

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

CLID # ██████████
Request # 143874

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Appellant”) a Notice of Action advising her that she was ineligible for Supplemental Nutrition Assistance Program (“SNAP”) benefits effective ██████████ 2019.

On ██████████ 2019, the Appellant requested an administrative hearing because she disagrees with the Department’s decision to discontinue her SNAP benefits.

On ██████████, 2016, 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, 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:

██████████, the Appellant
██████████, friend of the Appellant
Beatriz Ruiz, Interpreter
Lindsay Vallee, Department’s representative
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for one additional day for the submission of evidence. On [REDACTED] 2019, the hearing record closed.

Por favor vea la copia incluida de esta decision en espanol.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to discontinue the Appellant's SNAP benefits is correct.

FINDINGS OF FACT

1. On [REDACTED], the Appellant entered the United States from Peru. She was admitted indefinitely and granted lawful permanent resident status. (Exhibit 2: SAVE printout)
2. The Appellant was sponsored by her niece, who completed an affidavit of support. (Exhibit 2)
3. The Appellant's date of birth is [REDACTED]. On [REDACTED], she turned 65 years old. (Exhibit 2)
4. The Appellant rents a room in a private home (not her niece/sponsor) for \$100 a month with all utilities included.(Appellant's testimony)
5. The Appellant is employed as a babysitter for her niece/sponsor's child and earns \$75 weekly. (Exhibit 4: Letter from niece)
6. The Appellant has no income other than her babysitting earnings. She does not receive any additional income from her niece/sponsor. (Appellant's testimony)
7. The Appellant was a recipient of SNAP benefits and HUSKY medical assistance. When she turned 65, the Appellant came in to the Department's regional office regarding changes to her HUSKY medical benefits. (Department's summary and Appellant's testimony)
8. With regards to HUSKY medical, the Appellant was told that she must provide information regarding her sponsor and proof of her sponsor's income. (Appellant's testimony)
9. The Appellant provided a W727 Sponsor of Non-Citizens Information Sheet. On the form, she wrote that her sponsor's current gross income was \$9583 per month. She did not include information regarding dependent children of her sponsor. (Exhibit 3: W727 Sponsor of Non-Citizens Information Sheet)

10. The Appellant provided a 2018 W2 Wage and Tax Statement for her sponsor, which showed that the sponsor earned \$117,471.19 in compensation (\$120,433.14 in Social security wages) for 2018. (Exhibit 5: 2018 W2 form)
11. On [REDACTED], the Department sent the Appellant a notice of action advising her that her SNAP benefits would close on [REDACTED], 2019 because her net income exceeded the limit for the SNAP program. The notice indicated that the Appellant's sponsor's income was \$117,471.19 annually. (Exhibit 7: Notice of Action dated [REDACTED], 2019)
12. On [REDACTED], 2019, (the day of the hearing) the Department gave the Appellant a W724-Exception to Deeming for Needy Non-Citizens form. The Appellant had not been given the form or told such an option existed prior to the hearing date. (Exhibit 8: Exceptions to Deeming form and Appellant's testimony)
13. The issuance of this decision is timely under the Code of Federal Regulations 7 § 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. The hearing was held open for one day for the submission of additional evidence. 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") § 273.4(a)(1) provides for household members meeting citizenship or alien status requirements.
3. "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)).
4. UPM § 3005.06 provides that in order to receive food stamp benefits, an individual must be either a citizen or an eligible non-citizen.
5. 7 CFR § 273.4(a)(6) provides for individuals who are both a qualified aliens as defined in paragraph (a)(6)(i) of this section and an eligible aliens as defined in paragraph (a)(6)(ii) or (a)(6)(iii) of this section.

6. 7 CFR § 273.4(a)(6)(i)(A) provides that a qualified alien is one who is an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act. (“INA”).
7. 7 CFR § 273.4(a)(6)(iii)(A) provides in part that an alien age 18 or older lawfully admitted for permanent residence under the INA must be in a qualified status for 5 years before being eligible to receive food stamps.
8. The Department correctly determined that the Appellant is a qualified alien because she was admitted into the U.S. as a Lawful Permanent Resident.
9. The Department correctly determined that the Appellant is an eligible alien because she has been in qualified status (residing in the U.S.) for more than 5 years.
10. 7 CFR § 273.4(c)(2) provides that for purposes of determining the eligibility and benefit level of a household of which an eligible sponsored alien is a member, the State agency must deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I-864 or I-864A, as the unearned income and resources of the sponsored alien. The State agency must deem the sponsor's income and resources until the alien gains U. S. citizenship, has worked or can receive credit for 40 qualifying quarters of work as described in paragraph (a)(6)(ii)(A) of this section, or the sponsor dies.
11. UPM § 5020.60 A 1 provides that the Department deems the income of a non-citizen's sponsor and the sponsor's spouse, if the spouse signed the Revised Affidavit of Support (I-864) or the Contract Between Sponsor and Household Member (I-864A) to the non-citizen.
12. 7 CFR § 273.4(c)(3) (iv)(A) and (B) provides for exceptions to deeming and states an indigent alien that the State Agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). Prior to determining whether an alien is indigent, the State Agency must explain the purpose of the determination to the alien and/or household representative and provide the alien and/or household representative the opportunity to refuse the determination. If the household refuses the determination, the State agency will not complete the determination and will deem the sponsor's income and resources to the alien's household in accordance with paragraph (c)(2) of this section. The State agency must inform the sponsored alien of the consequences of refusing this determination. For purposes of this paragraph (c)(3)(iv), the phrase “is unable to obtain food and shelter” means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size. The State agency must determine the amount of income and other assistance provided in the month of application. If the alien is indigent, the only amount that the State agency must deem to such an alien will be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewable for additional 12-month periods. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved. State agencies may develop an administrative process under which

information about the sponsored alien is not shared with the Attorney General or the sponsor without the sponsored alien's consent. The State agency must inform the sponsored alien of the consequences of failure to provide such consent. If the sponsored alien fails to provide consent, he or she shall be ineligible pursuant to paragraph (c)(5) of this section, and the State agency shall determine the eligibility and benefit level of the remaining household members in accordance with § 273.11(c).

13. UPM § 5020.60 C 1 provides for exceptions to deeming in cases of indigence and states: a. The non-citizen may be considered indigent and exempt from the deeming requirement if the following criteria are met:

(1) the non-citizen does not have enough money to buy food and maintain a place to live without assistance from the Department based on:

(a) the total of the non-citizen's income and income-in-kind is less than the Supplemental Nutrition Assistance Program Gross Income Limit for his or her household size; or

(b) the non-citizen is living in an institution or in rated housing; or

(c) the non-citizen is applying for or receiving benefits under any Medicaid Home and Community Based waiver program; and

(2) the non-citizen's sponsor is not providing both free room and free board to the non-citizen; and

(3) the non-citizen lives apart from the sponsor, except as outlined in section 5020.60 C.1.a.(1)(c).

b.

(1) If the non-citizen does not want the Department to apply the indigence exception, the income of the sponsor shall be deemed to the non-citizen.

14. UPM § 5020.60 C 1 b provides that if the non-citizen meets the criteria in Paragraph C.1.a, **the non-citizen shall indicate, in writing, whether he or she wants the Department to apply the indigence exception to the non-citizen's application for benefits.** If the non-citizen does not want the Department to apply the indigence exception, the income of the sponsor shall be deemed to the non-citizen. If the non-citizen wants the Department to apply the indigence exception, the Department shall not deem the sponsor's income to the non-citizen. The Department shall notify the United States Attorney General of the name and address of the non-citizen and the name and address of the sponsor. (Emphasis added)

The Department was incorrect when it did not explain to the Appellant the exception to deeming sponsor's income in the case of indigence and advise her of the option to claim indigence. The Department was incorrect when it failed to obtain in writing the Appellant's option as to whether she wished to have her sponsor's income deemed or have the Department apply the indigence exception.

15. 7 CFR § 273.4(c)(2) (i)(A) and (B) provide that the monthly income of the sponsor and sponsor's spouse (if he or she has executed INS Form I-864 or I-864A) deemed as that of the eligible sponsored alien must be the total monthly earned and unearned income, as defined in §273.9(b) with the exclusions provided in §273.9(c) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member

applies or is recertified for participation, reduced by: a 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse and an amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

16. UPM § 5020.60 B 2,3, and 4 provide that the amount of income deemed from a sponsor and the sponsor's spouse is calculated in the following manner; that self-employment earnings are adjusted by subtracting the applicable self-employment expenses, that the gross monthly earned income amount is reduced by 20% to allow for personal work expenses; and that the remaining earnings plus gross unearned income is totaled and reduced by the Supplemental Nutrition Assistance Program Gross Income Limit as determined by the family size of the sponsor and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.

The Department incorrectly calculated the amount of income deemed from the Appellant's sponsor.

DISCUSSION

The Department was correct when it determined that sponsor's income is a factor in determining eligibility for SNAP for individuals who are permanent residents and were admitted to the United States with a sponsor. The federal regulations require that the sponsor's income be considered when determining eligibility until the permanent resident becomes a U. S. citizen or obtains 40 work quarters.

However, there are exceptions to the deeming of sponsor's income. Although the Appellant reported that she did not live with her sponsor or receive financial support (other than the money that she earned by working for the sponsor) the Department did not advise the Appellant that she may qualify for an exception to the deeming policy.

The Department's own policy requires that if a non-citizen qualifies for the exception of deeming by virtue of indigence, he or she needs to indicate in writing whether or not they want the indigence exception applied. In this case, the Appellant was not made aware of the exception to deeming option until the day of the hearing.

If the Appellant chooses not to claim the exception due to indigence, her sponsor's income would be a factor in her eligibility. It would be the Appellant's responsibility to provide verification of the sponsor's income and she did so. However, the Department did not deem the income in accordance with the regulations. The notices sent by the Department indicate the sponsor's annual income obtained from her W2 form. The hearing summary uses the monthly figure provided by the Appellant on the Sponsor's Information Sheet. (It should be noted that the Sponsor's Information Sheet did not contain information on the sponsor's child or children, which affects household size, a factor in the deeming.) The Department failed to apply the 20% earned income deduction or reduce the sponsor's income by the SNAP Gross Income Limit for her family's size.

The end result is thus: the Appellant must decide if she wants to claim the indigence exception to deeming (with all that it entails) or have her sponsor's income deemed and indicate her preference by her signature on the Exception to Deeming form. If she chooses not to claim the indigence exception, the Department must deem the sponsor's income in accordance with the methodology set forth in the above regulations.

It should be noted that although the Department did not deem the sponsor's income correctly, it would appear, based upon the information that was provided, that the income would exceed the allowable limit even if it were deemed correctly.

DECISION

The Appellant's appeal is **REMANDED BACK TO THE DEPARTMENT FOR FURTHER ACTION.**

ORDER

The Department must send the Appellant a W1348 Verification We Need form with a 10 day deadline for the Appellant's signature on the W724 Exception to Deeming for Needy Citizens form.

Upon the expiration of the deadline for the return of the W724 Exception to Deeming for Needy Citizens form, the Department must determine eligibility for SNAP effective [REDACTED] 2019 in accordance with the Appellant's selection on the W724 form and the above regulations.

Compliance with this order is due by [REDACTED] 2019 and shall consist of documentation that the Department has issued the Verification We Need form and determined eligibility upon the expiration of the deadline.



Maureen Foley-Roy
Hearing Officer

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 06105-3725. 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.