No. APL-2018-00208

To be argued by:
ANDREW W. AMEND
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.

BRIEF FOR STATE RESPONDENT IN RESPONSE TO *AMICUS CURIAE*

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Second Department No. 2016-05966

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PRELIMINARY STATEMENT

Amicus curiae the Empire Justice Center addresses two rulings by the Appellate Division, Second Department, in this case: (1) that the child support paid to petitioner Tina Leggio was her children's income for purposes of the Supplemental Nutrition Assistance Program (SNAP), and (2) that the child support attributed to two of the children who are SNAP-ineligible college students should be included in petitioner's household income. Like petitioner, the amicus agrees with the first holding and urges reversal to correct the second. But the effort is unavailing. Although petitioner and her amicus are correct that the income of SNAP-ineligible college students who live at home should be excluded from their parents' household income, the New York State Office of Temporary and Disability Assistance (OTDA) rationally interpreted its SNAP regulations to treat the disputed child support here as petitioner's income—not her children's.

This Court should therefore uphold OTDA's denial of benefits to petitioner for the reasons given by the agency. Petitioner's amicus does not and cannot show that OTDA's reasons are irrational.

Instead, petitioner's amicus primarily argues that attributing the income of SNAP-ineligible college students who live at home to their parents' households would worsen food insecurity among low-income college students, who generally are ineligible for SNAP.

OTDA shares the amicus's commitment to fighting food insecurity—among college students and the population in general—but the amicus's arguments miss the mark. Contrary to the amicus's claims, OTDA reasonably treats child support as income to the person who receives the payments and determines how they will be used, including to purchase food for the household. In this case, that person is petitioner. Moreover, while rejecting OTDA's interpretation here would make it easier for this particular petitioner to obtain SNAP assistance, the result would make it harder for other applicants to obtain benefits, including certain low-income college students. Food insecurity would thus increase—not abate—among those students and other affected individuals.

ARGUMENT

THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE (OTDA) RATIONALLY DENIED PETITIONER'S APPLICATION FOR SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) BENEFITS

A. Petitioner's Amicus Fails to Rebut OTDA's Showing That the Agency Rationally Interpreted Its Own Regulations in Denying Benefits.

This Court has made clear that courts "*must* defer to an administrative agency's rational interpretation of its own regulations" in the absence of a direct conflict with the regulatory text. *Andryeyeva v. New York Health Care, Inc.*, 33 N.Y.3d 152, 175-76 (2019) (emphasis in original) (quotation marks omitted). Here, OTDA reasonably interpreted its regulations to determine that the child support payments petitioner received were her income, not her children's, for SNAP purposes.

As OTDA's principal brief explained (at 27-32), the agency's interpretation is consistent with the regulatory language defining household income as "all income, earned and unearned, from whatever source," 18 N.Y.C.R.R. § 387.10(b), including "support or alimony payments made directly to the household from

nonhousehold members," *id.* § 387.10(b)(3)(iii). In addition, OTDA's interpretation furthers the major objective of SNAP's income rules to "cast the broadest possible net" when ascertaining 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. Where, as here, a household includes a custodial parent who receives child support from a noncustodial parent, OTDA's rule recognizes that it is the custodial parent payee—not the supported child—who retains discretion over how to use the money, including to purchase food for the entire household. Treating the child support as the income of the custodial parent thus accords with the core purposes of the relevant SNAP provisions, as well as the rules governing income attribution under other public benefits programs and basic principles of federal tax law. Brief for State Respondent (Resp. Br.) at 30-33.

Petitioner's amicus does not rebut OTDA's showing. Instead, the amicus asserts without elaboration that the court below "correctly" determined the child support paid to petitioner to be the income of her children. Br. for Amicus Curiae Empire Justice Center

(Amicus Br.) at 1, 4, 7. But that assertion is itself incorrect for two reasons previously explained by OTDA. First, the state-law principles invoked by the lower court do not invariably treat child support as the property of the supported child as opposed to the custodial parent. Resp. Br. at 43-46.[1] Second, OTDA could reasonably conclude that state-law principles developed in other contexts were inapplicable to the federal SNAP program, which has distinct goals. In particular, OTDA could reasonably conclude that SNAP's objective of broadly identifying all funds available to a household to purchase food would be best served by treating child support payments as income to the custodial parent who actually controls

[1] Indeed, the treatment of child support arrearages under state law contradicts the idea that a custodial parent is for all purposes simply a conduit for child support owned by the child. In *Dembitzer v. Rindenow*, for instance, the Second Department directed a father to pay accrued arrearages to the estate of the children's deceased mother, even though the children had since moved in with the father. 35 A.D.3d 791, 792-93 (2d Dep't 2006). The court rejected the father's contention that paying the estate would improperly "divert[] funds needed for the children's current needs, without any assurance that the children would receive any benefit from the estate after satisfaction of debts." *Id.* at 793.

the use of the payments, regardless of whether state law would vest legal title elsewhere. Resp. Br. at 46-48.

Petitioner's amicus does not and cannot refute OTDA's points. At most, the amicus suggests that OTDA should have treated a pro-rata share of the child support paid to petitioner as the income of her two SNAP-ineligible college-student children based on petitioner's testimony that she used two-fifths of the child support "exclusively for" her student children's "everyday expenses, such as school, clothing and food." Amicus Br. at 6 (quotation marks omitted). That suggestion, however, overlooks that petitioner was free to use the child support for virtually any purpose, including to purchase food for the entire household.

Indeed, the federal SNAP statute dictates that when parents and their children under age twenty-two live together, they *must* be in the same household and "treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so."[2] 7 U.S.C. § 2012(m)(2);

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[2] This provision disposes of petitioner's alternative argument that the child support is excludable regardless of whether it is

see 7 C.F.R. § 273.1(b)(1)(ii); 18 N.Y.C.R.R. § 387.1(*x*)(2)(i)(c). That command in effect creates an irrebuttable presumption that food purchased by petitioner for her college-student children will be shared by the rest of the household at family meals. OTDA did not act irrationally in adopting a regulatory interpretation that accords with that presumption by treating the entire child support payment made to petitioner as income available to her to purchase food for herself and all of her children under age twenty-two.

Petitioner's amicus thus errs in describing a portion of the child support used by petitioner to care for her two college-student children as "*their* income." Amicus Br. at 16 (emphasis added). Unlike wages or other money paid directly to those children and subject to their control, the child support in this case was paid to petitioner, under her control, and at her disposal to use for household meals or any other purpose she chose. OTDA therefore acted

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petitioner's income because it is a 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*). As OTDA's principal brief explained (at 48-54), petitioner's college-student children are *ineligible* household members, but household members all the same. Petitioner's amicus does not attempt to show otherwise.

reasonably in treating the disputed child support as petitioner's income, not her children's.

Petitioner's amicus at best suggests reasons why it might have been possible to read OTDA's SNAP regulations differently. But in the absence of a clear conflict with the regulatory text—and here there is none—the possibility of a different interpretation is not enough to warrant judicial rejection of an agency's regulatory interpretation. *See*, *e.g.*, *Andryeyeva*, 33 N.Y.3d at 177 (citing *Matter of Elcor Health Servs. v. Novello*, 100 N.Y.2d 273, 280 (2003)). Rather, the agency's interpretation must be unreasonable or irrational. Here, OTDA rationally and reasonably concluded that it makes sense, in calculating how much money a household has 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.

B. The Outcome Urged by Petitioner's Amicus Would Undermine the Sound Administration of SNAP in New York and Harm Some Low-Income College Students.

Petitioner's amicus advocates an outcome that would undermine important public policies and could worsen food insecurity among college students, not ameliorate it. As OTDA's principal brief explained (at 33-34, 40-42), agencies are uniquely expert in the details of the programs they administer and thus best positioned to ensure the coherent, harmonious administration of complex regulatory schemes. SNAP regulations are a case in point. No one disputes that the federal and state statutes and regulations governing SNAP are intricate. In fact, petitioner's amicus affirmatively states that some of the provisions central to this case—those governing "college student eligibility and the student exemptions"—are "among the most complicated SNAP policies to explain." Amicus Br. at 12 (quotation marks omitted).

These considerations counsel strongly in favor of deferring to OTDA's reasonable regulatory interpretation. Indeed, as OTDA's principal brief explained (at 34-35), rejecting that interpretation would produce anomalies in a distinct (albeit limited) subset 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. The effect would be to create an exception to the rule that household income includes all child support payments "made directly to the household," 18 N.Y.C.R.R. § 387.10(b)(3)(iii), even though the rationale underlying that rule—the recipient parent's ability to use the child support to purchase food for the whole household—continues to apply.

In fact, such anomalies have already arisen. In two fair hearing decisions in 2018, an administrative law judge (ALJ) applied the income-allocation rule adopted by the Second Department, and thus treated child support received by a custodial parent for a SNAP-ineligible college student under age twenty-two as the child's income.[3] *See* Decision After Fair Hearing at 8, No.

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[3] These two fair hearing decisions post-dating the Second Department's decision do not show any inconsistency in OTDA's general practice *predating* that decision—i.e., to treat child support as the custodial parent's income unless the support was actually under the child's control because it was paid directly to the child or forwarded to the child at a separate residence. See Resp. Br. at

7758129M (OTDA July 5, 2018); Decision After Fair Hearing at 9, No. 7856769P (OTDA Dec. 21, 2018). The ALJ also adhered to the regulatory command (disregarded by the Second Department) to exclude that child support from the parent's household income. Decision After Fair Hearing at 8, No. 7758129M; Decision After Fair Hearing at 9, No. 7856769P. The result was a reduction to the parent's household income even though the parent received the funds and retained discretion to use them for any purpose, including to purchase food for the household.[4]

The Second Department's income-allocation rule creates other anomalies as well. Treating child support payments as the income of the supported child even though a parent receives and

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17-18, 22 n.11, 26, 51 n.25 (citing examples); *see also* Decision After Fair Hearing, No. 6375353N (OTDA July 29, 2013) (child support paid to custodial parent is that parent's income, and thus excluded from household income if custodial parent is ineligible college student).

[4] The ALJ's partial departure from the Second Department's holding reinforces the practical problems caused by the court's error in rejecting OTDA's reasoning and instead resolving the case on alternative grounds not advanced by either party: including the income of an ineligible college student in a custodial parent's household income would violate federal requirements.

controls the funds would have unintended consequences that could worsen the problem, highlighted by petitioner's amicus, of food insecurity among low-income college students. Where, as in many cases but unlike here, college students do not live with a parent, those students may participate in SNAP as their own households, provided that they (unlike petitioner's children) work at least half-time or otherwise satisfy SNAP's special college-student eligibility rules, *see* 7 C.F.R. § 273.5. The rule espoused by petitioner's amicus would make it harder for such students to obtain SNAP, where the student is the subject of a child support payment received and retained by a parent. In such cases, the child support would count as income to the child and be budgeted to the child's separate SNAP household, even if the payments were received and retained by the parent's household. Such a rule would needlessly make SNAP harder to obtain for those college students. In fact, the rule would have the same adverse consequence for any child—college student or not—for whom child support is paid to and retained by a parent in a separate household. See Resp. Br. at 35 n.14.

The existence of those consequences highlights the importance of applying agency expertise to regulatory interpretive issues. Particularly where, as here, an agency is responsible for a complex and integrated regulatory scheme, changes to one aspect of that scheme will almost inevitably affect others. When such changes are imposed by courts and not initiated by the agency, the possibility for disruptive unintended consequences increases, to the detriment of members of the public served by the agency. In the present case, disregarding OTDA's income-allocation rule and adopting the Second Department's would help some individuals but effectively penalize others.[5]

OTDA's decision to treat child support as the income of recipient parents rather than supported children is thus a classic example of the myriad discretionary choices the agency must make in discharging the "onerous responsibility of disbursing limited welfare funds." *Matter of Barie v. Levine*, 40 N.Y.2d 565, 569-70

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[5] Any attempt by OTDA to avoid such penalties would likely be barred by the broad rule announced by the Second Department here that child support payments are the income of the supported child regardless of who receives and controls the payments.

(1976). This Court has made clear that it will not upset such exercises of agency discretion absent a "compelling" reason to do so. *Id.* This case presents no such reason because OTDA's judgment was reasonable, rational, and consistent with the regulatory text and objectives. The agency's reasoning therefore should be upheld.

CONCLUSION

For the foregoing reasons, and those stated in OTDA's principal brief, the judgment of the Appellate Division confirming OTDA's decision to deny petitioner's application for SNAP benefits should be affirmed.

Dated: New York, New York
December 19, 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), Andrew W. Amend, 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 2,486 words, which complies with the limitations stated in § 500.13(c)(1).

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Andrew W. Amend