

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 13, 2019

AGENCY: F-99

FH #: 8028029Q

In the Matter of the Appeal of
[REDACTED]
from a determination by the New York City
Department of Social Services

:
:
:
:
:
:

**DECISION
AFTER
FAIR
HEARING**

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on October 10, 2019, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

S. Lexton, Fair Hearing Representative

ISSUE

Was the Agency's computation of the Appellant's SNAP benefits from August 2019 to the present, correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant has been in receipt of SNAP benefits.
2. On September 13, 2019, the Appellant requested this fair hearing to contest the Agency's computation of the Appellant's SNAP benefits from August 2019 to the present.

APPLICABLE LAW

The level of SNAP benefits to which a household is entitled is based on the household's net income. A household's net income is computed by subtracting from the gross household income certain exclusions and deductions which are allowable under the Federal Food and Nutrition Act (7 USC 2014), Code of Federal Regulations (7 CFR 273.9, 273.10 and 273.11), specific United States Department of Agriculture (USDA) instructions and the Regulations of the New York State Department of Social Services (18 NYCRR 387.11 and 387.12).

The amount of earned income used to determine SNAP benefits is based on an estimate of average monthly earnings. To project average monthly income, the Agency must average no less than the most recent four weeks of income, or if there has been a change expected to last at least 30 days, use the new information regarding the amount of pay and the frequency of pay. Income which is not of a continuing nature must not be included for purposes of projecting average income. Average monthly income is applied against need to determine the amount of SNAP benefits for each calendar month of a certification period. The amount of average earned income applied must be recalculated at recertification and when a periodic report is received by the Agency. Adjustments to benefits will be made prospectively whenever information is received from a household required to report changes in working hours on a monthly basis because of ABAWD eligibility requirements. 18 NYCRR 387.17(d).

Exclusions are allowed for certain items including in-kind benefits, vendor payments, loans, reimbursements for past or future expenses (to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household), non-recurring lump sum payments, costs of producing self-employment income, and monies withheld to recover certain prior overpayments. In addition, all educational grants, loans and scholarships provided for education purposes other than living expenses, including work study income that is earned as part of a financial aid or educational assistance package, are excluded from a household's income. The earned income of children who are members of the household, and are enrolled as elementary or high school students on at least a half time basis, and who have not attained their 18th birthday is also excluded, including money earned during temporary breaks and vacations. Legally obligated child support payments made by a SNAP household member to non-household members are also excluded from consideration in determining eligibility or amount of entitlement. 7 CFR 273.9; 18 NYCRR 387.11; Administrative Directive 02 ADM-07.

Adoption subsidy payments that do not exceed allowable, verified, reimbursable expenses are also excluded from a household's income. However, subsidy payments which do exceed these amounts are considered unearned income. In addition, foster care payments which do not exceed allowable, verified, reimbursable expenses are excluded from a household's income. Foster care payments which do exceed these amounts are considered unearned income; however, if the child is not included in the SNAP household, the total amount of the foster care payment must be excluded as income to the SNAP household. Administrative Directive 08 ADM-04.

FH# 8028029Q

Pursuant to Department regulations at 18 NYCRR 387.12 and 18 NYCRR 387.15 and federal regulations at 7 CFR 273.9 and 273.10, allowable deductions include:

- (1) A 20% deduction from earned income.
- (2) A standard deduction equal to 8.31 percent of the applicable net income limit (poverty level) based on household size or \$134, whichever is greater, and up to a maximum deduction equivalent to the deduction for a household of six persons.
- (3) Actual dependent care costs which consist of costs for the care of a child or other dependents including an incapacitated adult when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search) or to attend training or to pursue education in preparation for employment. For the period beginning October 1, 2008, there is no limit to this deduction. Prior to that date, the deduction is capped at \$200 per month for each dependent under age two, and \$175 per month for each dependent age two and over.
- (4) Excess shelter costs computed by subtracting 50% of adjusted income from the sum of the following items:
 - a. actual rent or mortgage payments;
 - b. if the household is billed separately and on a recurring basis for heating/cooling costs, the heating/cooling standard. If the household is eligible for the standard allowance for heating and/or cooling, or if the household has received a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment in an amount greater than \$20.00 in the current month or within the previous twelve months, the household is entitled to the combined standard allowance for heating and/or cooling, non-heat related utilities and telephone.
 - c. if the household is billed separately and on a recurring basis for utility costs other than heat, the utility standard. If the household is not eligible for the standard allowance for heating and/or cooling but is eligible for the standard allowance for utilities, the household is entitled to the combined standard allowance for non-heat related utilities and telephone.
 - d. if the household is not eligible for the standard allowance for heating and/or cooling or for the standard allowance for utilities, the household is entitled to the standard allowance for telephone;
 - e. any other allowable shelter costs.

The excess shelter deduction is limited to an amount published annually in the general notices in the Federal Register unless the household contains a member sixty years of age or older or disabled. Where the household contains such a member, there is no limitation on the amount of the deduction.

- (5) Allowable unreimbursed medical costs in excess of \$35 monthly for those household members who are elderly or disabled.

Once the household's net income is determined, SNAP entitlement is determined by multiplying the net income amount by 30 percent. That figure, rounded up to the next whole dollar, is subtracted from the maximum SNAP allotment for the household size to determine the monthly SNAP entitlement. Alternatively, reference to the USDA Basis of Coupon Issuance Tables also provides the household's level of SNAP entitlement.

Under the SNAP Program in order to be eligible for SNAP benefits all households must meet a monthly gross income eligibility standard (gross income test) unless the household meets certain exemption requirements. Households in which all members are recipients of or authorized to receive Family Assistance, Safety Net Assistance or Supplemental Security Income are deemed categorically eligible for SNAP benefits and therefore are exempt from the gross and net income tests. 7 CFR 273.2(j), 18 NYCRR 387.14(a)(5). In addition, households containing a member who is elderly (sixty years of age or older) or who is disabled are not subject to the gross income test. Such households, however, must meet a net income eligibility standard. 7 CFR 273.9(a) and 18 NYCRR 387.10(a).

Pursuant to Administrative Directive 07 ADM-09 and Informational Letter 12 INF-12, recipients of a particular TANF-funded service may also be deemed categorically eligible for SNAP benefits. This TANF-funded service is the provision to SNAP applicants and recipients of certain information describing the range of services available to households in need. This information (and thus the service) is provided to all SNAP recipients, either in the form of a brochure or as a part of the Notice of Acceptance provided upon application or recertification. In order to be deemed categorically eligible, a household receiving the required information must meet the 130 percent gross income test or, if the household has an elderly or disabled member, the 200 percent gross income test. If that test is passed, the household will be deemed categorically eligible for a period of one year and will not be subject to gross or net income tests or to the SNAP resource test. Note that this does not apply to households which are disqualified due to an intentional program violation or a sanction.

Administrative Directive 09 ADM-06 provides that, effective March 1, 2009, a household receiving the above-referenced brochure will be subject to a 200 percent gross income test rather than the 130 percent test if such household has out-of-pocket dependent care expenses.

Administrative Directive 16-ADM-06 provides that, effective July 1, 2016 the gross income threshold for categorical eligibility for the Supplemental Nutrition Assistance Program (SNAP) for households with earned income budgeted for the purpose of determining SNAP eligibility and benefit amount is being increased from 130% of federal poverty level to 150% of

FH# 8028029Q

the federal poverty level. SNAP households without budgeted earned income, without out-of-pocket dependent care expenses, and without any household members who are aged/disabled remain subject to the 130% of the federal poverty level gross income test.

For households' subject to the gross income test, the monthly gross income eligibility standard is 130 percent of the annual federal income poverty level divided by twelve. 7 CFR 273.9(a), 18 NYCRR 387.10(a).

Where SNAP benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and the SNAP Source Book, Section 10.

DISCUSSION

The Appellant has been in receipt of SNAP benefits. On September 13, 2019, the Appellant requested this fair hearing to contest the Agency's computation of the Appellant's SNAP benefits from August 2019 to the present.

The record establishes that the Agency has included child support gross monthly income in the amount of \$533.58 and no medical expenses in the Appellant's SNAP budget computation since August 2019. According to the Appellant, she receives child support gross monthly income in the amount of \$475.00 and pays regular monthly medical expenses in the amount \$189. In support of the Appellant's testimony the Appellant presented an invoice from Centers Plan for Healthy Living dated July 4, 2019 which reflects the Appellant was charged \$189 monthly for her Medicaid Surplus from October 1, 2018 to July 31, 2019. The Appellant's testimony and documentation presented are considered and found to be credible due to the Appellant's specificity and consistency. Furthermore, the Agency presented proof of the Appellant's child support income which reflects the Appellant's court ordered child support monthly obligation amount is \$475.00, not \$533.58.

The record indicates that the Agency has not correctly reflected the Appellant's verified needs in its budgetary computations since August 2019. The record fails to establish the amount of the Appellant's household's income and needs so that the amount of the Appellant's SNAP benefits cannot be determined. However, based on the foregoing, the Agency computation of the Appellant's SNAP benefits from August 2019 to the present cannot be sustained.

DECISION AND ORDER

The Agency's computation of the Appellant's SNAP benefits from August 2019 to the present was not correct and is reversed.

1. The Agency is directed to re-compute the Appellant's SNAP benefits since August 2019 taking into account the Appellant's household's verified income and verified needs.
2. The Agency is directed to advise the Appellant in writing of its computations.
3. The Agency is directed to restore, subject to applicable law and regulations, to the Appellant any lost SNAP benefits.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
10/29/2019

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee