

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

██████████ 2023
SIGNATURE CONFIRMATION

██████████
██████████
REQUEST# 207347

NOTICE OF DECISION

PARTY

██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), a Notice of Action ("NOA") denying his application for SNAP due to excess income effective ██████████, 2023.

On ██████████, 2022, the Appellant requested an administrative hearing to contest the denial of SNAP due to excess income.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2023.

On ██████████ 2023, 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:

██████████, Appellant
Katrina Arnott, Department's Representative
Melissa Prisavage, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's application for SNAP benefits due to excess income on [REDACTED] 2022.

FINDINGS OF FACT

1. On [REDACTED] 2022, the Appellant submitted an online application ("ONAP") requesting SNAP. (Exhibit 1: ONAP, Exhibit 2: Case Notes, Appellant's Testimony)
2. The Appellant's household consists of five people, himself, his spouse, and 3 minor children. The Appellant is [REDACTED]-years-old [REDACTED]. Appellant's spouse is [REDACTED]-years-old [REDACTED]. The oldest child is [REDACTED]-years-old [REDACTED]. The middle child is [REDACTED]-years-old [REDACTED]. The youngest child is [REDACTED]-year-old [REDACTED] (Exhibit 1: ONAP, Appellant's Testimony)
3. There are no elderly or disabled individuals in the Appellant's household. (Appellant's Testimony)
4. On [REDACTED], 2022, the Department completed an interview with the Appellant. (Exhibit 2: Case Notes, Appellant's Testimony)
5. The Appellant is employed with the [REDACTED] and has gross wages of \$7,049.28 monthly. His wages are broken down into Base Pay (\$4,413.30), Basic Allowance for Subsistence ("BAS") Pay (\$406.98), and Basic Allowance for Housing ("BAH") Pay (\$2,229.00). (Exhibit 3: Pay Stub, Department's Testimony, Appellant's Testimony)
6. The Appellant has no other income. (Appellant's Testimony)
7. The Appellant's household lives in private housing. They do not live on a military base. (Appellant's Testimony)
8. The BAH payment is first paid to the Appellant as part of his gross income, and then diverted toward privatized housing. (Exhibit 3, Appellant's Testimony)
9. The gross income limit for a household of five is \$5,412.00. (Department's Testimony)
10. On [REDACTED], 2022, the Department issued the Appellant a Notice of Action ("NOA") denying his application for SNAP benefits due to excess income. (Exhibit 2: Case Notes, Exhibit 7: NOA)

11. 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], 2022. Therefore, this decision is due no later than [REDACTED], 2023. (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.

The Department has the authority to review the Appellant's SNAP application and determine whether her household meets the program's eligibility requirements.

2. Title 7 of the Code of Federal Regulations ("C.F.R.") § 273.2(a)(2) provides the application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency must act promptly on all applications and provide SNAP benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. States must meet application processing timelines, regardless of whether a State agency implements a photo EBT card policy. The State agency must make expedited service available to households in immediate need. Specific responsibilities of households and State agencies are detailed below.

The Department correctly screened the Appellant's application as of [REDACTED], 2022.

3. 7 C.F.R. § 273.2(e)(1) provides that except for households certified longer than 12 months, and except as provided in paragraph (e)(2) of this section, households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter. State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. State agencies may not require an in person interview solely to take a photo. Interviews may be conducted at the SNAP office or other mutually acceptable location, including a household's residence. If the interview will be conducted at the household's residence, it must be scheduled in advance with the household. If a household in which all adult members are elderly or disabled is certified for 24 months in accordance with § 273.10(f)(1), or a household residing on a reservation is required to submit monthly reports and is certified for

24 months in accordance with § 273.10(f)(2), a face-to-face interview is not required during the certification period. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer must not simply review the information that appears on the application, but must explore and resolve with the household unclear and incomplete information. The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to PA benefits do not apply to the receipt of SNAP benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for SNAP benefits. The interviewer must conduct the interview as an official and confidential discussion of household circumstances. The State agency must protect the applicant's right to privacy during the interview. Facilities must be adequate to preserve the privacy confidentiality of the interview."

4. 7 C.F.R. § 273.2(e)(2) provides that "The State agency may use a telephone interview instead of the face-to-face interview required in paragraph (e)(1) of this section for all applicant households, for specified categories of households, or on a case-by-case basis because of household hardship situations as determined by the State agency. The hardship conditions must include, but are not limited to, illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours that prevent the household from participating in an in-office interview. If a State agency has not already provided that a telephone interview will be used for a household, and that household meets the State agency's hardship criteria and requests to not have an in-office interview, the State agency must offer to the household to conduct the interview by telephone. The State agency may provide a home-based interview only if a household meets the hardship criteria and requests one. A State agency that chooses to routinely interview households by telephone in lieu of the face-to-face interview must specify this in its State plan of operation and describe the types of households that will be routinely offered a telephone interview in lieu of a face-to-face interview. The State agency must grant a face-to-face interview to any household that requests one."

The Department correctly completed an interview with the Appellant on [REDACTED], 2022.

5. 7 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)).”

6. 7 C.F.R. § 271.2 defines an elderly or disabled member as a member of a household who: (1) Is 60 years of age or older; (2) Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act; (3) Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act.

The Department correctly determined that no one in the household is elderly or disabled, therefore the household is subject to both the net and gross income eligibility standards.

7. 7 C.F.R. § 273.2 (j)(2)(i)(E) provides that “The following households are categorically eligible for SNAP benefits unless the entire household is institutionalized as defined in §273.1(e) or disqualified for any reason from receiving SNAP benefits. (E) Any household in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with paragraphs (j)(2)(i)(A) through (j)(2)(i)(D) of this section.”

The Appellant is not a recipient of Public Assistance (cash assistance) or SSI and is therefore not categorically eligible for SNAP benefits.

8. 7 C.F.R. § 273.9 (b) provides for the definition of income. (1) Earned income shall include: (i) All wages and salaries of an employee.

The Department correctly determined the Appellant’s monthly earned income from the [REDACTED] as \$7,049.28.

9. 7 C.F.R. § 273.9(c)(1)(i) provides for **Income exclusions**. Only the following items shall be excluded from household income and no other income shall be excluded: Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows: **Public assistance (PA) vendor payments.** PA vendor payments are counted as income unless they are made for: (A) Medical assistance; (B) Child care assistance; (C) Energy assistance as defined in paragraph (c)(11) of this section; (D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream; (E) Housing assistance payments made through a State or local housing authority.

The Department correctly determined that the Appellant's Basic Pay, BAS, and BAH payments are all forms of countable, earned income.

10. 7 C.F.R. § 273.9(c)(1)(vii)(B) provides for **Other third-party payments.** Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples: A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

The Department correctly determined that the Appellant's BAH payment is considered countable income because it is first paid to the Appellant and then diverted by the employer to a third party on behalf of the household. The Appellant's employer does not pay rent directly to the Appellant's landlord.

11. 7 C.F.R. § 273.2(j)(2)(ii)(A) provides that "The State agency, at its option, may extend categorical eligibility to the following households only if doing so will further the purposes of the Food and Nutrition Act of 2008: (A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104-193. States must inform FNS of the TANF services under this paragraph that they are determining to confer categorical eligibility."

Households in Connecticut with incomes below 200% 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 meet the requirements in Title 7 C.F.R. § 273.2(j)(2)(ii). As such, the Department extends broad-based categorical eligibility for SNAP to all households that qualify for the “Help for People in Need”.

12. The standards used in SNAP are adjusted each year on the first day of October. The Federal Poverty Standards applicable to the Appellant’s SNAP eligibility determination effective [REDACTED] 2022, are published in the Federal Register, Vol. 87, No. 14 / Friday January 21, 2022, pp. 3315-3316.
13. 7 C.F.R. § 273.9 (a) (1) provides that “The gross income eligibility standards for SNAP shall be as follows: (i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.”
14. The United States Department of Agriculture Food and Nutrition Services issued general guidance pertaining to the changes to the Income Eligibility Standards (see: www.fns.usda.gov/snap/allotment/COLA):

“The following tables provide the monthly income eligibility standards for FY 2023 (effective October 1, 2022, through September 30, 2023).”

Gross Monthly Income Limit (130% of Federal Poverty Level)

Household Size	Income Limit (130% FPL)
1	\$1,473
2	\$1,984
3	\$2,495
4	\$3,007
5	\$3,518
6	\$4,029
7	\$4,541
8	\$5,052
Each Additional Member	+\$512

The Department correctly determined that 200% of the FPL for a household of five is \$5,412.00 per month [$\$32,470$ (Federal Register FPL) / 12 months = $\$2,706 \times 2.00 = \$5,412$].

The Department correctly determined that the Appellant’s gross income of \$7,049.28 per month is over the allowable \$5,412.00 FPL Income Limit (200% of FPL) for a household of five seeking categorical eligibility.

DISCUSSION

The Department correctly determined that the BAH payment of \$2,229.00 is considered countable earned income. As outlined under 7 C.F.R. § 273.9 (c)(1)(i), the Department allows for some income exclusions including in-kind and certain vendor payments. However, BAH payments cannot be considered in-kind income as there is a monetary payment being made. That payment is evident on the Appellant's paystub (Exhibit 3). Furthermore, the BAH payment cannot be considered a vendor payment as it is NOT directly paid to the landlord by the Appellant's employer.

The BAH payment is paid to the Appellant and then diverted by the employer to a third party, as rent, on behalf of the household. As outlined under 7 C.F.R. § 273.9 (c)(1)(vii), these types of payments are only excluded if they are paid DIRECTLY to the third party from the employer. The Department's determination to include the BAH payment as countable income is correct.

The Department correctly determined that the Appellant's total gross monthly income of \$7,049.28 exceeds the monthly SNAP income limit of \$3,518.00 for a household of five. The Department's decision to deny SNAP is upheld.

DECISION

Appellant's appeal is **DENIED**



Melissa Prisavage
Fair Hearing Officer

CC: Jessica Carroll, DSS Operations Manager Norwich Regional Office
Katrina Arnott, DSS Liaison, Department Representative Norwich Regional 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 06105.

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, 165 Capitol Avenue, 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.