



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

MAY 5 - 2014

*Hazel Jackson*  
Hazel Jackson, Legal Assistant

|                                  |   |   |
|----------------------------------|---|---|
| <b>[REDACTED]</b>                | : |   |
| Petitioner,                      | : |   |
|                                  | : |   |
| v.                               | : | Docket No.: OSAH-DFCS-FSP-1 [REDACTED] Beaudrot |
|                                  | : |   |
| DHS, FAMILY & CHILDREN SERVICES, | : | Agency Reference No.: [REDACTED]                |
| Respondent.                      | : |   |
|                                  | : |   |

**INITIAL DECISION AND ORDER FOR REMAND**

The following findings of fact are based upon a preponderance of the evidence produced at the hearing held on Monday, April 14, 2014, at the Richmond County Offices of the Division of Family and Children Services ("DFCS") at 520 Fenwick Street, Augusta, Georgia.

**I. FINDINGS OF FACT**

1. Petitioner, his wife and their two children reside in Evans, Georgia. Petitioner is employed as a pilot by Express Jets based out of Houston, Texas. Petitioner's wife is not currently employed so Petitioner's income from Express Jets is the sole source of income for the family.
2. Petitioner is compensated using a formula in which his flight hours during the relevant pay period are multiplied times a base rate of compensation.
3. In connection with the performance of his services for Express Jets, Petitioner is required to supply his own meals and lodging while traveling.
3. To reimburse Petitioner for a portion of his meals and lodging expenses incurred in connection with his employment, Petitioner receives amounts which are described on Petitioner's pay records as "non-taxable per diem." This "non-taxable per diem" is calculated at the rate of \$1.80 for each hour of flight time during the relevant pay period. The "non-taxable per diem" is paid in arrears. It is not treated as taxable compensation to Petitioner but is instead treated as non-taxable reimbursement of travel and lodging expenses. It is not reported to Petitioner on his form W-2 nor is it included in the calculation of Petitioner's taxable income for federal or Georgia income tax purposes.
4. Petitioner originally filed an application to receive Food Stamps through the Supplemental Nutrition Assistance Program (the "Food Stamps Program") in August 2013 for Petitioner, his wife and children and was awarded Food Stamps. At that time the "non-taxable per diem" was not included in the computation of Petitioner's income for purposes of determining whether the "gross income limit" for eligibility was exceeded.
5. Petitioner's eligibility for continued Food Stamp benefits was subject to the standard review for renewal during the month of February 2014. Petitioner completed his renewal application in February 2014. Respondent denied Petitioner's renewal application on the basis that the family income exceeded the limitation of \$2,552 for a family of four and Petitioner appealed Respondent's decision.
6. Respondent and Petitioner are in agreement that if Petitioner's "non-taxable per diem" is included in

his income for purposes of computing his eligibility for Food Stamps, his total family income on a monthly basis exceeds the gross income cap of \$2,552 for a four person unit. They also agree that if the “non-taxable per diem” is not included as income for purposes of computing eligibility for Food Stamps, his family income falls below the gross income cap of \$2,552.

## **II. CONCLUSIONS OF LAW**

1. The sole issue for determination in this matter is whether the payment of the “non-taxable per diem” to Petitioner must be included in his income base for purposes of determination of Food Stamps eligibility.

2. The parties do not dispute that Petitioner receives per diem payments allocated for various flight time expenses, such as food. Thus, the relevant question becomes whether the per diem payments fall under one of the fifteen statutory exclusions from income for purposes of determining Food Stamps Program eligibility. *See* 7 U.S.C. § 2014(d). “Reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household” are excluded from household income for Food Stamps Program purposes. 7 U.S.C. § 2014(d)(5); *Food Stamp Manual*, 3420-14. The regulations provide that flat allowances, including reimbursements for job-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site are an example of excludable reimbursements. 7 C.F.R. § 273.9(c)(5). When a flat allowance covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses, such as rent or mortgage reimbursements of reimbursements for food eaten at home. *Id.*

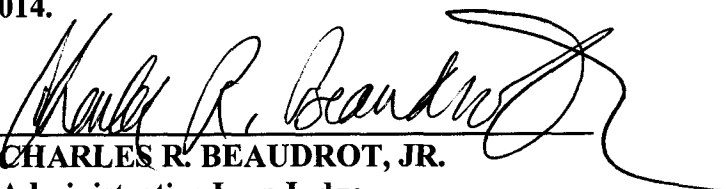
3. In this case, Petitioner receives per diem payments for expenses related to reimbursements for accommodations and eating out while traveling away from home. Accordingly, it falls under a non-normal living expense reimbursement, which does not represent a gain or benefit to the household. This flat allowance is therefore excluded from income for the purpose of determining Food Stamp eligibility.

4. Based on the foregoing, Petitioner’s income for Food Stamp eligibility does not include the “non-taxable per diem” and, therefore does not exceed the gross income cap of \$2,552. *See Food Stamp Manual*, Appendix A.

## **III. DISPOSITION AND ORDER OF REMAND**

It is the Initial Decision of this Administrative Law Judge that the matter be remanded to reopen Petitioner’s renewal application for Food Stamps filed February 2014 and to exclude from the computation of Petitioner’s income any amounts that are attributable to the “non-taxable per diem”. DFCS shall process Petitioner’s application following the applicable procedures contained in the Food Stamps Manual. As part of such process, Petitioner may be required to provide additional information to DFCS with documentation regarding income, resources, expenses or other eligibility criteria in connection with such interview.

SO ORDERED, this 5th day of May, 2014.

  
CHARLES R. BEAUDROT, JR.  
Administrative Law Judge