

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

Request # 154021

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On [REDACTED], 2020, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant"), a Notice of Action ("NOA") denying her for Supplemental Nutrition Assistance Program ("SNAP") benefits.

On [REDACTED] 2020, the Appellant requested an administrative hearing to contest the denial of SNAP benefits.

On [REDACTED] 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED], 2020.

On [REDACTED] 2020, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held a telephonic administrative hearing. The following individuals participated in the hearing:

[REDACTED], Appellant
[REDACTED] Appellant's Witness
Sheryl Feducia, Department's Representative
Carla Hardy, Hearing Officer

The hearing record remained open in order for the Department and the Appellant to submit additional documentation. The hearing record closed on [REDACTED], 2020

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the SNAP benefit.

FINDINGS OF FACT

1. On [REDACTED] 2020, the Appellant applied for and was interviewed for SNAP benefits. Her household is comprised of three members that include herself, her son [REDACTED], and a grandchild. (Exhibit 1: Application; hearing Summary)
2. The grandchild is the son of the Appellant's daughter. (Exhibit 5: Case Notes)
3. The Appellant is [REDACTED] years of age, her son is [REDACTED] and her grandchild is [REDACTED] months old. (Appellant's Testimony)
4. No one in the Appellant's household is disabled. (Appellant's Testimony; Hearing Record)
5. The Appellant has guardianship of her grandson. She receives \$366.00 per month in TFA cash benefits on his behalf. (Exhibit 5: Case Notes; Exhibit 9: SNAP Income Test)
6. The son works for [REDACTED] (Exhibit 5: Case Notes; Exhibit 10: Wage Stubs From [REDACTED])
7. The Appellant is self-employed. She has three businesses that she is involved in: [REDACTED], [REDACTED], and [REDACTED] (Hearing Record, Hearing Summary)
8. The Appellant is not an employee of [REDACTED]. She is the founder of this daycare and president of its board of directors. She does not receive compensation for this position. (Appellant's Exhibit L: Letter From [REDACTED])
9. The Appellant's mortgage is \$4,974.49 monthly. (Exhibit 4: Mortgage Statement; Appellant's Testimony)
10. On [REDACTED] 2020, the Department requested the following information from the Appellant: her son's wage stubs; copy of her Income Tax Return; proof of foreclosure on her home; proof of the dissolution of her business and that she is not

getting paid; and the tax return for the non-profit business, [REDACTED]. (Exhibit 5: Case Notes)

11. On [REDACTED] 2020, the Department received the son's wage stubs, foreclosure statement, an incomplete 2018 Income Tax Return, and a letter from [REDACTED] stating the Appellant is not an employee. (Hearing Summary)
12. The first page of the Appellant's Schedule E from her 2018 Income Tax Return was not included with the Appellant's Income Tax Return. (Exhibit 12: 2018 Income Tax Return; Appellant's Exhibit K: 2018 Income Tax Return)
13. The Appellant submitted her son's following wage stubs:

Pay Date	Gross Wages
[REDACTED]/20	\$289.92
[REDACTED]/30	\$280.68
[REDACTED]/30	\$474.84
[REDACTED]/20	\$474.24
[REDACTED]/20	\$477.84

(Exhibit 10: Wage Stubs from [REDACTED])

14. The son's year to date earnings for [REDACTED] 2020 equal \$3,097.72 and \$5,027.04 for [REDACTED] 2020. (Exhibit 10: [REDACTED] Wage Stubs)
15. The son's gross wages for [REDACTED], 2020 equal \$1,454.48 ($\$5,027.04 - \$474.24 - \$3,097.72 = \$1,454.48$). (Exhibit 10)
16. The \$1,454.48 wage stub for [REDACTED] 2020, is unusually high. (Exhibit 10: Wage Stubs From [REDACTED])
17. The Appellant and her son are the owners of [REDACTED]. The Department does not know what percentage of the business is owned by either party. (Exhibit 5: Case Notes)
18. On [REDACTED] 2020, the Department requested that the Appellant submit three months of profit and loss statements from [REDACTED] and [REDACTED]. (Exhibit 5: Case Notes)
19. On [REDACTED] 2020, the Department received the Appellant's profit and loss statements for [REDACTED] and [REDACTED]. The statements covered the period from [REDACTED] 2020, through [REDACTED], 2020. (Exhibit 5: Case Notes)
20. On [REDACTED], 2020, the Department updated the Appellant's case with her income from Schedule C of her 2018 Income Tax Return. (Exhibit 5: Case Notes)

21. The Appellant's 2018 net profit from [REDACTED] equals \$10,180.00. (Exhibit 8: Department's Self-Employment-Schedule C Form; Exhibit 12: 2018 Income Tax Return)
22. The Appellant's 2018 total income from [REDACTED] equals \$10,179.00. (Exhibit 12: 2018 Income Tax Return)
23. The Department calculated that the Appellant's monthly self-employment income equals \$15,354.08 monthly. (Exhibit 9: SNAP-Income Test)
24. On [REDACTED] 2020, the Department notified the Appellant that she was denied SNAP benefits because her household's monthly gross income exceeds the limit for the program. (Exhibit 3: NOA, [REDACTED]/20)
25. 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 hearing. The Appellant requested an administrative hearing on [REDACTED], 2020. Therefore this decision is due not later than [REDACTED], 2020. However, at the request of the Appellant, the hearing record was held open for an additional seven days. Because this 7-day delay resulted from the Appellant's request, this decision is not due until [REDACTED], 2020, and is therefore timely. (Hearing Record)

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 ("C.F.R.") § 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 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 as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"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 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).

UPM § 5000.01 provides that an elderly person, in the context used by the Food Stamp (SNAP) program means a person who is sixty or more years of age.

UPM § 5520.40 provide that income eligibility for the SNAP is determined either through the use of SNAP gross and applied income tests or through meeting the eligibility requirements for Temporary Family Assistance (“TFA”) (including diversion assistance), Aid to Families with Dependent Children (“AFDC”), Aid to the Aged, Blind or Disabled (“AABD”), General Assistance (“GA”), State Administered General Assistance (“SAGA”), refugee assistance or Supplemental Security Income (“SSI”).

- A. Gross Income Eligibility Test
 1. The Gross Income Eligibility test is used for all units except those which:
 - a. include one or more persons who are elderly or disabled; or
 - b. are categorically eligible for FS benefits.
 2. When the Gross Income Test is used, the assistance unit's gross monthly income is compared to a limit which is equal to 130% of the Food Stamp Applied Income Limit (FSAIL) for the number of persons in the needs group:
 - a. If the unit's total gross income exceeds the standard, the unit is not eligible for Food Stamps benefits.
 - b. If the unit's gross income equals or is less than the limit, the unit's applied income is then subjected to the Applied Income Test.
 - B. Applied Income Eligibility Test
 1. Income eligibility is determined on the basis of the assistance unit's total monthly applied income:
 - a. including those units which are not subjected to the Gross Income Eligibility Test; and
 - b. excluding those units which are considered categorically eligible for FS benefits.
 2. The unit's total monthly applied income is compared to an amount equivalent to the Food Stamp Applied Income Limit for the respective unit size:
 - a. If the total applied income exceeds the FSAIL, the unit is not eligible for Food Stamps benefits;
 - b. If the total applied income equals or is less than the FSAIL, the unit is eligible.
 - C. Categorical Eligibility Test

Those assistance units which qualify as categorically eligible are not subjected to gross or applied income eligibility tests
3. **No one in the Appellant’s household is disabled or elderly. The Appellant must meet the gross and net eligibility standards for SNAP.**
 4. Title 7 C.F.R. § 273.9(c) provides for the definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

5. Title 7 C.F.R. § 273.9(b)(1) provides that income shall include: (i) all wages and salaries of an employee. (ii) the gross income from a self-employment enterprise, including the total gain from the sale of any capital good or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section.

UPM § 5000.01 defines self-employment income as the total amount of income derived from a self-employment enterprise before self-employment expenses are deducted.

The Department correctly determined that the Appellant's self-employment income is included in the calculation for SNAP benefits.

6. Title 7 C.F.R. § 273.9(b)(2)(i) provides in relevant part that unearned income shall include, but not be limited to Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF) . . .

The Department correctly included the TFA income in the calculation of the SNAP benefits.

7. Title 7 C.F.R. § 273.10(c)(1)(ii) provides in part that 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.

Title 7 C.F.R. § 273.10(c)(2)(i) provides that 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.

UPM 5025.05(b) provides:

1. If income is received on a monthly basis, a representative monthly amount is used as the estimate of income.
2. 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 5025.15 provides that if self-employment income is received less frequently than monthly, the amount of monthly income is estimated by:

- A. Analyzing the income over a 12-month period:
 1. When quarterly tax records are available, the annualized period consists of the 12 month period ending with the last complete calendar quarter prior to the time of determination;
 2. When quarterly tax records are available, the period will consist of the last calendar year prior to the time of determination; or
- B. Dividing the total gross earnings by the number of months in which the self-employment income was earned if:
 1. The income was intended to meet the unit's needs for only part of the 12 – month period; or
 2. The self-employment has existed for less than 12 months.

8. The Department correctly calculated that the Appellant receives \$366.00 monthly in TFA benefits.

The Department incorrectly calculated that the son's monthly gross earnings equal \$1,767.56.

The son's monthly gross earnings equal \$1,835.67 [(\$280.68 + \$474.84 + \$474.24 + \$477.84)/4 x 4.3 = \$1,835.67]

9. Title 7 C.F.R. § 273.9(c)(19)(ii) provides in relevant part that gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(ii) of this section, must be calculated in accordance with § 273.11(a)(2).
10. Title 7 C.F.R. § 273.11(a)(1) provides that *Averaging self-employment income*. (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.
11. Title 7 C.F.R. § 273.11(a)(2) provides for determining monthly income from self-employment. For the period of time over which self-employment 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) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the 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. The monthly net self-employment income must be added to

any other earned income received by the household to determine total monthly earned income.

Title 7 C.F.R. § 273.11(b)(1) provides that 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, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

UPM § 5035.15(A)(1) provides that Income earned by any member of the assistance unit through self-employment is adjusted by subtracting the following costs of producing income as they apply:

- i. payments to employees;
- ii. cost of stock, raw material, seed, or fertilizer;
- iii. interest paid to purchase income-producing property;
- iv. insurance premiums and taxes paid on income-producing property; and
- v. cost of providing meals in day care programs to children, other than the provider's own, and to adults.

UPM § 5035.15(A)(5) provides that the cost of producing self-employment income is converted to a monthly amount in the same manner as the self-employment income is converted to a monthly amount. (Cross Reference 5025.15)

The Department incorrectly calculated that the Appellant's monthly self-employment income equals \$15,354.08 because they failed to compute her self-employment income based on the current 12-month period.

12. The Appellant's current self-employment cannot be determined based on the evidence and testimony provided for the hearing record.

DECISION

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

ORDER

1. The Department shall recalculate the Appellant's self-employment income analyzed over a 12-month period.
2. The Department shall issue a request for additional information if appropriate.

3. The Department shall give the Appellant 10 days to submit the requested verifications.
4. Compliance with this order shall be forwarded to the undersigned no later than [REDACTED] 2020.

Carla Hardy
Hearing Officer

Pc: Peter Bucknall, Jamel Hilliard, Sheryl Feducia, Department of Social Services,
Waterbury Office

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 060105-3725.

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.