

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE – Louis Pasteur Building
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Date: October 10, 2014

Docket # 14-1386
Hearing Date: October 1, 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:

DHS POLICY MANUAL: SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM
SECTION: 1008 Financial Criteria – Income
SECTION: 1010 Calculating Food Stamp Benefits
SECTION: 1038.25 Gross and Net Income Eligibility Standards

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: Aline Guertin, Betty Perez, and the Corrective Action Unit.

Present at the hearing were: You, and Agency representative Aline Guertin.

ISSUE: Is the appellant ineligible for Supplemental Nutrition Assistance Program (SNAP) benefits as of August 2014 because her countable gross income exceeds the program's income eligibility standards?

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 has a household size of two and had been receiving SNAP benefits based solely on her employment at a store.
- The appellant's SNAP benefits were due for recertification in July 2014.
- The appellant's SNAP benefits closed effective July 31, 2014 because she failed to attend her recertification appointment.
- On August 5, 2014, the appellant was denied SNAP benefits for the month of August 2014 because her income of \$2,613.00 exceeded the maximum gross income standard of \$2,392.00.
- The appellant is working two jobs and income verification for both jobs had been provided during the recertification.
- The appellant had provided pay stubs for the store job and the Agency had received information through their computer system that she had other employment so they sent out an AP-50B, which is a form that the Agency sends out to employers for them to send back to the Agency with information about an applicant's/recipient's income. The Agency received the completed AP-50B from the appellant's other employer.
- Income eligibility is usually determined based upon the prior month's income. When a person's income fluctuates, the Agency will use the average.

The appellant testified:

- Her family consists of herself and her son, neither of who is disabled or elderly.
- She does work two jobs. She started the second job in January 2014.
- Prior to August 2014, she did receive SNAP benefits based solely on her retail store job. At recertification she told the Agency about both jobs.
- She provided paystubs to the Agency but she does not have any paystubs with her today.

- Her schedule varies at her retail job, but she generally averages approximately 20 hours a week, earns \$12.00 an hour, and gets paid weekly.
- At her other job, she works a set schedule of 19 hours a week, earns \$13.76 an hour, and gets paid biweekly.

FINDINGS OF FACT:

- The appellant was informed per a notice dated August 5, 2014 that her application for SNAP benefits had been denied for the month of August 2014 because her countable gross income of \$2,613.00 was more than the \$2,392.00 maximum gross income allowed for a household size of two.
- The appellant filed a timely request for hearing received by the Agency on September 3, 2014.
- An Administrative Hearing was convened on October 1, 2014.
- Per the appellant's request, the record of hearing was initially held open through the close of business on October 3, 2014. Per the appellant's request for an extension, the record of hearing was held open through the close of business on October 6, 2014.
- Additional evidence was submitted by the appellant during the held open period and was made part of the record of hearing. No additional evidence was submitted by the Agency during the held open period.
- The appellant's household for the purposes of SNAP consists of herself and one child.
- Neither the appellant nor her child is disabled or over age 60.
- Household's that do not include an elderly and/or disabled individual must meet the program's gross income guidelines for SNAP eligibility to exist.
- At the time of the appellant's August 2014 SNAP application, the maximum gross monthly income allowed for a household of two was \$2,392.00.
- The appellant's monthly income consists of wages received from two jobs.
- The appellant's monthly income fluctuates.
- The appellant's anticipated gross monthly income is \$2,548.59.

CONCLUSION:

The issue to be decided is whether the appellant is ineligible for Supplemental Nutrition Assistance Program (SNAP) benefits as of August 2014 because her countable gross income exceeds the program's income eligibility standards.

Per SNAP policy, participation in the program is limited to those households whose income and resources substantially affect the household's ability to obtain a nutritious diet. Gross and net income eligibility standards are established by law and apply to all households who apply for the program. Income eligibility is determined by comparing the household's income to the maximum gross and/or net income eligibility standards for the household's size according to the characteristics of the household.

There is no dispute that the appellant's household consists of herself and one child, neither of who is disabled or over age 60. Per SNAP policy, households such as the appellant's must meet both the gross and net income eligibility standards, looking first at gross income. Further review of SNAP policy and the gross income standards finds that for SNAP eligibility to exist as of August 2014, her household's gross income had to be at or below 185% of the FPL for a household of two, or \$2,392.00. The Agency testifies that the appellant's income consists of wages from two jobs and that her total gross monthly income is \$2,613.00. The Agency failed to explain and or provide any evidence to establish the earnings from each job separately and/or to verify the total income amount of \$2,613.00.

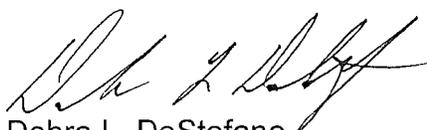
SNAP income eligibility is based on an applicant's anticipated future income, or the income expected to be received during the time period for which benefits are being requested. Per policy, income received in the thirty days prior to application is used to anticipate future income unless the preceding month's income is not representative of future income, or if the household's monthly income fluctuates to the point that it does not provide an accurate indication of anticipated income. In such cases an average monthly income can be utilized. The goal is to use the most reliable information that accurately reflects the household's projected future income.

The appellant testifies that her income fluctuates weekly because while she always works 19 hours a week earning \$13.76 an hour at one job, her work hours at her retail job, where she earns \$12.00 an hour, varies week to week. While the record of hearing was held open, the appellant submitted paystubs to verify her earnings from both jobs for the months of July, August, and September 2014. A review of the submitted pay stubs finds that the appellant's wages from her retail job fluctuate week to week, sometimes substantially, due to the number of hours worked as well as overtime pay. In July 2014, the month immediately preceding the month of application, the appellant earned an average weekly pay from her retail job of \$323.61 or \$1,402.30 monthly when converted using the 4.3333 calculation. In August she earned an average weekly pay of \$327.47 or \$1,419.03 monthly, and in September she earned an average weekly pay of \$329.02 or \$1,425.74 monthly. Further averaging results in an average monthly income of \$1,415.69 from her retail job. Since the appellant's wages from her retail job fluctuate on

a weekly and monthly basis, and there is no indication that the three months of verified wages are not representative of future fluctuations, the appellant's average monthly wage is thereby a better indication/representation of her anticipated monthly income from her retail job. The submitted pay stubs relative to the appellant's other job establish that in July 2014, the appellant earned \$261.44 a week or \$1,132.90 monthly when converted using the 4.3333 calculation. In August the appellant received an average weekly income of \$244.24 or \$1,058.37 monthly, and in September she received an average weekly income of \$259.72 or \$1,125.44 monthly, for an average monthly income of \$1,105.57 over the three month period of time. While the paystubs from this job did also show fluctuating income, the appellant testified that she is expected to work the same hours each week at this job and earn the same monthly wage as she received in July 2014. The income earned in the month of July 2014 is thereby the best indication/representation of anticipated future income for this job. In summary, at the time of application in August 2014, the appellant's anticipated gross monthly wage from her retail job was \$1,415.69 and her anticipated gross monthly wage from her other job was \$1,132.90, for an anticipated total gross monthly income of \$2,548.59.

In conclusion, for SNAP eligibility to exist, the appellant must first meet the program's gross income guidelines. Per SNAP policy, the household's countable monthly gross income cannot exceed 185% of the FPL for a family of two, or \$2,392.00. The appellant has countable monthly gross income of \$2,548.59, an amount that exceeds the maximum allowed despite being less than the \$2,613.00 a month that the Agency testified she had. It should also be noted, had the appellant's actual earned income from both jobs been averaged, her monthly gross income would have been \$2,521.23, an amount that also exceeds the gross income limit.

After a careful review of the Agency's policy, as well as the evidence and testimony given, this Appeals Officer finds that the appellant's countable monthly gross income exceeds the SNAP income eligibility standards and eligibility for SNAP benefits as of August 2014 therefore does not exist. The appellant's request for relief is denied.



Debra L. DeStefano
Appeals Officer

APPENDIX

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

(Formerly called the Food Stamp Program)

1008 (7 CFR 273.9) FINANCIAL CRITERIA - INCOME

1008.05 (7 CFR 273.9) INCOME

REV:10/2010

The Food Stamp Act requires that participation be "limited to those households whose income and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet." The standards are established by law and apply to all households applying for SNAP benefits.

Household income means all income from whatever source excluding only the items specified in 1008.10. The income considered is that received over the period of certification. As this is generally a future period, the income considered is usually that anticipated by the household. Section 1010 discusses how to determine Supplemental Nutrition Assistance Program (SNAP) income.

Households that contain an elderly or disabled member must meet the net income eligibility standards for the Supplemental Nutrition Assistance Program.

Households that do not contain an elderly or disabled member must meet both the gross income eligibility standards and the net income eligibility standards for the Supplemental Nutrition Assistance Program.

Households that are categorically eligible because they are recipients of RIW cash assistance and/or SSI do not have to meet either the gross or net income eligibility standards.

The gross and net income eligibility standards are based on the Federal income poverty levels established as provided in Section 673(2) of the Community Services Block Grant Act (42 O.S.C. 9902 (2)).

SNAP-only categorically eligible households that are recipients of a TANF-funded Service (the RI Department of Human Services TANF Information Publication) must meet the 185% gross income standard solely to determine eligibility for expanded categorical eligibility, and must meet the net income standards in order to determine benefit amount. One and two person households that are categorically eligible do not have to meet the net income standard in order to be eligible for the minimum monthly benefit.

The gross income eligibility standards for the Supplemental Nutrition Assistance Program for the contiguous 48 states, the District of Columbia, the Virgin Islands and Guam is one hundred thirty (130) percent of the Federal income poverty level.

The net income eligibility standards for the Supplemental Nutrition Assistance Program for the contiguous 48 states, the District of Columbia, the Virgin Islands and Guam is one hundred (100) percent of the Federal income poverty level.

The income eligibility limits are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 states and the District of Columbia.

The annual income poverty guidelines are divided by twelve (12) to determine the monthly gross income standards, rounding the results upward as necessary. For households greater than eight (8) persons, the increment in the Federal income poverty guidelines is multiplied by appropriate federal poverty level percentage, divided by twelve (12), and the results rounded upward, if necessary.

The annual income poverty guidelines are divided by twelve (12) to determine the monthly net income eligibility standards, rounding the results upward, as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by twelve (12), and the results rounded upward, if necessary. The income eligibility standards are listed in Section 1038.25.

1010 CALCULATING SNAP BENEFITS

1010.10 (7 CFR 273.10) ANTICIPATING INCOME - PROSPECTIVE BUDGETING

REV:07/1999

For the purpose of determining a change-reporting household's eligibility and monthly allotment, the agency representative takes into account the income already received by the household during the certification period and any anticipated income the household and the agency representative 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, the portion of the household's income that is uncertain is not counted by the agency representative.

For example, a household anticipating income from a new source, such as unemployment compensation, may be uncertain as to the timing and amount of the initial payment. These monies are not anticipated by the agency representative unless there is reasonable certainty concerning the month that the payment will be received and the amount. If the exact amount of the income is not known, that portion which is anticipated with reasonable certainty is considered income. In cases where the receipt of income is

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reasonably certain but the monthly amount may fluctuate, the household may elect to average income as described in Section 1010.15.

1010.10.05 (7 CFR 273.10) Income in Past Thirty (30) Days

REV:08/1987

Income received during the past thirty days is used as an indicator of anticipated income. However, past income is not used for any month in which a change in income has 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 agency representative may use a longer period of past time if it provides an accurate indication of anticipated income.

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 thirty (30) days, as one indicator of anticipated income. However, the agency representative must exercise 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. In no event may the agency representative automatically attribute to the household the amounts of any past income. The agency representative may not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

1010.10.10 (7 CFR 273.10) Anticipated Income for Month Received

REV:08/1987

Income anticipated during the certification period is counted as income only in the month it is expected to be received, unless the income is averaged as allowed in 1010.15. Non-recurring lump-sum payments are counted as a resource starting in the month received and are not counted as income.

1010.10.15 (7 CFR 273.10) Cases with Earnings

REV:07/1999

In cases where the head of the household is steadily employed, income from previous months is usually a good indicator of the amount of income which can be anticipated in the month of application and subsequent months. The method used to determine income must be fully documented in the case.

Hourly and Piece Work Wages

When income is received on an hourly wage or piece work basis, weekly income may fluctuate if the wage earner works less than eight (8) hours some days or is required to work overtime on others.

When determining the amount of anticipated income for a change reporting/prospectively budgeted case, review pay stubs from the previous four (4) weeks in order to determine a weekly average.

Withheld Wages

Wages withheld at the request of the employee must be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages withheld by the employer as a general practice, even if in violation of law, are not counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or the household anticipates that it will receive income from wages that were previously held by the employer as general practice and that were, therefore, not previously counted as income by the agency.

Advances on wages must only count as income if reasonably anticipated as defined in 1010.10.

1010.15 (7 CFR 273.10) AVERAGING INCOME

REV:08/1987

For non-monthly reporting prospective budgeting cases, whenever a full month's income is anticipated but is received on a weekly or bi-weekly basis, the agency representative converts the income to a monthly amount by use of the AP conversion table (AP-79) or multiplying the weekly income by 4.3333.

1010.15.15 (7 CFR 273.10) When Averaging Income is an Option

REV:01/2002

Households may elect to have income averaged. Income must not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs. To average income, the agency representative uses the household's anticipation of income fluctuations over the certification period. The number of months used to

arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past thirty (30) days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming year, the income from the two known months may be averaged and projected over a certification period of longer than two months.

1038 SNAP PROGRAM STANDARDS

1038.25 (7 CFR 273.9) GROSS AND NET INCOME ELIGIBILITY STANDARDS

REV:11/2013

The gross or net income eligibility standards for the household size are used to determine the household's eligibility according to the characteristics of the household.

1. To determine eligibility for non categorically eligible households the following steps are taken:
 - a. Compare the total gross monthly income of the household to the one hundred thirty percent (130%) maximum gross monthly income limit for the appropriate household size in Table I, below;
 - b. Compare the total net monthly income of the household (after appropriate deductions) to the maximum net monthly income limit for the appropriate household size in Table II, below.
2. To determine eligibility for categorical eligibility due to receipt of a TANF-funded service:
 - a. If the household's gross income is at or below one hundred and eighty five percent (185%) of the gross income limit, Table IV, the household meets the criteria for categorical eligibility and is not subject to a resource test.
 - b. The agency calculates the household's total net monthly income and then compares the total net monthly income of the household (after appropriate deductions) to the maximum net monthly income limit for the appropriate household size in Table II below to determine eligibility for SNAP benefits.
 - c. If the household's net income is at or below the net income limit, the household receives a benefit as long as the normal household size reduced by thirty percent (30%) of the household's net income in Table II results in a positive benefit amount.
3. Households that do not meet the net eligibility standard and would not receive a benefit are denied. EXCEPTION: One and two person categorically eligible households do not have to meet the net income standard in order to be eligible for the minimum monthly benefit.
4. To determine eligibility for households containing a member(s) who is elderly or disabled, or a disabled veteran or surviving disabled spouse/child(ren) of a veteran, the following steps are taken:

- a. Same household status
 - i. Compare the adjusted net monthly SNAP income of the household, computed in accordance with the instructions in Section 1010, to the maximum net monthly income limits for the appropriate household size in Table II, below.
 - b. Separate household status
 - i. Compare the gross monthly income of all other members in the household to the one hundred sixty-five percent (165%) maximum gross monthly income limit for the appropriate household size in Table III, below.
 - c. An elderly or disabled person/spouse is not considered a household member for this purpose, includes disabled veterans or surviving disabled spouse/child(ren) of a veteran, refer to Section (1010.30.05).
 - d. Elderly/disabled categorical eligibility due to receipt of a TANF-funded service
 - i. Compare the total gross monthly income of the household to the two hundred percent (200%) gross monthly income limit for the appropriate household size in Table V, below.
 - ii. If the household's gross income is over two hundred percent (200%) of the gross income limit, Table V, the household does not meet the criteria for categorical eligibility and is subject to a resource test.
 - iii. The agency then compares the total net monthly income of the household (after appropriate deductions) to the maximum net monthly income limit for the appropriate household size in Table II below to determine eligibility for SNAP benefits.
 - iv. If the household's gross income is at or below two hundred percent of the gross income limit, Table V, the household meets the criteria for categorical eligibility and is not subject to a resource test.
 - v. The agency then compares the total net monthly income of the household (after appropriate deductions) to the maximum net monthly income limit for the appropriate household size in Table II below in order to determine eligibility for SNAP benefits.
4. EXCEPTION: One and two person categorically eligible households do not have to meet the net income standard in order to be eligible for the minimum monthly benefit.

TABLE I - 130% LIMIT - GROSS MONTHLY INCOME LIMIT

HOUSEHOLD MONTHLY INCOME	MAXIMUM GROSS SIZE	HOUSEHOLD MONTHLY INCOME	MAXIMUM GROSS SIZE
1.	\$1,245	9.	\$4,730
2.	\$1,681	10.	\$5,166
3.	\$2,116	11.	\$5,602
4.	\$2,552	12.	\$6,038
5.	\$2,987	13.	\$6,474
6.	\$3,423	14.	\$6,910
7.	\$3,858	15.	\$7,346
8.	\$4,294	16.	\$7,782

+ For each additional member over 16, add \$436.00.

TABLE II - 100% INCOME LIMIT - NET MONTHLY INCOME LIMIT

HOUSEHOLD MONTHLY INCOME	MAXIMUM NET SIZE	HOUSEHOLD MONTHLY INCOME	MAXIMUM NET SIZE
1.	\$958.00	9.	\$3,638
2.	\$1,293	10.	\$3,973
3.	\$1,628	11.	\$4,308
4.	\$1,963	12.	\$4,643
5.	\$2,298	13.	\$4,978
6.	\$2,633	14.	\$5,313
7.	\$2,968	15.	\$5,648
8.	\$3,303	16.	\$5,983

+ For each additional member over 16, add \$335.00.

TABLE III - 165% INCOME LIMIT- ELDERLY/DISABLED SEPARATE HOUSEHOLD

HOUSEHOLD MONTHLY INCOME	MONTHLY MAXIMUM GROSS SIZE	HOUSEHOLD MONTHLY INCOME	MONTHLY MAXIMUM HOUSEHOLD SIZE	GROSS INCOME
1.	\$1,580	9.	\$6,003	
2.	\$2,133	10.	\$6,556	
3.	\$2,686	11.	\$7,109	
4.	\$3,239	12.	\$7,662	
5.	\$3,791	13.	\$8,215	
6.	\$4,344	14.	\$8,768	
7.	\$4,897	15.	\$9,321	
8.	\$5,450	16.	\$9,874	

+ For each additional member over 16, add \$553.00.

TABLE IV- 185% GROSS MONTHLY INCOME LIMIT

HOUSEHOLD INCOME	MAXIMUM GROSS SIZE	HOUSEHOLD MONTHLY INCOME	MAXIMUM GROSS SIZE	MONTHLY INCOME
1.	\$1,772	9.	\$6,730	
2.	\$2,392	10.	\$7,350	
3.	\$3,012	11.	\$7,970	
4.	\$3,632	12.	\$8,590	
5.	\$4,251	13.	\$9,209	
6.	\$4,871	14.	\$9,829	
7.	\$5,491	15.	\$10,449	
8.	\$6,111	16.	\$11,069	

+ For each additional member over 16, add \$620.00.

TABLE V- 200% GROSS MONTHLY INCOME LIMIT

HOUSEHOLD INCOME SIZE	MAXIMUM GROSS MONTHLY INCOME	HOUSEHOLD MONTHLY INCOME	MAXIMUM GROSS SIZE	MONTHLY
1.	\$1,916	9.	\$7,276	
2.	\$2,586	10.	\$7,946	
3.	\$3,256	11.	\$8,616	
4.	\$3,926	12.	\$9,286	
5.	\$4,596	13.	\$9,956	
6.	\$5,266	14.	\$10,626	
7	\$5,936	15.	\$11,296	
8	\$6,606	16.	\$11,966	

+ For each additional member over 16, add \$670.00.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.