

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

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

Client ID # ██████████  
Hearing Request # 143604

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2019, the Department of Social Services (the "Department") issued a Notice of Action which stated that ██████████ (the "Appellant") was ineligible for Supplemental Nutrition Assistance Program ("SNAP") benefits because her household's gross income exceeded the limit for the SNAP program.

On ██████████ 2019, the Appellant requested an administrative hearing because she disagrees with the Department's determination that she is ineligible for SNAP benefits.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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  
Sara Hart, Department Representative  
Shelley Starr, Hearing Officer

The hearing record was held open for the submission of additional exhibits from the Department that was requested by the hearing officer. The exhibits were received from the Department. On ██████████ 2019, the hearing record closed.

### STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined that the Appellant was not eligible for SNAP benefits.

### FINDINGS OF FACT

1. On [REDACTED] 2019, the Appellant applied for SNAP benefits as a single individual, residing in a household consisting of one member. (Hearing Summary; Exhibit 1: Application submitted [REDACTED] 2019)
2. The Appellant is [REDACTED] years old and is a contracted employee for the [REDACTED] as a para-educator. She is employed 32 hours per week and is paid \$18.85 per hour. Her gross income is \$25,937.60 annually or \$2,161.45 per month. (Exhibit 4: [REDACTED], 2019; Hearing Summary; Hearing Record)
3. The Appellant was injured on the job on [REDACTED] 2018, and was out of work for an extended period of time. She did not receive all of her contractual earned income from the [REDACTED] for the 2018-2019 academic school year. (Appellant's Testimony; Hearing Record)
4. The Appellant was awarded a period of worker's compensation. Her compensation benefits ended pending further litigation. (Post Hearing Exhibit Letter from [REDACTED], 2019; Appellant's Testimony; Hearing Record)
5. On [REDACTED] 2019, the Appellant returned to work at the [REDACTED], working 16 hours per week until the school year ended on [REDACTED] 2019. (Appellant's Testimony; Hearing Record)
6. The Appellant is not eligible for unemployment. (Hearing Summary; Appellant's Testimony)
7. On [REDACTED] 2019, the Department denied the Appellant's application for SNAP benefits because her income was more than the allowable limit. (Exhibit 3: Notice of Action dated [REDACTED] 2019)
8. The Department calculated the Appellant's monthly income based on ten months of contractual earned income from the [REDACTED] budgeted over the 12 calendar months that her income is intended to support.  $(32 \text{ (hours)} \times \$18.85 \text{ (rate)}) = \$603.20 \times 2 = \$1,206.40 \times 2.15 \text{ (bi-weekly)} = \$2,593.76 \times 10 \text{ (months)} = \$25,937.60 / 12 \text{ (months)} = \$2,161.45 \text{ per month} / 2.15 = \$1,005.33 \text{ (bi-weekly)}$ . (Exhibit 2: Case Notes; Hearing Summary)

9. The SNAP gross income limit per month for an individual is \$1,872.00, which is 185 % FPL. (Hearing Summary; Hearing Record; Income Limits & Standards)
10. There is no evidence in the hearing record that the Department considered that the Appellant was not receiving 32 hours of weekly pay due to her work injury and her inability to work at the school. (Hearing Record)
11. There is no evidence in the hearing record that the Department calculated the actual earned income received by the Appellant under contract, to determine an average for the period of time it was intended to cover. (Hearing Record)
12. The Appellant is anticipated to return to the [REDACTED] as a para-educator on [REDACTED] 2019, for the 2019-2020 academic school year. (Exhibit 4: Letter [REDACTED] 2019; Hearing Record)
13. The issuance of this decision is timely under the Code of Federal Regulations § 273.15 which states that a decision must be reached and the household notified within 60 days of receipt of a request for a fair hearing. The Appellant requested an administrative hearing on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED] 2019, and is timely.

### **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 program in accordance with federal law.
2. Title 7 of the Code of Federal Regulations (“CFR”) § 273.9(a) provides that 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 the Food Stamp Program. 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 the Food Stamp Program. 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)).
3. Title 7 of the Code of Federal Regulations (CFR) § 273.10(c)(1)(i) provides that 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.

4. 7 CFR § 273.10(c)(3)(i) provides for income averaging and states that income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c) and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.
5. "The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v Rowe*, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712(1990)).
6. 7 CFR § 273.9 (b) (1)&(2)(ii) provides in part that (1) earned income shall include: all wages and salaries of an employee. (2) unearned income shall include, but not be limited to annuities, pensions, retirement, veteran's or disability benefits, worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12.

UPM § 5000.01 Treatment of Income Definitions states that:

Earned Income is income which the assistance unit receives in exchange for the performance of duties or through self employment and may be in the form of wages, salary, benefits or proceeds from self-employment. Unearned Income is income which does not constitute compensation for work or services performed or business conducted and includes returns from capital investments when the individual is not actively involved in the production of income.

7. 7 CFR § 273.10 (3)(iii) provides for contractual or self-employment income and states that households which, by contract or self employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12 month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly

UPM § 5025.10 provides for Income Received Less Frequently Than Monthly and states in part that the Department prorates payments over a period of time in the following situations: 1.) When the income was earned over a past period of time, the payment is averaged retroactively over the number of months in which it was earned; 2.) When the income is paid subject to an employment agreement which provides for periodic advances to cover future needs, the payment is averaged by the number of months for which it is intended;

**The Department incorrectly averaged the Appellant's contractual gross Income as \$25,937.60 annually because she was injured on the job and did not received all of her contractual earned income. She was injured on [REDACTED] 2018, and did not return to work until [REDACTED] 2019. She worked only 6 weeks [REDACTED] 19 – [REDACTED] 19) in the 2019 academic school calendar year.**

### DISCUSSION


On [REDACTED] 2019, when the Department determined the Appellant's SNAP eligibility, the income was calculated based on her contractual 32 hours of weekly employment with the [REDACTED] by her \$18.85 hourly rate. While the calculation would be correct if she was working her regular contracted hours, the Department did not consider that the Appellant, on [REDACTED] [REDACTED] suffered an injury on the job, that resulted in her inability to work and earn her contractual income for an extended period of time during the school year. The Appellant was awarded a period of workmen's compensation, and the Appellant returned to work on [REDACTED] 2019, until the school year ended on [REDACTED] 2019. She is anticipated to return to work for the 2019-2020 academic school year.

**DECISION**

The Appellant's appeal is **REMANDED** to the Department for further action.

**ORDER**

1. The Department shall reopen the Appellant's [REDACTED] 2019, SNAP application.
2. The Department shall recalculate the Appellant's 2018-2019 contractual earnings based on the gross income actually received under the contract and average it over the period of time it was intended to cover. The Department shall continue to determine SNAP eligibility.
3. Proof of compliance with this order shall be sent to the undersigned no later than [REDACTED] 2019.

  
Shelley Starr  
Hearing Officer

pc: Tonya Cook-Beckford, DSS, Willimantic  
Sara Hart, DSS, Willimantic

### **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.