



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

ADMINISTRATIVE FAIR HEARING

LOG NUMBER: 5-21-2021-001

Decision Date: May 18, 2021

State Agency Appearances:

Lynn Carter, Presenter for Delaware Department of Health and Social Services,
Division of Social Services, **Appellee**;
Michelle Hall, Social Worker/Case Manager and Witness for Delaware Department
of Health and Social Services, Division of Social Services, **Appellee**

I – Statement of the Issues

The Appellant opposes and appeals the decision of the Delaware Department of Health and Social Services, Division of Social Services (“DSS”) to close food benefits.

DSS contends that the Appellant’s benefits were properly closed because of non-submission of verifications necessary to renew Appellant’s case at the time of the last Periodic Report.

II – Procedural History

On January 7, 2021, DSS sent a Notice to Deny Your Food Benefits to the Appellant. State’s Exhibit 6. The Appellant requested a Fair Hearing, which was date-stamped Received by DSS on March 24, 2021. State’s Exhibit 7.

The Appellant was notified by Certified Mail dated March 30, 2021, that a Fair Hearing was scheduled for April 14, 2021. The notice advised that the hearing would be conducted by telephone conference. The telephone conference procedure was implemented due to the COVID-19 pandemic and the consequent State of Emergency in Delaware.

The Hearing was held in the manner set forth in the notice. This is the Hearing Officer’s decision.

III. Statement of Facts

The issue in this case is whether the Appellant's food benefits were properly closed. All parties who testified were sworn and testified under oath at the hearing.

The State's witness, Ms. Hall testified that she received a food benefit renewal form. State's Exhibit 1. This was received by DSS on November 30, 2020. Also received on November 30, 2020 by DSS were out-of-date verifications submitted by the Appellant regarding costs for Liberty Mutual Insurance, NCC sewer, Delmarva, and local taxes. State's Exhibit 2. Ms. Hall tried to contact the Appellant by phone regarding out-of-date verifications.

On December 21, 2020, after not being able to reach the Appellant, she sent out an Appointment & Request for Verification Form. State's Exhibit 3. Specifically, this form requested, "proof of your self employment income, electric, water, oil and phone bills by 1/4/2021. Also needed is proof of employment or loss of employment with City of Newark." *Id.* An appointment was also scheduled for the Appellant to appear on December 28, 2020. *Id.* The Appellant did not appear for the appointment or contact DSS.

On December 28, 2020, Ms. Hall sent out a Missed Food Benefits Interview Appointment form. State's Exhibit 4. The Appellant stated that he missed the scheduled interview. On December 29, 2020, Ms. Hall sent out a Notice of Pending Food Benefit Status form. This again informed the Appellant that proof of income and expenses was still needed by DSS, and that if he did not provide this to DSS by January 4, 2021, he would have to reapply. State's Exhibit 5.

Ms. Hall testified that by January 7, 2021, none of the requested verification of income and expenses had been provided to DSS by Appellant. As a result, Ms. Hall processed the renewal with the information that had been provided and the benefits were denied. A Notice to Deny Your Food benefits was issued on January 7, 2021. State's Exhibit 6. As a result of receiving the Notice to Deny, the Appellant requested a Fair Hearing (that was received by DSS on March 24, 2021) that stated that he had been unemployed due to COVID19 since 9/20. State's Exhibit 7.

The Appellant then testified that he was unemployed. He has applied for jobs but has not received offers of employment. He is selling his house. He did not know what documents the State wanted that he did not supply. He did not show up for his interview because he was unavailable and out of the State caring for a sick mother. He did not call to reschedule the interview, or respond to Ms. Hall's messages.

Ms. Hall stated that documentation of self-employment income can be provided by tax returns, 1099's, ledgers of receipts, e.g., the last 3 months of business income and expenses. If no longer employed, a self-attest statement can be provided. The Appellant testified that he did not understand what was being requested, or what the problem was. He's been out of work since March 2020. If he did do a job, he called in and reported it. Nevertheless, the Appellant did not deny the fact that he did not provide any of the information DSS requested in order to process his food benefit renewal.

IV – Discussion and Analysis of Law

The mandate of the Hearing Officer with respect to the Food Supplement Program statutes and regulations is to “apply the State rules except to the extent they are in conflict with applicable federal regulations.” *DSSM* § 5406.1(1). “[T]he decision of the hearing officer [must be] supported by substantial evidence and [be] free of legal error.” *Brooks v. Meconi*, 2004 Del. Super. Lexis 363, *3 (Del. Super. Ct. 2004). Delaware regulations will apply as they do not conflict with federal regulations.

Once a reporting period has been established, a Food Benefits client is required to complete interim reports according to the schedule established. Changes in income during the certification period must be verified. *DSSM* § 9038. Gross income must be verified. *DSSM* § 9032.

“The household has the primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. DSS will assist the household in obtaining this verification provided the household is cooperating as defined in *DSSM* 9029.” *DSSM* § 9035.1.

In this case, DSS needed to verify the Appellant’s gross self-employment income and current household expenses. The gross income verification was mandatory to process Appellant’s renewal. *DSSM* § 9032. The Appellant admitted he did not provide the documentation requested by DSS. He also did not contact DSS to explain why he could not provide the records requested, or to ask for help. As a result, DSS was not able to process the renewal application in this case and the benefits were closed.

V – Decision

WHEREFORE, DSS has provided substantial evidence that the Appellant has failed to provide proper verifications, and the decision of DSS to close the Appellant’s Food Benefits is **AFFIRMED**.

Decision Date: **May 18, 2021**

/s/Mary Higgins
MARY HIGGINS
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

May 19, 2021
POSTED

cc: Appellant
Lynn Carter, FH Team
Michelle Hall, DSS Team 190

SUMMARY OF DOCUMENTARY EVIDENCE

STATE'S EXHIBITS

Exhibit #1 (5 pages) Consists of Food Benefit Renewal Letter dated November 12, 2020 and Renewal Form date-stamped Received November 30, 2020

Exhibit #2 (6 pages) Consists of Liberty Mutual bills, New Castle County sewer charges, Delmarva bill, local tax bill date-stamped Received November 30, 2020

Exhibit #3 (2 pages) Consists of Appointment and Request for Verification Form dated December 21, 2020

Exhibit #4 (1 page) Consists of Missed Food Benefits Interview Appointment dated December 28, 2020

Exhibit #5 (1 page) Consists of Notice of Pending Food Benefit Status dated December 29, 2020

Exhibit #6 (2 pages) Consists of Interview Notice to Deny Your Food Benefits dated January 7, 2021

Exhibit #7 (1 pages) Consists of the Appellant's request for Fair Hearing date-stamped Received March 24, 2021

APPELLANT'S EXHIBITS

None