

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

Case # ██████████
Client # ██████████
Request # 223914

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) issued a notice of action to ██████████ (the “Appellant”) discontinuing the Appellant’s Supplemental Nutrition Assistance Program (“SNAP”) because his household income exceeded the program income limit.

On ██████████, 2023, the Appellant requested an administrative hearing to contest the denial of his SNAP application.

On ██████████ 2023, 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, 17-61 and 4-176e to 4-184 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephone.

The following individuals participated in the hearing:

██████████, Appellant
Barbie Morales, Department’s Representative
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct to discontinue the Appellant's SNAP assistance due to having a net monthly income above the program limit for his household size.

FINDINGS OF FACT

1. On [REDACTED] 2023, the Appellant submitted a SNAP renewal form. The Appellant was a SNAP recipient for an assistance unit of one. (Exhibit 8: Notice of Action, [REDACTED]/23)
2. On [REDACTED], 2023, the Department sent the Appellant a notice of action discontinuing his SNAP benefits due to having a monthly net income more than the limit for his household size. The Department determined the Appellant received a \$690.00 weekly commission from his employment as a realtor. (Exhibit 8)
3. The Appellant is 70 years old. (Hearing Record)
4. The Appellant receives Social Security (SSA) of \$1580.00 monthly. (Appellant's testimony and Exhibit 5: Federal SNAP Income Tests)
5. The Appellant receives intermittent income from his employment as a realtor with [REDACTED]. The Appellant is an independent contractor with a hire date of [REDACTED] 2023 (Appellant's testimony and Exhibit 3: Equifax / The Work Number)
6. On [REDACTED] 2023, the Appellant received his first commission check of \$690.00 from Caldwell Banker. (Exhibit 2: Proof of self-employment income)
7. As of the date of the hearing request, the Appellant received \$690.00 in commission. (Exhibit 2: Proof of self-employment and Exhibit 3: Equifax/ The Work Number)
8. On [REDACTED] 2023, the Appellant claimed the following business expenses from [REDACTED] 2023, through [REDACTED] 2023:

\$6.37	Car and Truck Repair
\$550.00	Insurance (not health)
\$82.44	Supplies
\$480.90	Taxes and Licenses
\$55.00	Travel
\$65.91	Meals and Entertainment
<u>\$72.98</u>	<u>Utilities</u>
\$1313.60	Total Claimed Expenses

(Exhibit 9: W-38, Self-Employment Income Verification)
9. On [REDACTED] 2023, the Appellant requested an administrative hearing. (Hearing

Record)

10. After the [REDACTED] 2023, notice of action, the Appellant received the following commissions: [REDACTED] 23 \$552.00, and [REDACTED]/23: \$1569.57. (Exhibit 3)
11. On [REDACTED], 2023, the Department reviewed the [REDACTED] 2023, denial following the hearing request and determined that the Appellant's net self-employment income from [REDACTED] was \$0.00. (Department's testimony)
12. On [REDACTED], 2023, the Department sent the Appellant a Notice of Action. The notice stated the Appellant was approved for SNAP benefits for [REDACTED] 2023 through [REDACTED] 2023. The notice further stated that the Appellant's benefits were discontinued effective [REDACTED] 2023. (Exhibit 4: Notice of Action [REDACTED]/23)
13. On [REDACTED] 2023, the Department determined the Appellant's monthly net self-employment income with [REDACTED] effective [REDACTED] 2023, as \$3649.50. (Exhibit 5: Federal SNAP – Income Test)
14. As of the date of the hearing, the Appellant received year to date commission of \$2811.75 (\$690.00 + \$552.00 + \$1569.57) (Appellant's testimony, Exhibit 2: Proof of Self-employment and Exhibit 3: Equifax/ The Work Number)
15. The Appellant works part-time for [REDACTED] and received the following wages: [REDACTED] 23 \$84.75; [REDACTED]/23 \$67.25; [REDACTED]/23 \$65.00; [REDACTED]/23 \$95.00. (Exhibit 3)
16. The Appellant receives intermittent income-producing garden arts and crafts. (Appellant's testimony)
17. The Appellant receives intermittent income through his self-employment business [REDACTED]. (Appellant's testimony)
18. The issuance of this decision is timely under Title 7 of the Code of Federal Regulations ("C.F.R.") § 273.15 (c) (1) which provides that within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and the local agency is notified of the decision. The Appellant requested an administrative hearing on [REDACTED], 2023, therefore this decision is due [REDACTED] 2023. (Hearing Record)

CONCLUSIONS OF LAW

1. Connecticut General Statutes §17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (7) the supplemental nutrition assistance program pursuant to the Food and Nutrition Act of 2008.

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

2. 7 C.F.R. § 273.2 (j) (2) (i) provides 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's household is not a recipient of Public Assistance (cash assistance) or SSI and is therefore not categorically eligible based on receipt of such.

3. 7 C.F.R. § 273.9 (a) provides that participation in the Program shall be limited to those households whose income incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households that 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 that 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 levels established in Section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)).

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 the Appellant's household contains an elderly individual and is therefore subject to the net income eligibility standard.

4. 7 C.F.R. § 273.9(b) provides that household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.
5. 7 C.F.R. § 273.9(b)(1)(i) provides that Earned income shall include: All wages and salaries of an employee.
6. 7 CFR 273.10(c)(1)(i) provides 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](#).

7. 7 CFR 273.10(c)(1)(ii) provides 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. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.
8. 7 CFR 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. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

The Department correctly determined the Appellant's wages with [REDACTED] as \$335.40 monthly ($\$84.75 + \$67.25 + \$65.00 + \$95.00 = \$312.00 / 4 = \78.00 week x 4.3 weeks = \$335.40).

9. 7 CFR 273.11(a)(1)(i) provides that 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.

10. 7 CFR 273.11(a)(2)(i) provides for the period of time over which self-employment income 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.
11. 7 CFR 273.11(b)(1) provide 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.
12. 7 CFR 273.11(b)(2) provides that in determining net self-employment income, the following items are not allowable costs of doing business:
- (i) Net losses from previous periods;
 - (ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in [§ 273.9\(d\)\(2\)](#);
 - (iii) Depreciation; and
 - (iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

On [REDACTED], 2023, the Department incorrectly determined the Appellant received \$690.00 weekly commission income from self-employment activity with [REDACTED]. The Appellant received one payment as of this date. The Department incorrectly did not consider self-employment expenses for the time period he began as a contracted employee with [REDACTED] beginning in [REDACTED] 2023.

On [REDACTED], 2023, the Department incorrectly failed to determine the Appellant's business expenses for the time period the Appellant began as a contracted employee with [REDACTED], [REDACTED] 2023. As of the date of the hearing, the Appellant has been a realtor since [REDACTED] 2023, for ten months. As of [REDACTED], 2023, the Appellant had a year-to-date self-employment income of \$2811.75.

Based on the hearing record, unable to determine the Appellant's net self-employment income based on the income determined by the Department and expenses calculated.

13.7 C.F.R. § 273.9 (b) (2) (ii) addresses which types of unearned income are included in the calculation of the SNAP allotment, and provides that 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; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week shall be considered unearned income.

The Department correctly determined that SSA is considered unearned income and counted in the calculation of the Appellant's SNAP benefit.

DISCUSSION

On [REDACTED], 2023, the Department incorrectly discontinued the Appellant's SNAP benefits by counting a one-time and year-to-date commission check of \$690.00 as a weekly amount for his self-employment / contracted employment with [REDACTED]. On [REDACTED] 2023, the Appellant verified self-employment activities for this employment.

On [REDACTED], 2023, the Department reviewed the Appellant's self-employment activities and determined the Appellant's net income after expenses as of [REDACTED] 2023, as \$3649.50.

Based on the testimony and evidence, unable to determine how the Department calculated this self-employment income. The Appellant's self-employment has been less than a year, therefore the income must be averaged by the number of months the Appellant has been in business in this case ten months.

DECISION

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

ORDER

1. The Department will reopen the Appellant's SNAP benefits effective [REDACTED] 2023.
2. The Department will utilize year-to-date income from self-employment at [REDACTED]

and average over the months in the self-employment activity. The Department will deduct the average monthly business expenses to determine a monthly net income amount based on year-to-date expenses.

3. The Department will recalculate eligibility based on the new monthly budgeted net self employment amount and issue a Notice of Action with the results of such.
4. No later than 20 days from the date of this decision, the Department will submit proof to the undersigned of compliance with this order.

Scott Zuckerman
Scott Zuckerman
Hearing Officer

Cc: Josephine Savastra, Operations Manager, DSS, Hartford Office
Lindsey Collins, Operations Manager, DSS, Hartford Office
Mathew Kalarickal, Operations Manager, DSS, Hartford Office
David Mazzone, Operations Manager, DSS, Hartford Office
Wilfredo Medina, Fair Hearing Liaison Supervisor, DSS, Hartford Office

Barbie Morales, Fair Hearing Liaison, DSS, Hartford 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, law, and 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 requested 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 the 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 the 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 if 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 to 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 per §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.