

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 ██████████
Request #148656

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) issued a Notice of Action (“NOA”) to ██████████ (the “Appellant”) informing her she was ineligible for Supplemental Nutrition Assistance Program (“SNAP”) benefits beginning ██████████ 2109, because her income exceeded the gross limit for a household of five persons.

On ██████████ 2019, the Appellant requested an administrative hearing to appeal the Department’s determination that she was ineligible for SNAP.

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, 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:

██████████, Appellant
Lindsay Vallee, Department’s representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The issue is whether the Department processed the Appellant's recertification correctly, and correctly determined the Appellant's household was ineligible for SNAP.

FINDINGS OF FACT

1. The Appellant resides with her four children, ages [REDACTED] [REDACTED] [REDACTED] and [REDACTED] (Hearing Record)
2. The Appellant's [REDACTED] year old daughter is a full time college student. (Appellant's Testimony, Hearing Record)
3. The Department previously certified the Appellant's household to receive SNAP for the period ending [REDACTED], 2019. (Hearing Record)
4. The Department discontinued the Appellant's SNAP effective [REDACTED], 2019, for failing to complete the review process. (Hearing Record)
5. The Appellant filed an appeal to contest the Department's discontinuance of her SNAP and a fair hearing was held. (Hearing Record)
6. On [REDACTED], 2019, a hearing officer issued a Notice of Decision granting the Appellant's appeal. The decision ordered the Department to reopen the Appellant's SNAP effective [REDACTED] 2019 and complete the recertification process. (Hearing Record)
7. On [REDACTED], 2019, the Department determined that the Appellant was ineligible for SNAP. The determination was, purportedly, the Department's completion of the Appellant's recertification, and its compliance with the [REDACTED] [REDACTED] 2019 Notice of Decision. (Hearing Record)
8. On [REDACTED], 2019, the Department issued a NOA to the Appellant denying SNAP effective [REDACTED] 2019 and for all future months because her income exceeded the gross limit for a household size of five persons. (Ex. 1: NOA)

Information used to make the [REDACTED], 2019 determination

9. The Appellant reported on the recertification form that she had daycare expenses for her three younger children of \$300.00 per week, \$300.00 per week and \$268.75 per month. (Ex. 2: Recertification Form)
10. When the Department made its eligibility determination on [REDACTED], 2019, it allowed the Appellant the \$300.00 per week, \$300.00 per week and \$268.75 per

month daycare expense amounts she reported on her recertification form, but the amounts had no bearing on the eligibility determination. Because the Department determined the Appellant was over the gross limit for the program, it did not proceed further to calculate the Appellant's net income after deductions. (Ex. 1)

11. The Appellant's [REDACTED] year old daughter's wages were verified by an [REDACTED], 2019 letter from [REDACTED] that reported that she worked 20 hours per week and earned \$100.00 per week. (Ex. 10: Letter from [REDACTED])
12. Because a worker for the Department questioned the low rate of pay reported in the [REDACTED], 2019 letter from [REDACTED] (\$100.00 divided by 20 hours equals \$5.00 per hour), she called the company on [REDACTED], 2019, and verified that the daughter was paid \$200.00 per week. \$200.00 divided by 20 hours equals \$10.00 per hour. (Ex. 9: Case Notes)
13. When it processed the recertification on [REDACTED], 2019, the Department counted wages of \$200.00 per week for the Appellant's daughter, based on the worker's [REDACTED], 2019 phone call. (Ex. 1)
14. The Appellant's daughter was paid \$200.00 by [REDACTED] for the particular week when the worker called the company, but her usual rate of pay is \$100.00 per week. (Ex. C: [REDACTED] 2019 letter from Lyons Home Improvement)
15. The Appellant is employed by [REDACTED] and is paid bi-weekly. The Department has access to the Appellant's wages through its wage verification service, *The Work Number*. (Hearing Record)
16. The Appellant was paid \$1,891.27 gross on [REDACTED] 2019 and \$1,761.10 gross on [REDACTED], 2019. The average of the two bi-weekly pays is \$1,826.19. (Ex. 3: *The Work Number* wage verification)
17. When it processed the recertification on [REDACTED], 2019, the Department counted wages of \$1,827.51 bi-weekly for the Appellant. The figure is close to, but does not exactly match, the average of the Appellant's pays for the most recent four weeks prior to the date her recertification was processed. (Ex. 1, Fact #16)

Other relevant facts

18. Since the date the NOA was sent on [REDACTED], 2019, the Department has determined, without requesting or acquiring any additional verification on the matter, that the Appellant is only entitled to a daycare expense of \$104.00 per month. The reason given by the Department for changing the deduction amount is that the Appellant receives daycare assistance through the Care 4 Kids

program, and the monthly fee for the program is \$104.00. (Hearing Summary, Ex. 6: Computation sheet, Ex. 7: Computation sheet)

19. The Appellant has daycare expenses over and above what are covered by the Care 4 Kids program. Besides paying the Care 4 Kids fee, she pays her daycare provider for charges in excess of what Care 4 Kids pays, and pays for other charges not covered by Care 4 Kids. (Appellant's testimony, Ex. B: Letter from daycare provider)

20. The Appellant's daughter is not paid "on the books" as an employee by [REDACTED]. She does not receive regular paychecks, does not have a regular hourly rate of pay, does not have taxes taken out of her pay, and does not have her wages reported to the Department of Labor. Rather, she is self-employed as an independent contractor and is responsible to report her own wages. (Hearing Record, 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 following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified....(ii) A person under 22 years of age who is living with his or her natural or adoptive parents..." 7 CFR § 273.1(b)
3. "An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions in paragraph (b) of this section...." 7 CFR § 273.5(a)
4. "To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria....(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;" 7 CFR § 273.5(b)
5. Beginning January 1, 2019, the Federal minimum wage is \$10.60 per hour. (Federal Register volume 83, September 4, 2018, p. 44906)
6. **Whether the Appellant's daughter was paid \$100.00 per week for 20 hours, or \$200.00 per week for 20 hours, is a moot question. In either case, the daughter's earnings from self-employment were not at least equal to the Federal minimum wage of \$10.60 per hour multiplied by 20 hours.**

7. **The Appellant's daughter was ineligible for SNAP. She was a full time college student whose employment did not qualify her for an exemption from the rule that full time students in higher education are ineligible for SNAP.**
8. Paragraph (c) of 7 CFR § 273.11 discusses the treatment of income and resources of certain nonhousehold members. Ineligible students are not among the nonhousehold members discussed in 273.11(c). 7 CFR § 273.11(c)
9. "For all other nonhousehold members defined in § 273.1 (b)(1) and (b)(2) who are not specifically mentioned in paragraph (c) of this section, the income and resources of such individuals shall not be considered available to the household with whom the individual resides...." 7 CFR § 273.11(d)(1)
10. "Such nonhousehold members shall not be included when determining the size of the household for the purposes of: (i) Assigning a benefit level to the household; (ii) Comparing the household's monthly income with the eligibility standards..." 7 CFR § 273.11(d)(3)
11. **The Department made an incorrect eligibility determination on [REDACTED], 2019. The Department determined that the Appellant's income exceeded the gross limit for her household size, but in making the determination it included the income of the Appellant's daughter, who was not eligible for SNAP, and it compared the household's income to the limit for a household of 5 persons, incorrectly including the Appellant's ineligible daughter as a member of the household.**
12. 7 CFR § 273.10(c)(1)(i) provides, in relevant part, as follows:

For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account...any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period....In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average....
13. "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...." 7 CFR § 273.10(c)(1)(ii)
14. "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...." 7 CFR § 273.10(c)(2)
15. **In anticipating the Appellant's income during the new certification period, it was proper to use an average of her earnings from the most recent 30 day period,**

converted to a monthly amount, as a projection of future income. Her average bi-weekly pay of \$1,826.19, multiplied by 2.15, equaled \$3,926.31 per month. It was correct to use this figure as an projection of future income during the certification period, beginning with [REDACTED], 2109.

16. It was not correct for the Department to base the Appellant's [REDACTED] 2019 and [REDACTED] 2019 eligibility for SNAP on a figure that was calculated to anticipate future income. The Department had access to the Appellant's *actual* wages from [REDACTED] 2019 and [REDACTED] 2019 through *The Work Number*. Whenever eligibility is calculated for a past month and the actual income for the month is known, the actual income must be used to calculate eligibility for the month.

12. 7 CFR § 273.9 (a) provides, in relevant part, as follows:

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)).

13. States may, at their option, extend categorical eligibility to households "in which all members receive or are authorized to receive non-cash or in-kind services" from a program that is funded in part with State money counted for MOE purposes under Title IV-A, if the program was designed to further either purposes one and two, or three and four, of the TANF block grant. FNS must be informed of, or must approve, the TANF services that a State determines to confer categorical eligibility. 7 CFR § 273.2(j)(2)(ii)

14. Households in Connecticut with incomes below 185% of the federal poverty level ("FPL") qualify for the State's "Help for People in Need" program which is funded with money counted for TANF MOE purposes and meets the requirements in 7 CFR § 273.2(j)(2)(ii). As such, the Department extends broad-based categorical eligibility for SNAP to all households that qualify for "Help for People in Need".

15. The Appellant's correct household size was four. The only income for the household was the Appellant's earnings. The Appellant's daughter's income was counted in error by the Department and should not have been included in the income that was compared with the eligibility standards.

16. 185% of the FPL for a household of four persons is currently \$3,970.00. The Appellant's household's gross income, which consisted of her projected earnings of \$3,926.31, was below 185% of the FPL for her household size. The

Appellant's household was, therefore, eligible for "Help for People in Need" and was, therefore, categorically eligible for SNAP under the provisions of 7 CFR § 273.2(j)(2)(ii). Because the household was categorically eligible, it did not have to meet the gross income test.

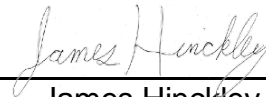
17. Because the Department incorrectly determined, on [REDACTED], 2019, that the Appellant was over the gross income limit, it did not go on to determine what income deductions the Appellant was entitled to, and did not determine her net applied income.
18. The recertification process, "at a minimum, must elicit from the household sufficient information that, when added to the information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The State agency must notify the applicant of information which is specified in § 273.2(b)(2), and provide the household with a notice of required verification as specified in § 273.2(c)(5)." 7 CFR § 273.14(b)(2)
19. The Department failed to recertify the Appellant's case properly. It did not verify the information necessary to ensure an accurate determination of eligibility and benefits. The Appellant is *not* subject to the gross income test. Her eligibility hinges on what income deductions she is eligible for, and what her resulting net applied income is. The Department arbitrarily reduced the Appellant's daycare deduction to \$104.00 without requesting or acquiring any additional verification that proved that \$104.00 was the correct figure. In fact, the Appellant has provided documentation from her daycare provider that her daycare expenses exceed the \$104.00 per month Care 4 Kids fee.
20. The Department must re-initiate recertification of the Appellant's SNAP beginning [REDACTED] 2019. It must *exclude* the Appellant's [REDACTED] year old daughter from the household because she is an ineligible student. It must use *actual* wages received in [REDACTED] 2019 and [REDACTED] 2019 to determine the Appellant's eligibility for those months. It must determine the Appellant's eligibility for deductions based on the information the household reported and on information already contained in the casefile. If the Department finds any information questionable, it must provide the Appellant with a notice of required verification as specified in SNAP regulations. The Department may not change deductions awarded to the Appellant without acquiring new verification that is more convincingly true than the information and verification already contained in the casefile, in accordance with the Department's standard of proof specified in UPM § 1540.05(A).

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department must reopen the Appellant's SNAP effective [REDACTED], 2019, and conduct a recertification of her household's eligibility, in accordance with SNAP regulations, and in accordance with the above Findings of Fact and Conclusions of Law.
2. The Department must send, by no later than [REDACTED], 2019 and directly to the undersigned fair hearing officer, proof that the Appellant's SNAP case has been re-opened and her recertification re-initiated as of [REDACTED] 2019. Such notification that the case has been reopened will be considered proof of the Department's compliance with this hearing decision.



James Hinckley
Hearing Officer

cc: Yecenia Acosta
Lindsay Vallee

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.