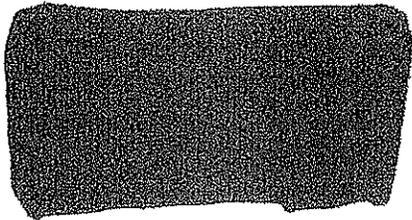


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LOUIS PASTEUR BUILDING
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Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-0458
TDD# (401) 462-3363

Date: June 13, 2014

Docket # 14-579
Hearing Date: June 2, 2014



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**THE DHS CODE: CHILD CARE ASSISTANCE PROGRAM (CCAP)
SECTION: 0850.02.04 CRITERIA FOR INCOME ELIGIBILITY**

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives David Nielson and Karen Beese.

Present at the hearing were: You, a Spanish Interpreter, and Agency representative David Nielson.

ISSUE: Is the appellant ineligible for the Child Care Assistance Program (CCAP) as of March 22, 2014 because he does not earn at least minimum wage?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The Agency representative testified:

- The appellant was previously found eligible for the child care assistance program (CCAP) and his case was due for recertification on April 5, 2014.
- The Agency received the appellant's CCAP recertification on February 21, 2014.
- The Agency reviewed the recertification and the income information submitted by the appellant
- To be eligible for CCAP, must work an average of 20 hours a week and at least minimum wage.
- The Agency received an employer's letter which states he earns \$8.00 an hour when he is inside the store and \$3.00 an hour while on the road.
- The Agency also received pay stubs which were reviewed in combination with the letter.
- The total hours worked and the total gross income earned, including tips, does not meet minimum wage standards.
- Because he is not earning minimum wage, his child care case was closed.
- If the Agency only looked at just the hours worked at \$8.00 an hour, then he would not meet the requirement of working a minimum of 20 hours a week.
- Eligibility for the Child Care program is based on gross income with no allowance for payment of child support.

The appellant, with the assistance of a Spanish Interpreter, testified:

- He works in a Pizzeria and he cannot change how they pay him.
- He works more than 32 hours a week and gets paid weekly.
- His income fluctuates week to week depending on the number of hours he works and the amount of tips he gets. Some weeks he could get over \$100.00 in tips but other weeks only \$70.00.
- His hours have recently increased because there are less people working there.
- He also requested more hours so that he can make more money to pay his sister for taking care of his child while he is working.

- He has to use almost all of the income he receives and he does not have enough to pay for child care.
- He does not take home the amount of income used by the Agency, or his gross income.
- He has \$77.50 in child support payments taken directly out of his income each week, as well as other deductions.
- While he takes home the tips because they are cash, he does have to pay taxes on that as well.

FINDINGS OF FACT:

- The appellant was sent a notice dated March 10, 2014 informing him that authorization for child care assistance would end on March 22, 2014 because he was not making at least minimum wage.
- The appellant filed a timely request for hearing received by the Agency on March 25, 2014.
- An Administrative Hearing was convened on June 2, 2014.
- The record of hearing was held open, through the close of business on June 6, 2014, to allow for the submission of additional evidence.
- Additional evidence was received and made part of the record of hearing.
- The appellant is employed at a Pizzeria and is paid weekly.
- The appellant's earned income consists of hourly wages and tips.
- The appellant earns \$8.00 an hour when working inside the Pizzeria.
- The appellant earns \$3.00 an hour when outside of the Pizzeria making deliveries.
- The Rhode Island minimum wage is \$8.00 per hour.

CONCLUSION:

The issue to be decided is whether the appellant is ineligible for the Child Care Assistance Program (CCAP) as of March 22, 2014 because he does not earn at least minimum wage.

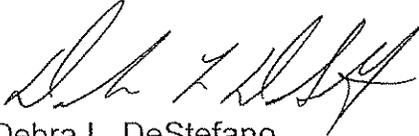
A review of CCAP rules and regulations finds that for CCAP eligibility to exist, the appellant must have an acceptable need for services relative to employment, meaning he must be employed a minimum of an average of 20 hours per week in a month and earn an average hourly wage of the greater of either the state or federal minimum wage. As the State minimum wage of \$8.00 an hour is higher than the Federal minimum wage, the appellant must thereby earn an average of \$8.00 an hour.

~~Prior to closure on March 22, 2014, the appellant had been authorized for and was in receipt of income eligible child care assistance. The appellant submitted verification of his employment and earnings with his CCAP recertification application which establishes that he works at a pizzeria for more than 20 hours a week and gets paid the State minimum wage of \$8.00 an hour during the hours he is working inside, but gets paid \$3.00 an hour when on the road making deliveries. The appellant also receives tips. The Agency argues that the total hours worked and the total gross income earned, including tips, does not meet minimum wage standard and the appellant is thereby ineligible for continued CCAP. The appellant argues that he works as many hours as he can get, but that his earnings fluctuate because the amount of tips fluctuates. He further argues that after weekly child support payments of \$77.50 are deducted from his wages, along with all other deductions, he does not have enough to pay for child care.~~

Per CCAP policy, income is defined as monetary compensation for services, including tips and gross wages. CCAP policy does not allow for any deductions, including child support payments and/or taxes. Therefore, while the submitted paystubs support the appellant's testimony as to deductions and fluctuations in his weekly work hours and earnings, his hourly wage must be based on his total gross wages and tips. Since the Agency determined ineligibility prospectively based on four weekly pays the appellant received in January and February 2014, and the appellant claimed that his income has since increased/changed due to an increase in his weekly work hours, the appellant was allowed to submit subsequent and more recent paystubs to determine if such changes resulted in a change in his average hourly wage at the time of closure and/or prospectively. The appellant submitted a total of ten weekly paystubs dated between January 31, 2014 and May 30, 2014. Only one pay stub was submitted for the month of March because the appellant had taken a three week vacation from work. The appellant submitted three paystubs for the month of April without any explanation as to why the paystub he should have received on April 18, 2014 was not submitted. The appellant also submitted his paystubs for the last two weeks of May 2014. The appellant's weekly paystubs document the number of hours worked and the wages earned for both inside and outside work, as well as the appellant's reported tips for the week. A full review of all the paystubs submitted finds that the appellant earned total wages and tips sufficient to meet the minimum wage, based on the total number of hours worked, only three out of the ten weeks.

In conclusion, a full review of all the evidence submitted finds that the appellant was not earning an average hourly wage of at least \$8.00 an hour on a monthly basis at the time of his CCAP closure, nor does the evidence establish that he will be earning an average of \$8.00 an hour prospectively. As the appellant does not earn an average hourly wage of at least minimum wage, he thereby does not have an acceptable need for services as defined and required by the CCAP rules.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the appellant is not earning at least minimum wage and he is thereby ineligible for continued child care assistance. The appellant's request for relief is denied.



Debra L. DeStefano
Appeals Officer