

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

██████████, 2020
Signature Confirmation

Client ID # ██████████
Request # 146444

NOTICE OF DECISION

PARTY

██████████

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to ██████████ (the "Appellant") discontinuing his benefits from the Supplemental Nutrition Assistance Program ("SNAP") effective ██████████ 2019, because his income of \$7,289.75 per month exceeded the gross limit for the program.

On ██████████, 2019, the Appellant requested an administrative hearing to appeal the Department's discontinuance of his SNAP eligibility.

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 the hearing be rescheduled due to a conflict with work, and on ██████████, 2019, OLCRAH issued a notice rescheduling the hearing for ██████████, 2019.

On ██████████, 2019, the Appellant requested the hearing be rescheduled due to another conflict with work, and on ██████████, 2019, OLCRAH issued a notice rescheduling the hearing for ██████████, 2019.

On [REDACTED] 2019, in accordance with sections 17b-60, 17-61 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:

[REDACTED], Appellant
Timika Cineus, Department's representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The issue is whether the Department correctly denied/discontinued the Appellant's SNAP effective [REDACTED] 2019.

FINDINGS OF FACT

1. In [REDACTED] 2018 the Appellant submitted a renewal form to the Department to recertify his household's SNAP eligibility for a new period. (Ex. 4: Case Notes)
2. On [REDACTED], 2019, the Appellant was interviewed for his SNAP review. He reported income from self-employment. (Ex. 4)
3. On [REDACTED], 2019, the Department requested verifications from the Appellant by mail. He was asked to provide verification of self-employment income and expense receipts for the last 3 full months. (Ex. 1: W-1348 *Proofs We Need* form)
4. The Appellant operates a car service. He has operated the business for three years. (Hearing Record, Appellant's testimony)
5. The Appellant responded to the Department's [REDACTED], 2019 request by providing hand written profit and loss statements for his business for the most recent three months. (Hearing Record)
6. On [REDACTED], 2019, the Department reviewed the three profit and loss statements provided by the Appellant. The expenses for each month included car payments of \$1,490.00, insurance of \$517.00, E-Z pass tolls of from \$530.00 to \$860.00, and oil changes and car washes of from \$345.00 to \$395.47. (Ex. 4)
7. On [REDACTED], 2019, the Department determined that the verification provided by the Appellant was insufficient. The Department wanted receipts verifying the expenses. (Ex. 4)

8. After determining, on [REDACTED], 2019, that the verification provided by the Appellant was insufficient, the Department did not send the Appellant a new W-1348 *Proofs We Need* request for information. (Hearing Record)
9. On [REDACTED] 2019, the Department issued a NOA to the Appellant that his SNAP was closed effective [REDACTED] 2019 because his monthly gross income of \$7,289.75 exceeded the limit. (Ex. 5: NOA)
10. There is no evidence in the record of how the \$7,289.75 figure was calculated, where it came from, or that it was an accurate estimate of the Appellant's monthly income. (Hearing Record)
11. On [REDACTED], 2019, a worker for the Department spoke to the Appellant by telephone and advised him to provide his complete 2018 tax return instead of receipts. The Appellant was informed by letter that if he provided his 2018 tax return by [REDACTED] 2019 his case could be reopened. He was, on that date, resent the W-1348 *Proofs We Need* form from [REDACTED], 2019. (Ex. 4, Ex. 2: W-3016 letter)
12. On [REDACTED], 2019, the Appellant dropped his 2018 tax return off at the Stamford office of DSS. (Hearing Record)
13. On [REDACTED] 2019, the Department reviewed the Appellant's tax return. The return showed \$135,810 in gross income, \$117,873 in expenses, and a profit of \$17,937. The Department's determination was, "Unfortunately we are not able to use this...Client cannot use 2018 tax return for verification of current income. Client needs to provide more details. How many cars does this business have, why does he pay for an oil change every month, etc. Case will remain closed". (Ex. 4)
14. The Appellant provided the Department with his 2018 tax return before the [REDACTED], 2019 due date. The worker told him on [REDACTED] 2019 to provide the 2018 tax return instead of receipts. The Appellant was informed in writing that if he provided the tax return by [REDACTED], 2019, his case would be reopened. (Facts #11, #12)
15. The Appellant operates a car service and runs trips to LaGuardia and JFK airports. (Appellant's testimony)
16. The Appellant's business owns two vehicles worth approximately \$65,000.00 each. The vehicles are high mileage and are used for commercial service and in stop-and-go traffic. The vehicles must be properly maintained, both mechanically and for their appearance. They require oil changes and car washes regularly. (Appellant's testimony)

17. A single oil change for one of the vehicles typically costs \$139.00. The Appellant sometimes has to have the oil changed twice in one month. (Appellant's testimony)
18. The Appellant has significant expenses every month for loan payments on the vehicles, insurance, E-Z Pass tolls, gasoline, oil changes and car washes. (Appellant's testimony)
19. The Appellant processes payments through *Square*. Transportation requests are often clustered around the same times, based on flight schedules. The Appellant only has two vehicles available and each job is a multi-hour trip. If he receives more requests for service than he can provide, he contracts the business out. He processes the payments through *Square*, but the payments only pass through his business because they are afterward paid out to his subcontractor(s). This aspect of his business inflates the gross receipts he reflects in his records. (Appellant's testimony)
20. The Appellant does his own taxes. He has a bachelor's degree in accounting and formerly worked for a tax preparation service. He keeps detailed records. He has receipts for all his business expenses. (Appellant's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Commissioner of the Department of Social Services to administer the SNAP in accordance with federal law.
2. "The State agency must base SNAP eligibility solely on the criteria contained in the Act and this part". 7 CFR § 273.2(a)(1)
3. "Recertification process - ...(4) Verification. Information provided by the household shall be verified in accordance with § 273.2(f)(8)(i)...." 7 CFR 273.14(b)(4)
4. "Verification subsequent to initial certification -Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification..." 7 CFR § 273.2(f)(8)(i)
5. "Gross nonexempt income shall be verified for all households prior to certification...." 7 CFR § 273.2(f)(1)(i)
6. "Application for recertification. Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period...." 7 CFR § 273.10(a)(2)

7. "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....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...." 7 CFR § 273.10(c)(1)(ii)
8. **Self-employment income is more prone to fluctuation than regular earnings. 30 days is not a sufficient period to be used as an indicator of future income from self-employment. The treatment of self-employment is specifically discussed in 7 CFR § 273.11.**
9. "If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly income projected for the coming year." 7 CFR § 273.11(a)(1)(ii)
10. **If the Appellant's business had only been in operation for eight months, SNAP regulations would have required the use of the average of the income from the eight-month period to anticipate income for the coming year. Since the Appellant's business had actually been in operation for three years, it was appropriate to use the entire prior year's income from the business to establish the average.**
11. **The Department was incorrect when it requested proof of business income for the last three full months on the W-1348 dated [REDACTED], 2019. Unless it had information that the business income had changed substantially from the prior year (no such information is documented in the record), it should have requested the Appellant's prior year tax return only.**
12. "For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section)..., exclude the costs of producing self-employment income (as determined in paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income..." 7 CFR § 273.11(a)(2)(i)
13. "Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property." 7 CFR § 273.11(b)(1)

14. "In determining net self-employment income, the following items are not allowable costs of doing business...(iii) Depreciation;..." 7 CFR § 273.11(b)(2)
15. **A tax return contains all the necessary information to anticipate net self-employment income. It reflects a full year's income, smoothing out fluctuations and seasonal variations. It is a legal document, with criminal penalties for filing false information. It breaks out both the costs of self-employment allowed under SNAP rules – purchase of capital assets, payments on loans, tax and insurance payments on income-producing assets, cost of raw material, etc. – as well as an expense that is disallowed, depreciation.**
16. "The State agency must give households at least 10 days to provide required verification...." 7 CFR § 273.2(f)
17. **The Appellant was responsive to the Department's [REDACTED], 2019 information request. He provided the Department with his most recent three months of profit and loss data, as requested. When the Department made the determination that the verification was inadequate, it did not send a new W-1348 as required.**
18. "If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of the application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period...." 7 CFR § 273.14(e)(1)
19. **The Department was incorrect when it discontinued the Appellant's SNAP on [REDACTED], 2019. The basis of the denial was an unexplained and unverified income figure of \$7,289.75. The Department should have continued processing the recertification as of that date. Any delay up to that point was caused by the Department, because it requested the wrong information.**
20. **After the Department properly notified the Appellant on [REDACTED], 2019, both verbally and in writing, that he should provide his 2018 tax return instead of providing receipts, the Appellant responded timely and provided the tax return on [REDACTED], 2019.**
21. "The State agency may establish its own standards for the use of verification..." 7 CFR § 273.2(f)(3)(i)
22. "A statement made by an applicant or recipient is considered by the Department to be verified when the available evidence indicates that it is more likely to be true than not." UPM § 1540.05(A)
23. **A legally filed tax return is sufficient to verify self-employment income under the Department's established standard of proof. There is no evidence in the record that suggests that the Appellant filed his tax return fraudulently. The Department**

should have accepted the tax return submitted on [REDACTED], 2019 as adequate proof. No justification was offered for why the tax return should have been considered questionable.

24. The Appellant is entitled to SNAP benefits beginning [REDACTED] 2019. He is entitled to a full month's allotment for what would have been the first month of the new recertification period because he filed his application for recertification timely, he complied timely with the Department's requests, and he submitted all of the information necessary to complete the recertification process by [REDACTED], 2019, which was within 30 days.

DISCUSSION

The Department's SNAP Policy Manual provides as follows:

Self-employment income is generally reported on income tax forms. Determine the income from the following forms *if tax forms are not filed*: (emphasis added)

- Business accounts
- Bookkeeping records
- Other records maintained by the business owner that allows a calculation of the income and expenses.
- Sales and expenditures records.

The Department should have requested the Appellant's prior year's tax return in the first place, because his taxes *had been* filed.

After the tax return was submitted, there was no reason for the Department to delay the Appellant's SNAP and require him to further explain the line item expenses in the tax return.

DECISION

The Appellant's appeal is **GRANTED**.

ORDER

1. The Department must grant the Appellant's SNAP effective [REDACTED] 2019.
2. The Department must use the 2018 tax return information to calculate the Appellant's allotment for the new certification period.
3. The Department must send proof directly to the undersigned Hearing Officer, by no later than [REDACTED], 2020, that the benefits ordered by this decision have been issued.

James Hinckley
James Hinckley
Hearing Officer

cc: Yecenia Acosta
Timika Cineus

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 06105-3725.

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.