

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	
[REDACTED] [DR] Appellant, vs. DENVER DEPARTMENT OF HUMAN SERVICES, Appellee.	▲ COURT USE ONLY ▲ CASE NUMBER: SHS 2008 [REDACTED]
ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND INITIAL DECISION	

This matter comes before Administrative Law Judge Judith F. Schulman (ALJ), Colorado Office of Administrative Courts, on a Motion for Summary Judgment filed by Appellant. A telephone hearing on the motion was conducted on April [REDACTED], 2009. Peter Komlos-Hrobsky, Esq. and Patricia Richmond, Paralegal, both of Colorado Legal Services, participated on behalf of Appellant. Assistant City Attorneys Victor Devereaux and David Bernhart, Jr. participated on behalf of the Denver Department of Human Services (County Department).

Nature of Proceeding

In this appeal, Appellant contests the County Department's calculation of her Food Stamp benefit, asserting that the County is improperly utilizing her gross income from Social Security rather than her net income as the basis for that calculation. The issue presented is whether the amount of Appellant's Social Security income being withheld by the Social Security Administration to recoup a previous overpayment assertedly made to Appellant should be considered income to Appellant for the purpose of calculating her gross Food Stamp income and Food Stamp benefit amount.

Motion for Summary Judgment

Appellant's Motion for Summary Judgment asserts that the underlying issue in the current proceeding, whether the County Department should be utilizing her gross Social Security income or net Social Security income as the basis for determining her Food Stamp benefit, has been previously litigated and determined. Relying on principles of collateral estoppel, Appellant asserts the previous determination, holding that Appellant's net, rather than her gross, Social Security income should be used to calculate her Food Stamp benefit amount, is binding in this proceeding. The County Department disagrees, claiming that the

prior determination has no binding force in the present action.

Findings of Fact

As pertinent to this proceeding and based on the record, the ALJ finds the following matters are not in dispute in connection with Appellant's summary judgment motion:

1. Appellant has been receiving Food Stamp benefits for her single-person household since at least August 2004.

2. Appellant is disabled and receives Social Security Disability Insurance (SSDI) from the Social Security Administration (SSA).

3. In 1993, Appellant applied for participation in the PASS (Plan to Achieve Self Support) program developed by SSA. This program allowed participants to set aside income and/or resources for a specified period of time to be used to cover expenses for such things as education, vocational training, or starting a business, with the goal of achieving self-sufficiency. In order to participate in the PASS program, an applicant was required to submit a specific work goal plan for SSA approval. Once the plan was approved, participants were subject to periodic audits to assure the money set aside under the program was being utilized in accordance with the approved plan.

4. The amount set aside pursuant to an approved PASS program was not counted as income by SSA for Supplemental Security Income (SSI) purposes. Consequently, participation in the PASS program could help participants establish or maintain SSI eligibility and could increase the SSI payment of participants. For example, an individual such as Appellant who was receiving SSDI payments could set aside some of those payments to be used for a PASS program, thereby lowering that individual's countable income and rendering the individual income-eligible for SSI (as was the case for Appellant) or increasing that individual's SSI payment amount. The result would be a higher monthly benefit amount, with eligibility for both SSDI and SSI.

5. Appellant's 1993 PASS application was approved and she participated in the program from November 1993 until July 1996.

6. Following one or more compliance audits conducted by SSA, Appellant was informed she was not in compliance with her PASS plan. She was also informed she owed SSA the entire amount that had been set aside from her SSA checks since she began participation in the program. Thereafter, Appellant received a series of letters from SSA asserting there had been an overpayment and requesting that she return the funds in question.

7. On March 29, 2005, SSA issued a letter to Appellant, which stated as follows:

When you received Supplemental Security Income (SSI) payments in the past, you received more than you should have. Our records show that you still owe us \$6,646.00. Congress passed a law that permits us to collect SSI overpayments by withholding from your Social Security benefits. We plan to do that by withholding \$66.00 from your Social Security benefits each month until we collect the \$6,646.00 that you owe.

The letter informed Appellant that after SSA withheld her Social Security benefits, she would receive monthly payments of \$594.00 beginning in April 2005. The notice also informed Appellant that she would resume receiving her full regular monthly payment with the payment she receives in October 2013.

8. The March 29, 2005 notice additionally informed Appellant of her right to appeal the withholding decision. Appellant did not appeal. As a result, SSA has been withholding \$66.00 per month from Appellant's SSDI benefit check since April 2005 to recoup the identified SSI overpayment.

9. The March 29, 2005 overpayment notice did not indicate whether SSA or Appellant was responsible for creating the overpayment. Additionally, the notice did not indicate SSA had determined that the overpayment had resulted from an intentional failure on Appellant's part to comply with the PASS program (or any other program) requirements.

10. In December 2007, Appellant's Food Stamp benefits were subject to recertification. In connection with that recertification process, an issue arose as to the proper amount of Appellant's Food Stamp benefit, including an issue as to whether the gross amount of Appellant's SSDI payment (without regard to the \$66.00 monthly amount being withheld) or the net amount of that benefit (excluding the \$66.00 withholding amount) should be considered countable income for the purpose of calculating Appellant's proper Food Stamp benefit amount.

11. In connection with that recertification, the County Department ultimately determined that Appellant's gross SSDI should be used in calculating Appellant's proper Food Stamp benefit amount. Appellant appealed that decision in Case Number SHS 2008-[REDACTED].

12. As part of the recertification and in connection with Appellant's appeal in SHS 2008-[REDACTED], the County Department made a specific inquiry to SSA as to why monies were being withheld from Appellant's SSDI payments and whether Appellant had engaged in an intentional violation of the PASS program.¹

13. Following a hearing in SHS 2008-[REDACTED] the undersigned ALJ issued an Initial Decision on August 14, 2008. The Initial Decision found that the record "did not establish Appellant intentionally failed to comply with the PASS program or that SSA's determination

¹ Initial Decision, SHS 2008-[REDACTED], August 14, 2008, Findings of Fact 14-17.

to withhold SSDI funds was based on a determination that Appellant had intentionally failed to comply with the requirements of that program (as opposed, for example, to a failure by Appellant to comply with program requirements due to inadvertence or misunderstanding of her obligations under the program).² Applying applicable rules of the State Department of Human Services, the ALJ then concluded that in the absence of a showing SSA's recoupment was due to an SSA determination that Appellant had committed an intentional violation of the PASS program, the recoupment was "properly considered exempt as income" for Food Stamp purposes. As a result, the Initial Decision determined that Appellant's Food Stamp benefit was properly calculated using her *net* SSDI income rather than her *gross* SSDI income. The ALJ further determined that that because the County Department had improperly utilized Appellant's gross SSDI income rather than her net income as the basis for calculating Appellant's Food Stamp benefit, the County Department's calculation of Appellant's Food Stamp benefit was erroneous and was reversed. The County Department was instructed to recalculate Appellant's Food Stamp benefit using Appellant's net SSDI income, rather than her gross SSDI income.³

14. On September █, 2008, the Office of Appeals for the State Department of Human Services issued a Final Agency Decision in SHS 2008-█ affirming the ALJ's Initial Decision. As reflected in the Final Agency Decision, neither party filed exceptions to or appealed the Initial Decision.

15. Although the County Department now asserts it did not agree with this result, the County Department complied with the Final Agency Decision in SHS 2008-█ for the remainder of Appellant's Food Stamp existing certification period.

16. As is the case for all Food Stamp recipients, Appellant's Food Stamp eligibility and appropriate benefit amount are periodically redetermined by means of a recertification process. On December 19, 2008, near the conclusion of Appellant's then-existing certification period, the County Department determined Appellant remained eligible for Food Stamp benefits and certified Appellant to receive Food Stamp benefits for a new two-year certification period commencing January 2009. However, in calculating the amount of Food Stamp benefits Appellant was entitled to receive during this time, the County Department utilized Appellant's gross SSDI income rather than her net income, just as it had done prior to Appellant's successful appeal in SHS 2008-█. Appellant appealed that determination, resulting in this proceeding.

17. At the April █, 2009 hearing on Appellant's Motion for Summary Judgment in the present proceeding, the County Department made an offer of proof in which it asserted that if permitted to testify, County Department personnel would state that subsequent to the hearing on the merits in SHS 2008-█ the County has obtained information and documentation from SSA that could support a factual determination that Appellant's

² *Id.*, Finding of Fact 22.

³ *Id.*, Conclusions of Law and Initial Decision, p. 8.

violation of the PASS program, which precipitated SSA's recoupment, was intentional. The County did not assert in its offer of proof that its proffered information and documentation was unavailable to the County Department at the time of the hearing in SHS 2008-██████. Instead, the County Department merely asserted the County did not anticipate the issue in question at the time of the prior hearing and therefore either did not obtain the information prior to the hearing in SHS 2008-██████ or did not have that information available to present at that hearing.

Discussion

Legal Standard

Summary judgment is proper when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c). The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. *Continental Airlines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987); *Schultz v. Wells*, 13 P.3d 846 (Colo. App. 2000). The movant may satisfy this burden by showing there is no record evidence supporting the nonmoving party's case. Once the movant has met the initial burden of production, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. *Civil Service Commission v. Pinder*, 812 P.2d 645 (Colo. 1991); *Schultz v. Wells*, supra.

In ruling upon a motion for summary judgment, the nonmoving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts. *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992); *Van Alstyne v. Housing Authority of City of Pueblo*, 985 P.2d 97 (Colo. App. 1999). However, once a movant makes a convincing showing that genuine issues are lacking, C.R.C.P. 56(e) requires that the opposing party adequately demonstrate by relevant, receivable, and specific facts that a real controversy exists; reliance on allegations or denials in the pleadings will not suffice when the moving party has established by affidavit the absence of a triable issue of material fact. *Ginter v. Palmer & Company*, 585 P.2d 583, 585 (Colo. 1978); *Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970).

Issues Presented

In the present proceeding, the sole issue on appeal is the decision of the County Department to utilize Appellant's gross SSDI income, rather than her net SSDI income, in calculating her Food Stamp benefit amount. Appellant does not contest any other aspect of the Food Stamp benefit calculation and does not dispute the County Department's right as part of a redetermination process to reevaluate and reconsider Appellant's financial situation, including any other sources of income, household composition, household expenses and potential income deductions.

Appellant's Motion for Summary Judgment is premised exclusively on the prior determination of this issue in SHS 2008-██████. Relying on the doctrine of collateral estoppel, Appellant asserts the findings of fact and conclusions of law contained the ALJ's August ██████, 2008 Initial Decision in SHS 2008-██████ as affirmed by the Office of Appeal in its September ██████, 2008 Final Agency Decision, are binding on the County Department in this proceeding and therefore require the County Department to utilize Appellant's net SSDI income, rather than her gross SSDI income in calculating her Food Stamp benefit amount effective January 1, 2009 and ongoing. In contrast, the County Department asserts that while the decision in SHS 2008-██████ may have been binding on the County during Appellant's previous Food Stamp certification period, it has no binding effect on the County's current determination, which occurred in the context of a new certification period. The ALJ concludes that the County is bound by the Final Agency Decision in SHS 2008-██████ and therefore is required to calculate Appellant's Food Stamp benefits using her net, rather than her gross, SSDI income.

The Food Stamp Program

Participation in the Food Stamp program, a federal program administered by the states, is limited "to those household whose incomes and other financial resources . . . are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet." 7 U.S.C. § 2014(a). Consequently, in order to be eligible for Food Stamps, households must meet income-eligibility criteria or be categorically eligible. Section 4.4220.1.⁴ For the purposes of the current proceeding, the income-eligibility of Appellant's household is not at issue.

Once income eligibility has been determined, the amount of Food Stamp benefits issued to a household will depend on household size and net income after allowable deductions. See, e.g., Sections 4.4223 and 4.4230. As noted, the sole issue in this proceeding is whether the County Department properly utilized Appellant's *gross* SSDI income (the total amount of Appellant's SSDI benefit without subtracting the amount being withheld to recoup the identified SSI overpayment) as a starting point in calculating the amount of her Food Stamp benefit, or whether the County instead should have utilized Appellant's *net* SSDI (the amount Appellant actually receives each month after the \$66.00 SSI recoupment has been withheld) for the purposes of calculating Appellant's proper Food Stamp amount.

⁴ The State Department of Human Services ("State Department"), the single state agency designated to administer or supervise the administration of the Food Stamp program in Colorado in cooperation with the federal government pursuant to Section 26-2-301, C.R.S., has adopted rules relating to the Food Stamp program. These rules are printed in 10 CCR 2506 and begin with the number "4" or, interchangeably, with the letter "B." All rules are cited by section number. The cited rules are those currently in effect unless otherwise stated in the decision.

Prior Proceeding

In the prior proceeding (SHS 2008-██████), the ALJ considered several State Department regulations in determining whether the County Department should have utilized Appellant's net or gross SSDI benefit in calculating Appellant's income for Food Stamp purposes. The provisions reviewed included Section 4.4221 (household income means all earned and unearned income received or anticipated to be received by household members, from whatever source, unless specifically exempted for food stamp eligibility and budgeting purposes); Section 4.4221.22 (unearned income includes retirement and disability payments such as Social Security payments); and Sections 4.4222.3 and 4.4222.3.A (certain recoupments or repayments from a nonexempt income source are considered exempt as income unless recoupment results from the household's intentional failure to comply with that program's requirements). Based on this review, the ALJ determined that pursuant to State Department regulations recoupments are exempt from being considered as income for Food Stamp purposes *unless* the money is being withheld for purposes of recouping an overpayment that resulted from an *intentional failure to comply with program requirements*.

The ALJ then applied those provisions to the hearing record. The ALJ concluded that as a factual matter the County Department had failed to establish either that Appellant had in fact intentionally failed to comply with the PASS program or that SSA was withholding funds based on a determination that such an intentional failure had occurred. In the absence of proof of an intentional failure to comply with program requirements, the ALJ further determined that the SSA recoupment was exempt as income under the State Department's rules, with the result that Appellant's Food Stamp benefit was properly calculated using her *net* SSDI income rather than her *gross* SSDI income. Based on this application of the factual record developed at the hearing to the controlling regulations, the ALJ concluded the County Department improperly utilized Appellant's gross SSDI income rather than her net income as the basis for calculating Appellant's Food Stamp benefit. The ALJ therefore reversed the County Department's calculation of Appellant's Food Stamp benefit, a decision that was affirmed by the Office of Appeals.

The Party's Positions in This Proceeding

Although the County Department did not appeal the ALJ's Initial Decision in the prior proceeding and that determination was affirmed in a Final Agency Decision, at the commencement of Appellant's new certification period, the County recalculated Appellant's Food Stamp benefits, once again utilizing Appellant's gross, rather than her net, SSDI income. Appellant has appealed that action.

The issues in the present proceeding are limited. Appellant merely asserts the County is bound by the prior adjudication requiring use of her net SSDI income in calculating her Food Stamp benefit amount. She does not dispute the County Department's right as part of a redetermination process to reevaluate and reconsider all

other aspects of her financial situation, including any changes in income, household composition, household expenses and potential income deductions. She also does not contest the County Department's underlying calculations, other than the amount of SSDI income that was used.

The County Department's response is similarly limited. The County does not contest the ALJ's interpretation of the State Department's regulations in the prior proceeding. Nor does the County contest the ALJ's assessment of the factual record developed at that hearing. Instead, the County Department asserts the prior final decision in SHS 2008-█████ requiring use of Appellant's net SSDI income to calculate Appellant's Food Stamp benefit amount is simply not binding in a new certification period. Further, the County defends its current use of Appellant's gross SSDI income in calculating Appellant's Food Stamp benefit amount by pointing to information that it believes may establish: 1) Appellant intentionally failed to comply with the PASS program, and 2) SSA withheld/recouped funds based on a determination that such an intentional failure had occurred. The County concedes that the information it now wishes to present was available to it at the time of the prior proceeding but maintains that its failure to present this information in the prior proceeding should not prevent it from presenting that information in the current proceeding.

Motion for Summary Judgment: Collateral Estoppel

Relying on the doctrine of collateral estoppel, Appellant seeks summary judgment based on the final decision in SHS 2008-█████. Appellant maintains that the County is precluded, based on the doctrine of collateral estoppel, from relying upon or presenting any such information in the present proceeding. In contrast, the County Department asserts collateral estoppel is inapplicable here and contends it should be permitted to re-try in the current proceeding the factual issues previously determined adverse to the County Department in SHS 2008-█████, based on information that was available to the County Department at the time of the prior proceeding but not presented by the County Department at that time. The issue thus presented is whether, under the circumstances of this case, the County Department is precluded by the doctrine of collateral estoppel from re-raising factual and legal matters previously determined in SHS 2008-█████.

The doctrine of collateral estoppel, also known as "issue preclusion," functions to "bar relitigation of an issue that has been finally decided by a court in a prior action." *Sunny Acres Villa, Inc. v. Cooper*, 25 P. 3d 44, 47 (Colo. 2001). The doctrine promotes judicial economy by preventing needless litigation, *Neco v. Upper Gunnison River Conserv.*, 142 P.3d 1265, 1280 (Colo. 2006), and promotes reliance on the judicial system by preventing inconsistent decisions. *Bebo Constr. Co. v. Mattox & O'Brien, P.C.*, 990 P.2d 78, 84 (Colo. 1999). Issue preclusion bars relitigation when the following criteria are met:

- 1) The issue precluded is identical to an issue actually litigated and necessarily adjudicated in the prior proceeding;
- 2) The party against whom estoppel is sought was a party to or was in privity to a party in the prior proceeding;
- 3) There is a final judgment on the merits in the prior proceeding; and
- 4) The party against whom the doctrine is asserted had a full and fair opportunity to litigate the issues in the prior proceeding.

Neco, 142 P.3d at 1280.

Issue preclusion is applicable to administrative proceedings, such as this Food Stamp proceeding, as well as to judicial proceedings. *Bebo Constr. Co.*, 990 P.2d at 85. Furthermore, the doctrine applies to both an administrative agency's findings of fact and to its conclusions of law. *Sunny Acres Villa, Inc*, 25 P. 3d at 47.

Consequently, issue preclusion is applicable in the present proceeding to bar relitigation of findings of fact and conclusions of law contained in the SHS 2008-██████, as affirmed by the Final Agency Decision in that matter, if the required elements of the doctrine are present. The ALJ concludes each of these elements have been satisfied in this case.

With respect, first, to the element of identity of issues, Appellant seeks to bar the County Department from relitigating the determination in SHS 2008-██████ that the County must utilize Appellant's net, rather than gross, SSDI income to calculate her Food Stamp benefit amount. This determination in SHS 2008-██████ rested on a two-step analysis: First, the ALJ concluded that Section 4.4222.3 and Section 4.4322, when read together, "exempt recoupments from being considered as income for Food Stamp purposes *unless* the money is being withheld for purposes of recouping an overpayment that resulted from an *intentional failure to comply with program requirements*."⁵ Second, the ALJ concluded the evidence failed to establish SSA is withholding the funds in question based on an SSA determination that Appellant intentionally failed to comply with the PASS program and, instead, the evidence merely established that SSA had determined Appellant failed to comply with PASS requirements.⁶ The Initial Decision (and Final Agency Decision) concluded that under these circumstances, the recoupment in question must be categorized as one based on unintentional conduct. The recoupment was therefore determined to fall within the general provision of Section 4.4223 and not its exception for recoupments resulting from *intentional* failures to comply with program requirements. Consequently, the decision determined the recoupment is properly considered exempt as

⁵ Initial Decision, SHS 2008-██████, August █████, 2008, Conclusions of Law, p.7.

⁶ *Id.*, pp.7-8.

income such that Appellant's Food Stamp benefit is properly calculated using her *net* SSDI income rather than her *gross* SSDI income.⁷

In order to satisfy the identity of issues requirement, Appellant must establish the issues sought to be precluded are identical to issues actually litigated and necessarily adjudicated in the prior proceeding. *Neco*, 142 P.3d at 1280. In this case, Appellant is challenging the County Department's determination to once again use Appellant's gross SSDI income rather than her net income in calculating her Food Stamp benefits amount, based on the same SSA recoupment decision that was at issue in SHS 2008-██████. It is therefore apparent that the issues in the present proceeding are identical to issues directly raised by the parties in the prior proceeding, which issues were submitted by the parties for determination, were actually determined by the adjudicatory body, and affected the disposition of the case. *Bebo Constr. Co.*, 990 P.2d at 85-86. Therefore, the first required element for collateral estoppel, identity of issues, has been satisfied in this case. See *Neco*, 142 P.3d at 1280.

The second criteria for issue preclusion, whether the party against whom collateral estoppel is sought to be applied was a party in the prior action, is also satisfied in this case. There is no dispute that County Department, the Appellee in the present proceeding, was also the responding party in SHS 2008-██████.

The third element necessary to satisfy the issue preclusion test is whether there was a final judgment on the merits in the prior proceeding. This element has also been satisfied. The ALJ issued an Initial Decision in SHS 2008-██████. Pursuant to Sections 26-1-106 and 24-4-105(14)(a)(I), C.R.S., and as reflected in the Initial Decision itself, the parties had the opportunity to appeal that decision by filing exceptions. Neither party did so. Following the deadline for filing exceptions, the Office of Appeals issued its Final Agency Decision affirming the Initial Decision. The Final Agency Decision also was not appealed by either party.⁸ Under these circumstances, it is apparent that a Final Agency Decision in SHS 2008-██████ affirming the Initial Decision in that case constituted a final judgment on the merits, thereby satisfying the third prong of the issue preclusion test.

The final prong of the issue preclusion test has also been satisfied here because the County Department, the party against whom the doctrine is asserted, had a full and fair opportunity to litigate the issues in the prior proceeding. Factors to be considered in making this determination include whether the remedies and procedures in the first proceeding are substantially different from the proceeding in which collateral estoppel is asserted, whether the party against whom collateral estoppel is asserted had sufficient incentive to litigate vigorously in the prior proceeding, and the extent to which the issues

⁷ *Id.*, p.8.

⁸ In any event, pursuant to Section 24-4-105(14)(c), the failure to file exceptions to the Initial Decision resulted in waiver of the right to judicial review of the agency's final order, unless the portion of such order subject to exception is different from the content of the initial decision.

are identical in the two proceedings. *Grynberg v. Arkansas Gas Corp.*, 116 P. 3d 1260, 1265 (Colo. App. 2005).

It is apparent that Appellant's Food Stamp appeal in the present case and her appeal in SHS 2008-████ are governed by identical procedures. See Section 4.4410. In both cases, Appellant was entitled to advance notice of the charges and both parties were entitled to a full opportunity to be heard, including the right to counsel, the right to cross-examine witnesses, the right to present witnesses, the right to testify, the right to have an orderly hearing, the right to a fair and impartial decision based on substantial evidence, and the right to appeal that decision by filing exceptions. Section 4.4410.3. Additionally, the County Department had substantial incentive to defend against Appellant's appeal in the prior proceeding because that proceeding raised issues as Appellant's financial eligibility for Food Stamps and the amount of any such benefits. As reflected by the record, the County availed itself of these hearing rights by participating in the hearing and asserting and defending its position concerning the proper methodology for computing Appellant's income for Food Stamp benefits purposes. Under these circumstances, it is apparent that the fourth prong of the issue preclusion test, full and fair opportunity to litigate in the prior proceeding, has been satisfied.

The County makes several arguments in support of its position that collateral estoppel should not be applied under the facts of this case. First, the County argues the doctrine is not applicable here because the County's current determination relates to a new Food Stamp certification period. The County has not articulated a specific legal basis underlying this argument. However, to the extent the County is asserting collateral estoppel is not appropriate here because Appellant's *claim* in this proceeding is different from her claim in SHS 2008-████ because it involves a different certification period, the County has failed to appreciate the distinction between issue preclusion and claim preclusion.

The doctrine of *claim* preclusion (also known as *res judicata*) operates as a bar to a second action on the same claim litigated in a proceeding. The doctrine bars not only the claims actually litigated in the first proceeding, but also those that could have been litigated. *Lobato v. Taylor*, 70 P.3d 1152, 1165 (Colo. 2003). The claim at issue in SHS 2008-████ was whether the County Department properly calculated Appellant's Food Stamp benefit amount/in connection with Appellant's December 2007 Food Stamp recertification. Thus, the claim in SHS 2008-████ was arguably not the same as the claim in the current proceeding. In contrast, *issue* preclusion (also known as collateral estoppel), which prohibits relitigation of issues actually litigated in the first proceeding, does not require identity of claims, but merely identity of issues. The issues litigated in SHS 2008-████ were: 1) whether the County established Appellant intentionally violated the PASS program and whether SSA was recouping benefits due to an intentional violation by Appellant, and 2) whether the County may properly use Appellant's gross SSA payments, rather than her net SSA payments, in calculating Appellant's income for Food Stamp purposes. These issues were unrelated to any particular certification period. Therefore,

even if the existence of two different Food Stamp certification periods supports a conclusion that Appellant's *claim* in the present case is different from her *claim* in SHS 2008-████, the lack of identity of the claims in the two cases does not affect the application of issue preclusion, which is the doctrine asserted by Appellant in this case. Thus, the mere fact that the current proceeding involves a new certification period and therefore arguably involves a new claim does not prevent the operation of issue preclusion in this case since the *issues* involved in both cases are identical.

The County also asserts issue preclusion is not applicable here because the County did not have a full and fair opportunity to heard in SHS 2008-████. Specifically, the County asserts it was unaware prior to hearing that Appellant would raise the issue of whether SSA ever determined she had intentionally violated the PASS program and therefore the County did not have an adequate opportunity to prepare for the hearing. The ALJ finds this argument unconvincing.

The County Department is the proponent of an order affirming its Food Stamp benefit calculation method and therefore bore the burden of proof on that issue in the prior proceeding, as it does in the current proceeding. Section 26-2-127(1)(a)(II), C.R.S. (hearings regarding modifications in FS benefits are to be conducted according to the provisions of Section 24-4-105, C.R.S.); Section 24-4-105(7) (proponent of an order shall have the burden of proof). The County was well aware prior to the hearing in SHS 2008-████ that the issue to be determined was whether Appellant's net or gross SSDI income should be used in that calculation. Additionally, contrary to the County Department's current assertions, the County was aware that the critical component in making that determination was whether the SSA was recouping funds from Appellant's SSDI payments due to an asserted intentional violation by Appellant of the PASS program. In fact, in connection with the 2007 recertification, the County Department made specific inquiries to SSA as to whether Appellant's PASS violation was intentional.⁹ The County's argument in this regard is thus factually inaccurate.

Nor can the County be excused from the operation of issue preclusion simply because it failed adequately to prepare for hearing in SHS 2008-████ and therefore failed to establish the basis for its calculation. As the proponent of an order affirming its Food Stamp benefit amount calculation, the County had a full and fair opportunity at the time of the SHS 2008-████ hearing to prepare its case and explain the basis for its decision to use Appellant's gross SSA income. Its assertion now that it should be excused from the operation of issue preclusion simply because it failed to present an adequate case in the prior proceeding effectively amounts to a request for a "do-over," which is precisely what the doctrine of issue preclusion is designed to avoid. Issue preclusion is intended to support finality and consistency and to avoid subjecting winning litigants to multiple attempts by the losing party to obtain a better result through serial litigation. See *Neco v. Upper Gunnison River Conserv.*, 142 P.3d 1265, 1280 (Colo. 2006); *Bebo Constr. Co. v.*

⁹ See Finding of Fact 12 herein and Initial Decision, SHS 2008-████, Findings of Fact 14-17.

Mattox & O'Brien, P.C., 990 P.2d 78, 84 (Colo. 1999). The fact that the County was not prepared at the time of the first hearing does not mean it did not have a full and fair opportunity to be heard, merely that it failed to avail itself adequately of that full and fair opportunity. Appellant should not now be penalized and subjected to further litigation as a consequence of that failure. Thus, the County Department's assertion that it lacked a full and fair opportunity to be heard in SHS 2008-██████ is without merit.

The County Department raises one additional argument in support of its position that the application of issue preclusion is inappropriate under the circumstances of this case. This argument focuses on the fact that Appellant's right to Food Stamps ceases at the end of each certification period and the requirement of state and federal law and regulations that the County to conduct a new eligibility determination at the commencement of each certification period, based on current information. The County maintains that it is now in possession of information which, in accordance with the County's offer of proof, tends to establish Appellant intentionally violated the PASS program, thereby indicating use of Appellant's gross, rather than her net, SSA income is appropriate in calculating Appellant's proper Food Stamp benefit amount going forward in the new certification period. The County asserts that application of the doctrine of issue preclusion under the circumstances of this case would therefore require the County to ignore known circumstances relating to Appellant's proper Food Stamp benefit amount in the new certification period, in contravention of state and federal requirements. Although the County's argument has superficial appeal, the ALJ concludes that it is ultimately unpersuasive.

Federal Food Stamp regulations require the applicable state agency to "establish a definite period of time within which a household shall be eligible to receive [Food Stamp] benefits." 7 C.F.R. § 273.10(f). "No household may participate beyond the expiration of the [assigned] certification period . . . without a determination of eligibility for a new period" in accordance with state recertification procedures. 7 C.F.R. § 273.14(a). The State Department's regulations implement this requirement. As provided in Section 4.4240, "At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall only be established on a newly completed application, an interview, and verification. . . . Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility." See *also* Section 4.4012, providing *inter alia*, that "[b]enefits will not be continued beyond the end of the certification period unless the household is recertified."

Thus, as asserted by the County, Food Stamp offices must regularly reconsider household eligibility for Food Stamps based on then-current information and households may not continue to receive Food Stamps beyond a particular certification period without such a determination. However, the County has failed to provide to explain how the mere existence of the recertification requirement renders issue preclusion inapplicable to the facts of this case. The County has not supported its argument with any legal authority and does not assert that the existence of recertification requirements negates any of the four required elements of issue preclusion. Instead, the County appears to assert, without any

legal support, that the Food Stamp certification process simply supersedes and negates application of the doctrine of collateral estoppel. These assertions are without merit.

The ALJ agrees that each new certification period requires a new determination of Food Stamp eligibility and benefit level. Sections 4.4240 and 4.4012. However, application of issue preclusion in no way prevents the County from complying with this obligation. The County is merely precluded, on the basis of a prior final legal judgment, from utilizing Appellant's gross SSA income in calculating Appellant's Food Stamp benefit amount. It is not precluded from redetermining all other matters relating to Appellant's Food Stamp eligibility and proper benefit level that have not been the subject of qualifying litigation under the issue preclusion doctrine. Thus, the County is not prevented from considering any increases in Appellant's net SSA income, any other income received by Appellant, her resources, her applicable deductions and expenses, or any other pertinent household circumstances. This result honors the recertification process while also implementing the doctrine of collateral estoppel to promote judicial economy and reliance on the judicial system by avoiding needless litigation and preventing inconsistent decisions. Furthermore, application of the doctrine is properly tailored because it acts as a bar only to relitigation of issues that have been finally decided in a prior adjudication and not to any other matters. In this case, as noted, the County had a full and fair opportunity to litigate the matter that is now precluded. Consequently, no legal basis has been established that would prevent application of the doctrine of issue preclusion in this proceeding.

Moreover, this is not a case in which the County claims the operative facts have changed since the prior hearing. Nor does the County assert it has only recently been able to acquire newly discovered evidence. Although the County asserts it now has additional information that it did not have (or did not present) at the time of the hearing in SHS 2008-█████, the County has not asserted Appellant's actual circumstances have changed or that the information the County now seeks to offer at hearing could not have been obtained prior to, and presented at, the previous hearing; merely that it failed to do so. This is also not a case in which the County asserts that the law upon which the prior decision was based has changed. In fact, the County has never asserted that the legal reasoning in SHS 2008-█████ was flawed, only that pertinent facts were not presented and therefore were not considered. Under these circumstances, the County has simply failed to establish that the doctrine of issue preclusion is not applicable or that it should not be applied to this proceeding as a matter of policy. In view of the focused and limited reach of the doctrine of issue preclusion under the facts of this case and in the absence of any legal authority supporting the County Department's theory that issue preclusion is simply inapplicable to new Food Stamp certification periods, the ALJ concludes that issue preclusion is properly applied in this case as a matter of law and policy, consistent with the purposes of the doctrine to support judicial finality and consistency and to avoid multiple attempts by the losing party to obtain a better result through serial litigation.

Accordingly, it is appropriate to apply the doctrine of issue preclusion/collateral estoppel in the present proceeding to bar the County Department from relitigating the final determination in SHS 2008-█████ that Appellant's net, rather than her gross, SSA income

should be utilized in calculating her Food Stamp benefit amount. Consequently, Appellant's Motion for Summary Judgment seeking a order that the determination of this issue in SHS 2008-████ is binding in the present proceeding should be granted.

Further, because there are no other issues between the parties in this Food Stamp matter, the granting of Appellant's Motion for Summary Judgment constitutes an Initial Decision in this matter.

Conclusions of Law

Based upon the foregoing Findings of Fact, the Administrative Law Judge enters the following Conclusions of Law:

1. Appellant's Motion for Summary Judgment is granted. By application of the doctrine of issue preclusion, the determination in SHS 2008-████ that Appellant's net, rather than her gross, SSA income shall be utilized in calculating her Food Stamp benefit amount is binding in this matter. Accordingly, the County Department shall utilize Appellant's net SSA income in calculating Appellant's Food Stamp eligibility and benefit amount.


2. Because the parties agree that there are no further outstanding issues in this proceeding, the ALJ's order granting Appellant's Motion for Summary Judgment constitutes an Initial Decision.

Initial Decision and Order

It is the Initial Decision of the Administrative Law Judge that Appellant's Motion for Summary Judgment is granted. The County Department's calculation of Appellant's Food Stamp benefit was erroneous and is reversed. The County Department shall recalculate Appellant's Food Stamp benefit using Appellant's net SSDI income, rather than her gross SSDI income. The hearing in the present proceeding previously scheduled for April █, 2009 has been vacated.

Pursuant to Sections 26-1-106 and 24-4-105(14)(a)(I), C.R.S., this Initial Decision shall be reviewed by the Office of Appeals, State Department of Human Services. The parties shall have 15 days from the date this Initial Decision is mailed, plus 3 days for mailing, to file written exceptions with the Office of Appeals at 1575 Sherman Street, 1st Floor, Denver, Colorado 80203, unless extended by the Office of Appeals. This Initial Decision will not be implemented while pending further review and final agency action by the Office of Appeals. Pursuant to applicable rules, the failure to file exceptions to provisions of the Initial Decision will waive the right to seek judicial review of a final agency decision which affirms those provisions.

DATED: May 13, 2009


JUDITH F. SCHULMAN
Administrative Law Judge