

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

██████████ 2019
Signature Confirmation

Client ID # ██████████
Request # 149013

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) discontinuing her benefits under the Supplemental Nutrition Assistance Program effective ██████████.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department’s decision to discontinue such benefits.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, the Appellant requested a continuance which OLCRAH granted.

On ██████████, 2019, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████, 2019, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant
 Jacqueline Taft, Department Representative
 Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to discontinue the Appellant's benefits under the SNAP effective ██████████ 2019 was correct.

FINDINGS OF FACT

1. The Appellant received SNAP for herself and two children, ██████████ age ██████████ and ██████████ age ██████████ (Hearing Record)
2. The Appellant is age ██████████ and not disabled. (Appellant's Testimony and Exhibit 1: Renewal Document)
3. The Appellant's two children are not disabled. (Appellant's Testimony)
4. The Appellant works full time for the ██████████ ("Employer") earning \$1,585.02 bi-weekly. The Appellant received the following bi-weekly pays: (Exhibit 1: Renewal Document, Exhibit 3: Work Number and Exhibit A: Employee Earnings Statement)

Pay Date	Gross Earnings	Month Total
██████████-19	Not available	
██████████-19	\$1,710.97	
██████████-19	\$1,835.62	
██████████		Unable to determine
██████████-19	\$953.52	
██████████-19	\$1,585.02	
██████████		\$2,538.54
██████████-19	\$1,839.75	
██████████-19	\$1,679.94	
██████████		\$3,519.69
██████████-19	\$1,192.97	
██████████-19	\$1,551.90	
██████████		\$2,744.87
██████████-19	\$1,726.68	
██████████-19	\$1,477.82	
██████████		\$3,204.50
██████████-19	\$1,479.68	

█-19	\$1,392.93	
█		\$2,872.61
█-19	\$1,555.08	
█-19	\$1,511.91	
█-19	\$1,591.70	
█		\$4,658.69

5. The Appellant pays \$65.00 per week childcare expense for her youngest daughter. (Appellant's Testimony and Exhibit 1: Renewal Document)
6. The Appellant owns her home where she resides with her two children. The Appellant pays a monthly mortgage of \$1,301.00 which includes homeowners insurance and property taxes. (Exhibit 1: Renewal Document and Appellant's Testimony)
7. The Appellant heats her home with gas and completed an application for energy assistance this winter. (Appellant's Testimony)
8. The SNAP gross monthly income limit for a household of three is \$3,289.00. (Hearing Record)
9. On █ 2019, the Department received the Appellant's renewal document and determined the Appellant's household income of \$3,677.19 exceeded the SNAP income limit of \$3,289.00 under expanded categorical eligibility and discontinued the Appellant's benefits under the SNAP effective █ 2019. Pay date █/19 \$1,585.02 + Pay date █/19 \$1,835.62 = \$3,420.64 / 2 = \$1,710.32 biweekly average x 2.15 = \$3,677.188. Because the █/19 pay was low in relationship to the Appellant's wage history, the Department excluded the █/19 wages when calculating the monthly gross wages. (Hearing Record)
10. On █ 2019, the Department issued the Appellant a notice of action. The notice stated SNAP benefits would end on █ 2019 for the reasons the monthly gross income of your household is more than the limit for this program and does not meet program requirements. (Exhibit 2: Notice of Action)
11. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on █, 2019. However the hearing, which was originally scheduled for █ 2019, was rescheduled for █, 2019, at the request of the Appellant which cause a █ day delay. Because this █ day delay resulted from the Appellant's request, this decision is not due until █, 2019, and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statute (“Conn. Gen. Stat.”) provides that the Department of Social Services is designated as the state agency for the administration of the supplemental nutrition assistance program pursuant to the Food and Nutrition Act of 2008.
2. “The department’s uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat, § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712(1990))
3. Title 7 of the Code of Federal Regulations (“C.F.R.”) § 273.9(a) provides as follows:

Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for SNAP. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for SNAP. Households which are categorically eligible as defined in §273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Section 5520.40 of the Uniform Policy Manual (“UPM”) provides as follows: “Income eligibility for the FS program is determined either through the use of FS gross and applied income tests or through meeting the eligibility requirements for TFA (including diversion assistance), AFDC, AABD, GA, SAGA, refugee assistance or SSI.”

“If the unit’s total gross income exceeds the standard, the unit is not eligible for Food Stamps benefits.” UPM § 5520.40(2)(a)

“The period of time in which the assistance unit is income-eligible for Food Stamp Program is limited to the calendar months in which the unit’s income passes the appropriate income eligibility test.” UPM § 5510(c)

4. Federal regulation provides as follows:

The State agency, at its option, may extend categorical eligibility to the following households only if doing so will further the purposes of the Food and Nutrition Act of 2008:

Subject to FNS approval, any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L. 104-193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

7 C.F.R. § 273.2(j)(2)(ii)(B)

“At least one member of the assistance unit receives or is authorized to receive TANF-funded services under the Help for People in Need Program.” UPM § 2545.05(A)(2)

UPM § P-5520.36 provides for the gross income limits for SNAP Expanded Categorical Eligibility as 185% of the FPL.

5. Effective [REDACTED] 2019, the 2019 Poverty Guidelines for the 48 Contiguous States and the District of Columbia for a household of three is \$21,330.00 annually. [Federal Register, Vol. 84, No. 22, [REDACTED] 2019, pp1168]
6. Effective [REDACTED] 2019, 185% of the monthly federal poverty limit (“FPL”) equals \$3,289.00 for a family of three. $\$21,330.00 \text{ annual FPL} / 12 \text{ months} = \$1,777.50 \times 185 \% = \$3,288.375$
7. “Household income shall mean all income from whatever source excluding only items specified in paragraph c of this section.” 7 C.F.R. § 273.9(b)

“Earned income shall include: All wages and salaries of an employee.” 7 C.F.R. § 273.9(b)(1)(i)

“The Department counts the assistance unit’s available income, and that income is considered available if it is received directly by the assistance unit.” UPM § 5005(A)(1)

8. Federal regulation provides as follows:

For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any

anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. **In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average.** Households shall be advised to report all changes in gross monthly income as required by §273.12.

7 C.F.R. § 273.10(c)(1)(i)

9. Federal regulation provides as follows:

Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. **If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income.** Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

7 C.F.R. § 273.10(c)(1)(ii)

Department policy provides as follows:

The Department uses the best estimate of the amount of income the unit will have, if the exact amount is unknown. This estimate is based upon:

- a. Information about what the unit received in similar past periods of time, and
- b. A reasonable anticipation of what circumstances will exist to affect the receipt of income in future months.

UPM § 5025.05(A)(2)

10. Federal regulation provides as follows:

Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

7 C.F.R. §273.10(c)(2)(i)

"Income which is counted in determining the unit's eligibility and calculating its benefits must be converted into monthly amounts if it is not already received in that manner. This chapter describes the methods of conversion used under various circumstances." UPM § 5025

Department policy provides as follows:

If income is received on other than a monthly basis, the estimate of income is calculated by multiplying 4.3 by a representative weekly amount that is determined as follows:

- a. If income is the same each week, the regular weekly income is the representative weekly amount;
- b. If income varies from week to week, a representative period of at least four consecutive weeks is averaged to determine the representative weekly amount;**
- c. If there has been a recent change or if there is an anticipated future change, the amount expected to represent future income is the representative weekly amount;

- d. If income is received on other than a weekly or monthly basis, the income is converted to a representative weekly amount by dividing the income by the number of weeks covered.

UPM § 5025.05(B)(2)

11. The Department incorrectly calculated the Appellant's monthly gross wages as \$3,677.19 after the Department excluded the [REDACTED]/19 gross wages due to low wages. The Department failed to calculate the Appellant's gross wages using four consecutive weeks or a 30 day period as outlined under SNAP federal regulations and department policy. Because the Appellant's bi-weekly wages fluctuate, the household may elect to utilize income averaging, such as a three month period/quarterly period when calculating monthly gross income under the SNAP or the Department and the household may elect to use a longer period of past time to provide a more accurate indication of the household's future income such as an 8 week period when calculating monthly gross income under the SNAP.
12. The Department incorrectly discontinued the Appellant's benefits under the SNAP for exceeding the SNAP gross income limit under expanded categorical eligibility because federal regulation and department policy fails to support the Department's calculation method used to determine the Appellant's monthly gross income.

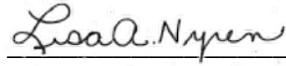
DECISION

The Appellant's appeal is granted.

ORDER

1. The Department must recalculate the Appellant's monthly gross income by choosing to elect income averaging or utilizing a longer period of time that exceeds a 30-day period.
2. The Department must continue to process the Appellant's SNAP renewal effective [REDACTED] 2019 based on the new calculation of the Appellant's monthly gross income.
3. The Department must issue a corrected notice of action to the Appellant notifying her of the outcome of the renewal process and issue any benefits due, if appropriate.

4. Compliance is due [REDACTED] 2020.



Lisa A. Nyren
Fair Hearing Officer

CC: Rachel Anderson, DSS RO #20
Cheryl Stuart, DSS RO #20
Lisa Wells, DSS RO #20
Jacqueline Taft, DSS RO #20

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.