate questions about that person: (i) whether the person is a member of the household, so that her income is potentially counted as part of the household income, and (ii) whether she is eligible for SNAP benefits, so that the benefit for the household may be increased on her account. Membership in the household and eligibility for SNAP benefits are determined separately, and may not coincide.

Accordingly, it is possible for a person living in a household receiving SNAP benefits to be outside the legally recognized household, but nonetheless potentially eligible for SNAP as a separate household. This may occur where, for instance, an individual lives with a household but is not considered a part of the household because she does not regularly purchase and consume meals with the members of the household. *See* 18 N.Y.C.R.R. § 387.1(x)(3)(iii); *cf.* 7 C.F.R. § 273.1(a)(3) (defining "household"). It may also occur where an individual qualifies as a "roomer" or a "live-in attendant" and chooses not to join another group's household, even though she could qualify as a member of that household because she regularly purchases and prepares food with the household. *See* 7 C.F.R. § 273.1(b)(5)-(6); 18 N.Y.C.R.R. § 387.1(x)(3)(i)-(ii). Such individuals are permitted to apply for SNAP benefits as their own households and have their eligibility determined independently. *See* 7 C.F.R. § 273.1(a)(2), (b)(5)-(6); 18 N.Y.C.R.R. § 387.1(x)(3).

It is also possible for a person to be included as a member of a household receiving SNAP benefits, but nonetheless *not* be eligible to participate in SNAP. This may occur where an individual, such

as a child under twenty-two years old living at home with her parents, is a mandatory household member under SNAP, but is an ineligible college student. *See* 7 C.F.R. § 273.1(b)(1)(ii); 18 N.Y.C.R.R. § 387.1(x)(2)(i)(c).

SNAP establishes special rules governing the treatment of households that contain ineligible members; under those rules, ineligible members typically must not be included in determining the household's size, but all (or a portion of) their income must be included in household income.[6] *See* 7 C.F.R. § 273.11(c)-(d); 18 N.Y.C.R.R. § 387.16(c)-(d). This requirement has the effect of reducing a household's benefits by lowering its size—and hence, its applicable income threshold—and increasing its net income, thereby

[6] The extent to which an ineligible household member's income counts as household income depends on the reason for the member's ineligibility. Thus, for instance, if a household member is ineligible because she failed to comply with a SNAP work requirement, all of her income must be counted as household income. *See* 7 C.F.R. § 273.11(c)(1)(i); 18 N.Y.C.R.R. § 387.16(c)(1)(i). If a household member is ineligible because she is deemed an ineligible alien, only a pro rata portion of her income may be counted as household income. *See* 7 C.F.R. § 273.11(c)(3)(ii)(A); 18 N.Y.C.R.R. § 387.16(c)(2)(ii).

creating an incentive for household members to comply with SNAP eligibility rules.[7] At the same time, where a household member is ineligible solely because she failed to comply with the SNAP student eligibility rules, none of her income may be counted as household income. *See* 7 C.F.R. § 273.11(d)(1); 18 N.Y.C.R.R. § 387.16(d)(1).

The federal and state SNAP regulations each reflect these distinctions but articulate them in slightly different ways. The state SNAP regulations use the term "non-household member" to refer to individuals who are not household members but may be eligible for SNAP, and use the term "ineligible individuals" to refer to those who are household members but are ineligible for SNAP. 18 N.Y.C.R.R. § 387.1(x)(3)-(4). The federal regulations formerly identified both groups as "nonhousehold members," *see* 7 C.F.R.

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[7] For example, a six-member household with thirty percent of monthly net income of $500 will be eligible for $414 in SNAP benefits. See *supra* at 8-9. But if one household member is ineligible for SNAP, the household will be entitled to only $262 in benefits—that is, the five-member household per-month food allotment of $762 based on the Thrifty Food Plan, less $500 in household income that includes the ineligible member's share.

§ 273.1(b)(1)-(2) (2000), but were restructured in 2000 and no longer use the term “nonhousehold member”; they now refer to the first group as individuals who “may participate as separate households,” 7 C.F.R. § 273.1(b)(5), (6), and refer to the second group as “ineligible household members,” *id.* § 273.1(b)(7).[8]

2. Rules governing child support payments

Although the SNAP regulations make clear that child support payments count as income, they do not address how to attribute those payments among the members of the household.

In a series of fair hearing decisions, OTDA has interpreted its SNAP regulations to mean that child support payments are income of the person who receives the payments. In most cases, this means that child support payments are treated as income of the custodial parent to whom they are assigned and directed. *See* Decision After

[8] Despite the 2000 restructuring and the slight variation in terminology between the federal and state schemes, both afford the same substantive treatment to these two distinct categories of individual. *See, e.g.*, 65 Fed. Reg. at 64,583 (stating, of the federal restructuring in 2000, that it merely “reorganize[d]” the federal regulations but did not effect any “significant changes” to them).

Fair Hearing at 8, No. 7231042M (OTDA Apr. 26, 2016); Decision After Fair Hearing at 6, No. 7215307H (OTDA Feb. 23, 2016). Less frequently, child support payments are made directly to a child, in which case OTDA treats them as the child's income. *See* Decision After Fair Hearing at 6, No. 7637515N (OTDA Dec. 29, 2017).

OTDA also recognizes that child support payments received by a parent may be excluded from household net income in certain circumstances, under the exclusion for payments received for the care of someone "who is not a household member." 7 C.F.R. § 273.9(c)(6); 18 N.Y.C.R.R. § 387.11(i). That exclusion applies where (i) a parent receives a child support payment for a child who is not a household member and (ii) the parent forwards the payment to the child for her exclusive use. *See* Decision After Fair Hearing at 5-6, No. 7256864R (OTDA Apr. 6, 2016); Decision After Fair Hearing at 6, No. 6571007K (OTDA Feb. 6, 2013). Because a child living at home with her parents is a mandatory household member (see *supra* at 10), the exclusion does not apply to child support payments a parent receives for a child living at home, *see* Decision After Fair Hearing at 14, No. 7269800R (OTDA May 27, 2016).

B. Factual Background and Proceedings Below

1. Petitioner's application for SNAP benefits, and the determination by the Office of Temporary and Disability Assistance (OTDA)

The facts underlying this proceeding are undisputed. At the time petitioner applied for SNAP benefits, she lived with her six children. (Appendix (A.) 176.) Her eldest child was not included in her application for benefits, and is not relevant to the issues in this litigation. (A. 17.) Petitioner's two next-eldest children, who were then under twenty-two years of age, both attended college full-time but were not employed; they were thus ineligible students and, consequently, ineligible household members.[9] (*See* A. 16, 36.) During the period in which she sought benefits, petitioner received a child support payment of $2,572.92 per month from her ex-husband to support her five youngest children, including her two ineligible-student children (A. 18.)

When petitioner submitted the SNAP application giving rise to this proceeding, the local social services district—the Suffolk

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[9] Petitioner does not dispute that her two children are ineligible students under SNAP.

County Department of Social Services (DSS)—calculated petitioner's income by counting, among other things, the entire child support payment she received from her ex-husband. (A. 18, 40.) Based on that calculation, petitioner's household's monthly net income exceeded SNAP program eligibility requirements, and DSS denied benefits by notice dated October 16, 2014. (A. 40.)

Petitioner challenged that determination at a fair hearing before OTDA, arguing that DSS should not have counted as household income the portion of the child support payments that petitioner received for her two ineligible-student children. (A. 181-182.) Initially, an administrative law judge agreed, holding that the exclusion for payments received for the benefit of a person who was not a household member applied to the portions of the child support payments that petitioner received for her ineligible-student children. (A. 36-37.)

OTDA reversed that decision, however, and issued an amended fair hearing decision upholding DSS's original determination. (A. 42, 46-47.) The amended decision explained that the exclusion for payments received for the benefit of a person who

was not a household member did not apply to the portion of the child support payments petitioner received for her ineligible-student children because those children were mandatory household members, and thus were not within the scope of the exclusion for individuals who are not a household member. (A. 46-47.)

2. The Second Department's decision denying petitioner benefits

Petitioner challenged OTDA's determination in this C.P.L.R. article 78 proceeding, raising two challenges for review.[10] First, petitioner claimed that the child support payments she received were not her income at all, but were instead income of the supported children; and that the portions of those payments received for petitioner's two ineligible-student children should therefore have been excluded pursuant to the provision excluding income of students

[10] Petitioner originally filed this proceeding in Supreme Court, Suffolk County, which transferred the proceeding to the Appellate Division under C.P.L.R. 7804(g). (A. 8-9.) The Second Department concluded that Supreme Court's transfer decision was error because the proceeding "did not raise a question of substantial evidence" but nevertheless decided the petition on the merits in the interest of judicial economy. (A. 5.)

who fail to comply with SNAP's student eligibility rules. (A. 20.) Second, petitioner claimed that, even if the child support payments were income attributable to her, those payments should have been excluded under the exclusion for payments received for the benefit of a third-party beneficiary who is not a household member. (A. 20-21.)

The Second Department confirmed OTDA's determination and denied the petition, but on alternative grounds advanced by neither party. The court agreed that the exclusion for payments for the care of a person who is not a household member did not apply to the portions of the child support that petitioner received for her ineligible-student children.[11] (A. 5.) But the court did not agree that petitioner's child support payments should count as her income under SNAP; those payments should count as income of petitioner's children, the court reasoned, because child support is an obligation

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[11] The original fair hearing decision in this case relied on an earlier OTDA fair hearing decision, which applied the exclusion for payments for the care of a person who is not a household member on facts like those at issue here. (A. 36); *see also* Decision After Fair Hearing at 1, 6, No. 6479136L (OTDA Nov. 8, 2013) ("Nov. 2013 DAFH"). The Second Department accepted OTDA's concession that that earlier fair hearing decision was wrongly decided and concluded that OTDA was not bound by that past error. (A. 5.)

"to the child, not to the payee spouse," who serves as a mere "conduit[] of that support" to the child. (A. 5 (quotation marks omitted).) Nevertheless, the court held that this error was harmless because petitioner's ineligible-student children "were disqualified primarily because of their failure to comply with work requirements," and their income should therefore be included in household income under 7 C.F.R. § 273.11(c)(1) and 18 N.Y.C.R.R. § 387.16(d). (A. 6.)

The court thus disagreed with OTDA's reasoning in part but confirmed the denial of benefits for a separate reason the agency did not advance. This Court granted leave to appeal. *See Matter of Leggio v. Devine*, 32 N.Y.3d 1075 (2018).

ARGUMENT

The facts in this case are undisputed and the only question is whether OTDA's calculation of petitioner's household's net income is affected by an error of law. *See* C.P.L.R. 7803(3). OTDA committed no error: it properly counted the child support payments petitioner receives as her income, and correctly applied the SNAP

income exclusions in this case. This Court should therefore affirm the judgment confirming OTDA's determination.

POINT I

OTDA RATIONALLY COUNTED PETITIONER'S CHILD SUPPORT PAYMENTS AS HER INCOME

OTDA reasonably determined that the child support payments petitioner receives for her ineligible student children are her income for SNAP purposes. Petitioner principally challenges the agency's interpretation of its SNAP regulations, under which child support payments received by a custodial parent are treated as income of that parent, rather than income of the supported child. But as this Court has long held and recently reiterated, courts are required to defer to an agency's rational interpretation of its own regulations, *see Andryeyeva v. New York Health Care, Inc.*, 2019 N.Y. Slip Op. 02258, at *5 (2019), and OTDA's interpretation is rational. Custodial parents who receive child support payments have wide discretion to decide how to spend them, including on food for the entire household—and it is rational to treat those payments

as income of the person who decides whether to use them to purchase household meals.

The Second Department identified no valid basis to overturn OTDA's interpretation. There is, for instance, no asserted conflict between OTDA's interpretation and the SNAP regulations. Instead, the lower court based its decision on a view that OTDA's interpretation conflicted with state law, which the court construed to treat child support payments made to a parent as belonging to the supported child and not the parent. But the Second Department's overbroad characterization of state law is not accurate: state law does not create an ownership interest for children in the child support payments their parents receive. And in any event, that question of state law is beside the point because there is nothing in the SNAP statute or regulations requiring OTDA to conform its SNAP regulations to state law regarding child support. On the contrary, OTDA rationally concluded that control over child support payments—not formal title—was the crucial factor for determining how to allocate those payments under the SNAP income rules.

A. OTDA's Rational Interpretation of Its Regulations Is Entitled to Deference.

OTDA rationally interpreted the SNAP provisions at issue in this case. The federal SNAP regulations make clear that household income includes "support or alimony payments made directly to the household from nonhousehold members." 7 C.F.R. § 273.9(b)(2)(iii); 18 N.Y.C.R.R. § 387.10(b)(3)(iii). But the regulations do not resolve how to allocate child support payments among the members of the household. For the narrow set of cases where this allocation makes a difference, OTDA has rationally interpreted its regulations to mean that the child support payments are income of the parent or other adult who receives them, rather than income of the supported child. *See, e.g.*, Decision After Fair Hearing at 8, No. 7231042M; see also *supra* at 17-18.

OTDA's interpretation is entitled to deference. As this Court recently emphasized, courts are *required* to defer to an agency's rational interpretation of its own regulations. *See Andryeyeva*, 2019 N.Y. Slip Op. 02258, at *5. That requirement applies even if the agency's interpretation "might not be the most natural reading of

the regulation" or "the regulation could be interpreted in another way." *Id.* at *5-6.

Various considerations justify this principle, and even though not all of them may be present in a particular case, that fact does not alter the mandatory character of the rule that courts "*must* defer to an administrative agency's rational interpretation of its own regulations." *Id.* (quotation marks omitted); *see also Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (2009) ("[C]ourts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise.").

Here, multiple considerations support the rationality of OTDA's interpretation.

1. OTDA's interpretation is consistent with the regulatory text and overall purpose of SNAP.

OTDA rationally interpreted its SNAP regulations as providing that child support payments are income of the person who receives and has discretion over how to use the payments—in this case, the parent (petitioner), not the supported children. This was a rational interpretation of the regulatory text. OTDA's pertinent

regulation defines "income" to mean "all income, earned and unearned, from whatever source, except for items specifically excluded in this subdivision." 18 N.Y.C.R.R. § 387.10(b). The regulation further specifies that "unearned income" includes "support or alimony payments made directly to the household from nonhousehold members." *Id.* § 387.10(b)(3)(iii). Granted, the text does not specify whether child support payments are income of the recipient or the child (where, as here, the child is not the recipient), but OTDA rationally determined that SNAP's purposes would be best served by attributing the income to the recipient, not the child.

SNAP's income rules are intended to "cast the broadest possible net" to ascertain how much money a household has available to spend on food. *See, e.g.*, H.R. Rep. No. 95-464, at 22-24 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1978, 1999-2001. Treating child support payments received by a parent as the parent's income, rather than the supported child's, reflects this purpose because it recognizes that the parent who receives the payments has nearly unfettered discretion to use them to purchase products or services—including food, shelter, or utilities—that will benefit the entire

household. Indeed, short of a finding that a parent's use of child support payments constitutes neglect, state law imposes essentially no constraints on a parent's discretion to determine how to spend those payments.[12] *Cf. Roe v. Doe*, 29 N.Y.2d 188, 193 (1971) ("It is the natural right, as well as the legal duty, of a parent to care for, control and protect his child from potential harm, whatever the source and absent a clear showing of misfeasance, abuse or neglect, courts should not interfere with that delicate responsibility."). OTDA's interpretation recognizes that, in the hands of a parent, child support payments may be made available to meet the needs of the entire household, and it rationally allocates those payments to the person who decides whether they will, in fact, be made available to the household in evaluating its ability to purchase food.

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[12] Some States have sought to restrict a parent's discretion though statutory measures requiring the parent to provide an accounting of the child support payments and expenditures. *See* Fla. Stat. § 61.13(1)(a)(2); Ind. Code § 31-16-9-6; Mo. Ann. Stat. § 452.342. New York, however, is not one of the States that has taken such measures. *Cf. Chen v. Chen*, 586 Pa. 297, 309-12 (2006) ("As a general rule, we do not put strings on the custodial parent's use of the money, confident that a parent's natural love will guide his or her motives as the family finances are apportioned among the many competing opportunities.").

The U.S. Supreme Court endorsed a similar presumption in *Bowen v. Gilliard*, 483 U.S. 587 (1987). That case involved amendments to the federal benefits program called Aid to Families with Dependent Children (AFDC). The amendments required families seeking benefits to include any children living at home in their applications. The effect of this requirement was to prevent families from reducing their income—and thus increasing their benefits—by excluding children for whom child support payments were being received. As the Court explained, Congress rationally decided to require that such payments be included in a family's income based on "the fact that support money generally provides significant benefits for entire family units." *Id.* at 600.

In other words, the Court recognized in *Bowen* that Congress could rationally tailor eligibility for benefits based on a presumption that parents who receive child support payments will use those payments to benefit the entire household. OTDA's interpretation of its SNAP regulations turns on essentially the same presumption. To be sure, the two cases arise in different contexts, but in both cases, the presumption serves the same end:

to ascertain how much money a group of people living together has at its disposal. Just as Congress could act rationally in structuring the AFDC program based on a presumption that child support payments would be available to benefit the entire group, so too OTDA acted rationally in determining that child support payments in the hands of a parent would be available to the entire household.

Other courts have also held, in the context of SNAP, that it is rational to denominate payments as income based on who receives those payments. In *Ruhe v. Bergland*, 683 F.2d 102 (4th Cir. 1982) (per curiam), the court upheld a State's SNAP policy that included in household income housing subsidies received by a household directly, but excluded similar subsidies received by a third party for the household's benefit. The court explained that the State's distinction was "reasonable" because payments received by the household directly were under the "household's control" and could be spent for any purpose. *See id.* at 105. "[T]he recipient's control of cash in one situation and lack of control in the other" thus provided a rational basis to distinguish between these payments and to denominate some as income and others not. *Id.* at 106; *see also*

Matter of Stearns v. Perales, 163 A.D.2d 392 (2d Dep't 1990) (household's receipt of money orders required that they be included in household income). OTDA's interpretation in this case is based on the same rational distinction.

Other areas of law also denominate payments as income based on who receives them. For example, federal tax law—an area of law centrally concerned with the definition of income—reflects a similar principle that money which is "subject to a man's unfettered command and that he is free to enjoy at his own option may be taxed to him as his income." *Corliss v. Bowers*, 281 U.S. 376, 378 (1930) (Holmes, J.). That principle recognizes that a person's receipt of and dominion over a payment is what distinguishes it as the person's income. *See Commissioner of Internal Revenue v. Banks*, 543 U.S. 426, 434 (2005) ("In an ordinary case attribution of income is resolved by asking whether a taxpayer exercises complete dominion over the income in question."). Indeed, the Supreme Court could find no decision where "a person has been found to have taxable income that he did not receive and that he was prohibited from

receiving."[13] *Commissioner of Internal Revenue v. First Sec. Bank of Utah, N.A.*, 405 U.S. 394, 403 (1972).

Moreover, OTDA's interpretation avoids the inconsistent treatment of child support payments under SNAP that would result if, instead, those payments were treated as income of the child. *See, e.g.*, *Matter of Kaslow v. City of New York*, 23 N.Y.3d 78, 88 (2014) (deference warranted where agency's interpretation "fits into the overall statutory design" and avoids "conflicts" within the scheme). In the mine run of cases, the SNAP rules require child support payments received by a household to be included in household net income, regardless of whether they are treated as income of the recipient or of the child. That is, if child support payments are income of the child, they will still be included in household income

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[13] Federal tax law does not treat child support payments as income of either the receiving parent or the child, but instead leaves tax liability for them with paying parent, in effect treating the payment as an after-tax expense. *See* Dep't of the Treasury, Internal Revenue Service Publication 504, at 15-17 (Feb. 5, 2019); *see also* 26 U.S.C. § 71, *repealed by* Pub. L. No. 115-97, tit. I, § 11051(b)(1)(B) (2017); Wendy Gerzog Shaller, *On Public Policy Grounds, A Limited Tax Credit for Child Support and Alimony*, 11 Am. J. Tax Pol'y 321, 329-30 (1994) (describing rationales for the tax treatment of child support payments).

if the child lives at home, *see* 7 C.F.R. § 273.10(e)(1)(i)(A), regardless of whether she attends secondary or elementary school, *see id.* § 273.9(c)(7); *see also id.* § 273.9(b)(2)(iii), and regardless of whether she is subject to SNAP work requirements, *see id.* § 273.11(c)(1)(i).

In fact, as a practical matter, the two approaches to income allocation produce divergent results in the limited set of cases where (i) a parent receives child support payments (ii) for a child who is ineligible for SNAP (iii) for one of the few reasons that permits an ineligible member's income to be excluded from household net income. In those rare cases, OTDA's approach is consistent with the scheme's prevailing treatment afforded to child support payments—i.e., that they be included in household income. By contrast, treating those payments as income of the child would, in rare cases like this one, result in an exception to the otherwise unqualified requirement that household income include the entirety of all child support payments "made directly to the household." 7 C.F.R. § 273.9(b)(2)(iii). And such an exception would arise despite the fact that the recipient parent controls the child

support, and can use it to purchase food for the entire household, regardless of the supported child's SNAP eligibility.[14]

2. OTDA's interpretation reflects a discretionary policy decision about the scope of the State's SNAP program.

Deference is particularly appropriate in this case because OTDA's interpretation of the SNAP regulations reflects a policy judgment left to OTDA's discretion. State SNAP operating procedures must comply with requirements in the federal statute and regulations, *see* 7 U.S.C. § 2014(b); *see also* 7 C.F.R. § 272.3(a)-(b), but States retain "broad discretion in deciding how they operate the program" where federal law does not impose a specific requirement, 81 Fed. Reg. at 2,729. In New York, OTDA is the state agency responsible for formulating the State's SNAP program and is authorized to "take such action . . . as may be required" to

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[14] Rejecting OTDA's interpretation would also produce absurd results in cases where a household receives child support payments for a child who lives outside the home and participates in SNAP as her own household. In such cases, allocating the child support payments as income of the child would require budgeting those payments to the child's separate household, even if the payments are received and retained by the parent's household.

implement the State's plan. SSL § 95(1)(a). OTDA is thus the agency in New York responsible for establishing SNAP policy where federal law allows States discretion to tailor their programs.

This discretion extends to child support payments. Federal law expressly grants States discretion to make a variety of important policy choices about how their respective SNAP programs treat child support payments.[15] And the narrow child-support-related question raised in this case is one that federal law leaves to States' discretion: as noted above (see *supra* at 26), the SNAP statute and implementing regulations are silent on the issue.

States have accordingly elected a variety of approaches. Some follow New York's approach and treat child support payments as

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[15] For instance, federal law expressly grants States discretion to decide what sources of information they will rely on to verify child support obligations, *see* 7 C.F.R. § 273.2(f)(1)(xii), (f)(8)(i)(A), and discretion to sanction a household member for failing to comply with child support obligations or for failing to cooperate with a support collection unit (SCU), *see id.* § 273.11(o), (p). States also have discretion in deciding how to budget child support payments made by a household member. *See id.* § 273.9(c)(17), (d)(5); *see generally* USDA, *State Options Report* 68 (14th ed. 2018).

income of the person who receives them.[16] Others treat child support payments as income of the supported child.[17] Either course reflects a State's policy judgment about the kind of program it wishes to make available to its residents. OTDA having made that

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[16] *See, e.g.*, Alabama Dep't of Human Resources, *Food Assistance Points of Eligibility Manual* § 901(B)(4) ("Child support is considered the income of the person to whom it is legally obligated, usually the custodial parent."); Alaska Dep't of Health & Social Servs., *Supplemental Nutrition Assistance Program (SNAP) Manual* § 602-3B(3) ("Child support payments are counted as income to the person receiving it."); West Virginia Dep't of Health & Human Resources, *West Virginia Income Maintenance Manual* § 4.4.4.P ("[C]hild support is counted for the AG [Assistance Group] that receives the income, even when it is forwarded to, and/or used, for the child."). All policy manuals cited in this footnote were last visited online on May 7, 2019.

[17] *See* Florida Dep't of Children & Families, *Access Florida Program Policy Manual* § 1810.0700 (child support "is considered as unearned income of the child for whom the payment is intended"); Indiana Family & Social Servs. Admin., *Program Policy Manual* § 2805.15.05.05 (directing program administrators to "[c]onsider child support income to be the income of the child"); Missouri Dep't of Social Servs., *Income Maintenance Manual* § 1115.010.00 (child support "is income to the child for whom the payment is made if the child is in the [eligibility unit]"). All policy manuals cited in this footnote were last visited online on May 7, 2019.

policy choice as the agency appointed to do so in New York, this Court should defer to its policy decision.[18]

Indeed, this Court has repeatedly emphasized the need for deference to agencies' discretionary choices in "striking a balance between the interests of recipients of public assistance and those of the State which must allocate limited welfare funds among those most in need of aid." *Matter of Barie v. Levine*, 40 N.Y.2d 565, 568-69 (1976). It has accordingly urged judicial restraint absent a "compelling constitutional or statutory reason to overturn the judgment of public officials charged with the onerous responsibility of disbursing limited welfare funds."[19] *Id.* at 569-70.

The Supreme Court reached a similar conclusion in *Knebel v. Hein*, 429 U.S. 288 (1977). That case involved the USDA Secretary's decision to define income to include transportation subsidies received through a state benefits program. *See id.* at 289. Finding

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[18] The State has notified officials at USDA of this litigation and the regulatory interpretation at issue, and USDA has thus far not objected to OTDA's interpretation or chosen to participate here.

[19] *Accord, e.g.*, *Goodwin v. Perales*, 88 N.Y.2d 383, 393, 395, 398-99 (1996); *Matter of Howard v. Wyman*, 28 N.Y.2d 434, 437-38 (1971).

that the federal SNAP statute did not address whether such subsidies should be treated as income, the Court held that determining whether to include or exclude them was a policy choice left to the administrative agency and that courts should defer to the agency's exercise of discretion. *See id.* at 292-95. The Court emphasized that, although it may have been able to conceive of other "more equitable" ways to treat transportation subsidies under SNAP, "the availability of alternatives does not render the Secretary's choice invalid." *Id.* at 294. On the contrary, the Court explained that "where reasonable minds may differ as to which of several remedial measures should be chosen, courts should defer to the informed experience and judgment of the agency to whom Congress delegated appropriate authority." *Id.* at 294 n.14 (quotation marks omitted).

Knebel involved a policy decision by the federal Secretary of Agriculture, not a state administrator, and was issued at a time when the federal Secretary had greater discretion to define income. But the principle remains the same: courts should defer to the policy decisions of a SNAP administrator exercising policy-making

discretion. That principle applies with the same force to the decisions of a state administrator within its area of discretion as it does to the federal administrator, and requires deference to OTDA's determination about the scope of the State's SNAP program at issue in this case. *See, e.g.*, *Green v. Arizona Dept. of Economic Sec.*, 121 Ariz. 210, 212 (Ariz. Ct. App. 1978) (citing *Knebel* as requiring deference to state agency's interpretation of SNAP regulations regarding treatment of workers' compensation awards).

3. Deference is particularly appropriate given the complex statutory and regulatory framework governing SNAP.

Deference is also particularly appropriate because the federal and state rules governing SNAP eligibility are intricate and complex; deferring to an agency's administrative expertise in such a context promotes coherent and consistent application of the regulatory scheme. This Court has long looked to the complexity of the applicable regulatory scheme in determining whether to defer

to an agency's interpretation.[20] And although this Court has never applied that principle in the specific context of SNAP, other courts have recognized that the complexity of the SNAP regulatory scheme warrants deferring to the views of administrative agencies charged with implementing that scheme. *See State of New York v. Lyng*, 829 F.2d 346, 349-50 (2d Cir. 1987) (deferring to interpretation of SNAP regulations by federal administrators, whose view "in this complex area is more expert than that of the courts"); *see also Ennis v. North Dakota Dept. of Human Servs.*, 820 N.W.2d 714, 718 (N.D. 2012) (deferring to state administrator's interpretation of SNAP regulations governing calculation of self-employment income).

The Second Department's decision in this case illustrates the sound reasons for deferring to an agency's interpretation of the complex regulatory scheme it administers. Here, the Second

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[20] *See, e.g.*, *International Union of Painters & Allied Trades Dist. Council No. 4 v. New York State Dept. of Labor*, 32 N.Y.3d 198, 209 (2018) (prevailing wage laws); *Matter of Peckham*, 12 N.Y.3d at 431 (rent stabilization laws); *Matter of Blossom View Nursing Home v. Novello*, 4 N.Y.3d 581, 595 (2005) (Medicaid reimbursement rates); *Matter of Siemens Corp. v. Tax Appeals Trib.*, 89 N.Y.2d 1020, 1022 (1997) (tax law).

Department disagreed with OTDA's view about how to treat child support payments under SNAP, and adopted its own approach—one that neither party advocated—that overlooks important aspects of the governing scheme and, as explained below (see *infra* at 55-58), conflicts with express regulatory provisions. Judicial deference to expert agencies' rational interpretations of their own regulations serves in important part to avoid this type of confusion in complex regulatory fields.

B. The Second Department Identified No Valid Basis to Disregard OTDA's Interpretation of Its SNAP Regulations.

Although the Second Department refused to defer to OTDA's interpretation of its SNAP regulations, the court did not identify any way in which that interpretation "conflicts with the plain meaning of the promulgated language" in the SNAP regulations. *Matter of Visiting Nurse Serv. of N.Y. Home Care v. New York State Dept. of Health*, 5 N.Y.3d 499, 506 (2005). Rather, the Second Department held, in effect, that OTDA's interpretation of its SNAP regulations was irrational because that interpretation conflicted with principles of state law, under which child support payments

belong to the supported child, not the recipient parent. (A. 5.) This was error for two reasons.

1. The Second Department misconstrued principles of state law.

The Second Department mischaracterized state law to the extent it held that child support payments belong to the supported children. The two decisions cited by the Second Department do not stand for this broad proposition.

The first, *Matter of Modica v. Thompson*, 300 A.D.2d 662 (2d Dep't 2002), did not conclude that the supported child in that case had an ownership interest in the child support payments at issue there. Rather, in that case, the child's father sought repayment of child support payments he made after the child's mother died, on the grounds that her death terminated his obligation to continue paying child support. *See id.* at 662. The Appellate Division rejected that argument, stating that the father continued to have an obligation to support his child, even after the mother's death. *See id.* at 662-63. But this holding about a parent's obligation to support

his child does not address, let alone establish, that a child has an ownership interest in specific child support payments to a parent.[21]

Likewise, the other decision cited by the Second Department—*Matter of Commissioner of Social Services v. Grifter*, 150 Misc. 2d 209 (Fam. Ct. N.Y. County 1991)—did not involve any broad pronouncement of state law. In *Grifter*, a noncustodial father sought to terminate his child support obligation and recoup past child support payments after his daughter was placed in foster care. *See id.* at 210. The court rejected the father's application on the ground that the "placement of a child in foster care does not serve to extinguish the parental duty of support." *Id.* at 212 (quotation marks omitted). But as in *Matter of Modica*, confirming a parent's obligation to make child support payments is not the same as holding that those payments belong to the supported child.

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[21] Indeed, the decision suggests that the child has no such interest: the Appellate Division did not release the previously-paid child support payments to the child, as would be appropriate if the child owned them, but rather released those payments to the child's grandparent, who obtained custody after the mother's death. *See Matter of Modica*, 300 A.D.2d at 662-63.

Further, while the Second Department's cited authorities do not establish that child support payments belong to the supported children, other precedents from this Court and the Appellate Divisions suggest that a child support payment belongs *not* to the supported child, but to the custodial parent to whom the support is owed and paid.[22] Thus, this Court has recognized that, except in extraordinary circumstances, a child lacks an interest in child support payments sufficient to allow the child standing to enforce the provisions of a separation agreement requiring those payments. *See Forman v. Forman*, 17 N.Y.2d 274, 280-81 (1966); *see also*

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[22] SSL § 111-h(4) confirms that the ownership of child support payments is more complicated than the Second Department's decision suggests. That provision does not address all child support payments, but only those that have been "paid into the support collection unit." *See* SSL § 111-h(4). As to that limited subset of child support payments, the history of SSL § 111-h(4) makes clear that the provision was intended to settle competing ownership claims as between the paying noncustodial parent and the recipient. *See Dominico v. Dominico*, 57 N.Y.S.2d 79, 85 (N.Y.C. Dom. Rel. Ct. Queens County 1945); *see also* Mem. of John Warren Hill, Presiding Justice, Domestic Relations Court of the City of New York (Apr. 3, 1940), *in* Bill Jacket for ch. 671 (1940), at 9. The provision does not address, or resolve, the question of state law purportedly relevant in this case regarding who owns child support payments as between the recipient parent and the supported child.

Schneider v. Schneider, 17 N.Y.2d 123, 127 (1966) ("All the authorities seem to say that a cause of action for payments like these for a child belongs not to the child but to the mother."). And the Appellate Division has thus held that "the right to receive child support belongs to the custodial parent, not to the child," *Miller v. Miller*, 82 A.D.3d 469, 470 (1st Dep't 2011), and that "barring unusual circumstances, children have no standing to enforce the periodic support provisions of their parents' separation agreement," *Drake v. Drake*, 89 A.D.2d 207, 212 (4th Dep't 1982). These holdings are inconsistent with a broad principle that child support payments belong to the supported children.

2. OTDA could rationally diverge from state law principles in interpreting the SNAP eligibility requirements.

As the authorities above illustrate, state law governing ownership of child support payments does not, as the Second Department's decision suggests, treat child support payments as property of the supported child for all purposes. This Court need not resolve that question here, however, because this case is limited to the requirements of SNAP. And while OTDA could have looked

to state law concepts as a guide in interpreting the requirements of SNAP, there is no basis in the SNAP statute or legislative history from which to conclude that OTDA was *required* to do so.[23]

On the contrary, OTDA could rationally conclude that state law was not the best guide for purposes of allocating child support payments among household members as income under SNAP. Even if state law clearly vested formal title to child support payments in the supported children—and it does not (see *supra* at 43-46)—OTDA could conclude that the authority to spend child support payments, rather than formal legal title, was a guide better tailored to the underlying purposes of SNAP. It is the person who controls how a payment is spent—not necessarily the person who holds formal legal title to the payment—who determines whether a payment is available to purchase goods for the entire the household. In the context of SNAP, then, it makes sense to look to control, rather than title, to allocate income among household members.

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[23] To the extent it addresses this topic, the legislative history suggests that Congress knew that the concept of income under SNAP would be *sui generis* and might conflict with other areas of law. *See* H.R. Rep. No. 95-464, at 24, 29.

And absent an overriding statutory or regulatory provision dictating a different result, OTDA's decision to do so here was rational.

* *

In sum, the Second Department identified no valid basis to disregard OTDA's interpretation of its SNAP regulations. That interpretation is entitled to deference as a matter of well-settled law and, as OTDA correctly concluded here, compels that petitioner's application for SNAP benefits be denied.

POINT II

THE SNAP EXCLUSION FOR PAYMENTS RECEIVED FOR THE BENEFIT OF INDIVIDUALS WHO ARE NOT HOUSEHOLD MEMBERS DOES NOT APPLY

Petitioner's alternative argument also fails, and the Second Department rightly rejected it. Petitioner contends that OTDA should have excluded her child support payments under the exclusion for payments received for the care of a person who is not a household member. Appellant's Brief ("Br.") at 19-22. But the child support

payments petitioner received were for household members (albeit ineligible ones), and so the exclusion does not apply.[24]

The exclusion petitioner mistakenly invokes applies to any payment "received and used for the care and maintenance of a third-party beneficiary who is not a household member." 18 N.Y.C.R.R. § 387.11(i); *see also* 7 U.S.C. § 2014(d)(6); 7 C.F.R. § 273.9(c)(6). But petitioner's ineligible-student children do not come within the scope of this exclusion because it is not the case that they were not household members: they were *mandatory* household members under the SNAP provisions requiring that parents and their children under the age of twenty-two who live together be considered members of the same household. *See* 7 U.S.C. § 2012(m)(2); 7 C.F.R. § 273.1(b)(1)(ii); 18 N.Y.C.R.R. § 387.1(x)(2)(i)(c).

In petitioner's view, because each of her student children was ineligible to participate in SNAP and thus not counted toward the

[24] Petitioner is mistaken in suggesting that the Second Department "fail[ed] to address" this argument. Br. at 22. On the contrary, the court rejected that argument by overturning, as incorrect, the lone fair hearing decision (Nov. 2013 DAFH) that had endorsed petitioner's argument. (A. 5.)

total number of people comprising petitioner's household, each child should be deemed "not a household member" for the purpose of the exclusion in 18 N.Y.C.R.R. § 387.11(i). *See* Br. at 19-20. But that view incorrectly conflates an *ineligible* household member with a person who is *not* a household member. As described above (see *supra* at 13-16), SNAP carefully distinguishes between those two categories of individual and affords them different treatment in various ways. For example, the income of a person who is not a household member is excluded from household income, while the income of an ineligible household member (or a portion of that income) is typically included in household income. Consistent with this distinct treatment, SNAP excludes payments that a household receives and uses exclusively for a person who is not a household member, but does not permit a similar exclusion for payments received for a household member who is ineligible. Giving an exclusion for ineligible members would eliminate the incentive carefully created by the SNAP rules for household members to comply with the rules that would make them eligible. See *supra* at 15-16 (discussing incentive created by reducing benefits for

households that contain members who have been deemed ineligible for SNAP).

Petitioner can find no support in 18 N.Y.C.R.R. § 387.11(i), because that provision applies only to payments received for the care of a person who is not a household member, such as a person living independently or in an institution. Petitioner's ineligible-student children are necessarily household members, under SNAP's unambiguous rule that children under age twenty-two who live with their parents are mandatory members of the household. See *supra* at 10; *see also* 7 U.S.C. § 2012(m)(2); 7 C.F.R. § 273.1(b)(1)(ii); 18 N.Y.C.R.R. § 387.1(x)(2)(i)(c). As a result, 18 N.Y.C.R.R. § 387.11(i) excludes payments received and used for the care of a child under twenty-two only if child does not live at home.[25] *Cf.* H.R. Rep. No. 95-464, at 36 (explaining that exclusion

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[25] *Compare* Decision After Fair Hearing at 9, No. 7683685Q (OTDA Apr. 3, 2018) (18 N.Y.C.R.R. § 387.11(i) applies to payments received by household for care of child who lived on campus at college), *and* Decision After Fair Hearing at 5-6, No. 6571007K (18 N.Y.C.R.R. § 387.11(i) applies to payments received by household for care of child who lives on own outside parent's home), *with* Decision After Fair Hearing at 6, No. 7224173H (OTDA Jan. 22, 2018) (18 N.Y.C.R.R. § 387.11(i) does not apply to payments

was intended to cover, for example, payments received by household to care for a relative "*in an institution*" (emphasis added)). Thus, the exclusion has no application to petitioner's ineligible children, even though petitioner assertedly uses her child support payments "solely for the care and maintenance" of those children. (A. 37.)

Petitioner misplaces her reliance on portions of the federal regulations that dictate that the income of ineligible students must be handled according to the rules governing "other nonhousehold members." 7 C.F.R. § 273.11(d). According to petitioner, this phrase means that ineligible students are nonhousehold members and are thus within the scope of the exclusion for payments received for individuals who are not a household member. *See* Br. at 19-20. But in fact the phrase is a relic of the time when the federal regulations used the term "nonhousehold member" to refer to both *ineligible* household members (like petitioner's student-children) and individuals who are *not* household members (to whom the exclusion applies). See *supra* at 16-17. Even when the regulations used the

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received for care of child who lives at home), *and* Decision After Fair Hearing at 14, No. 7269800R (same).

same term for both groups, however, they excluded income only for people who are actually not members of the household, and not for ineligible members of the household. *See* 7 C.F.R. § 273.1(b)(1)-(2) (2000). And that longstanding limitation survives the reorganization of the federal regulations in which the term "nonhousehold member" was eliminated. There is no indication that federal regulators sought to change that limitation of the exclusion; on the contrary, federal regulators made clear that their "reorganization" was intended to make no significant change.[26] *See* 65 Fed. Reg. at 64,583.

As she did below, petitioner relies (Br. at 20-21) on a single fair hearing decision, the Nov. 2013 DAFH. But OTDA conceded that that decision was erroneous (see Brief for State Respondent at 14-15, *Matter of Leggio v. Devine*, 158 A.D.3d 803 (2d Dep't 2018) (No. 2016-05966)), and the Second Department rightly accepted the

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[26] Thus, 7 C.F.R. § 273.11(d) continues to apply to the same categories of individuals that it applied to before the reorganization of 7 C.F.R. § 273.1—namely, ineligible students, *see id.* § 273.5(d); recipients of Supplemental Security Income (SSI) benefits in so-called "cash-out" States, *see id.* § 273.20(c); and anyone who is not a household member, *see id.* § 273.1(a), (b)(5)-(6).

concession and correctly concluded that OTDA was not bound by the error. (A. 5.) Administrative agencies are free "to correct a prior erroneous interpretation of the law by modifying or overruling a past decision." *Matter of Charles A. Field Delivery Serv. (Roberts)*, 66 N.Y.2d 516, 519 (1985) (citations omitted). Here, OTDA has conceded that, by applying the exclusion for payments for the care of a person who is not a household member to a live-at-home student who was a mandatory household member, the Nov. 2013 DAFH was "incorrect as a matter of law" and should not be followed. Brief for State Respondent at 14, *Matter of Leggio*, 158 A.D.3d 803. As this Court has made clear, OTDA was not required "to perpetuate [its] earlier error." *Matter of Cowan v. Kern*, 41 N.Y.2d 591, 596 (1977); *see also Matter of Lefrak Forest Hills Corp. v. Galvin*, 32 N.Y.2d 796, 802 (1973) (Jasen, J., dissenting).

In short, as the Second Department correctly held, OTDA properly determined that petitioner's ineligible-student children were household members not subject to the exclusion for payments received for persons who are "not a household member."

POINT III

If the Child Support Payments Were Properly Attributable to the SNAP-Ineligible Students (Which They Were Not), Then They Should Have Been Excluded from Household Income, and the Judgment Below Would Be Erroneous

This Court should defer to OTDA's rational interpretation of its SNAP regulations. If this Court were to decide otherwise, however, and conclude that petitioner's child support payments were income of her children under SNAP, then it would follow that the Second Department's decision should be reversed. The parties agree—and the applicable regulatory provisions unambiguously require—that the income of ineligible students like petitioner's children must be *excluded* from household income, not *included* as the Second Department held.

That is, after mistakenly concluding that the child support was income of petitioner's ineligible-student children, the Second Department also mistakenly concluded that such income of the children should be included in household net income. (A. 5.) But the federal regulations expressly require the exclusion of income of ineligible students. Section 273.5(d) of the federal regulations—a

provision not cited by the Second Department—makes clear that "the income and resources of an ineligible student shall be handled as outlined in § 273.11(d)." And section 273.11(d) provides that the income and resources of an individual covered by that section "shall not be considered available to the household with whom the individual resides." Thus, if the income were properly attributed to the children (which it was not), the Second Department's decision could not be squared with these federal regulations mandating that household net income not include the income of ineligible students.

The Second Department's conclusion was in turn based on an erroneous view that ineligible students are subject to SNAP's general work requirements. (A. 6.) That conclusion conflicts with express provisions exempting students from those work requirements *altogether*. The federal SNAP statute exempts from its work requirements "a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education," subject to the caveat "that any such person enrolled in an institution of higher education shall be ineligible to participate in [SNAP] unless he or she meets" separate eligibility requirements

applicable only to college students. 7 U.S.C. § 2015(d)(2)(C). These provisions manifest Congress's intent to exclude college students from SNAP's general work requirements, and instead base their eligibility entirely on separate criteria particular to students.[27]

Implementing federal and state regulations give effect to this intent. Those provisions state that a person is exempt from the SNAP work requirements if she is a "student enrolled at least half-time in any recognized school, training program, or institution of higher education." 7 C.F.R. § 273.7(b)(1)(viii); 18 N.Y.C.R.R. § 385.3(a)(1)(viii) (same). To be sure, those provisions also state

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[27] Legislative and regulatory history confirms this point. Prior to 1980, college students' SNAP eligibility was governed by a patchwork of requirements that were "complex" and "ineffective" in practice, and that consumed "considerable administrative time and expense" to implement. *See 1980 Food Stamp Amendments; Eligibility Limits*, 45 Fed. Reg. 46,036, 46,036 (July 8, 1980). As a result, Congress revised the SNAP eligibility rules governing college students in 1980 as part of a package of amendments designed "to reduce Food Stamp costs." *Id.*; *see also* Food Stamp Act Amendments of 1980, Pub. L. No. 96-249, § 139, 94 Stat. 357 (1980). Those revisions replaced the prior patchwork system with a broad prohibition on students receiving Food Stamps, with limited exceptions for those who met a distinct set of student-eligibility criteria to be codified at 7 C.F.R. § 273.5. *See* 45 Fed. Reg. at 46,036-37, 45,040.

that a student must meet the SNAP eligibility criteria specifically applicable to students. *See* 7 C.F.R. § 273.5(b); 18 N.Y.C.R.R. § 387.1(aj). But that language simply reiterates the caveat in the federal statute that students are not eligible for SNAP without satisfying those criteria; it does not subject such students to the work requirements instead of those criteria. The Second Department thus erred in holding students "are only exempt [from the SNAP work requirements] if they meet 'the student eligibility requirements listed in' 7 C.F.R. § 273.5(b)." (A. 6.) Contrary to the Second Department's decision, petitioner's ineligible-student children were not ineligible for SNAP due to their failure to comply with the generally applicable work requirements. They were instead ineligible because they did not satisfy any of the conditions—e.g., performing twenty hours of paid work per week, or participating in a federally financed work study program, see *supra* at 11—that would have made them eligible under SNAP's special college-student eligibility criteria.

CONCLUSION

For the foregoing reasons, the judgment of the Appellate Division, confirming OTDA's decision to deny petitioner's application for SNAP benefits, should be affirmed on the grounds stated above.

Dated: New York, New York
May 8, 2019

Respectfully submitted,

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AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Philip V. Tisne, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 10,987 words, which complies with the limitations stated in § 500.13(c)(1).

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Philip V. Tisne