

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9575  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his ANFC, Food Stamps, and Medicaid benefits. The issue is whether the petitioner has resources that are in excess of the regulatory maximum for each of these programs.

FINDINGS OF FACT

A hearing in the matter was held on May 2, 1990. Following the presentation of evidence by the petitioner, the Department indicated it would provide further evidence and legal argument in support of its contention that two acres of land owned by the petitioner constitutes a resource whose value is in excess of the Department's maximum.

In a prior recommendation (dated October 10, 1990) the hearing officer noted that the Department had not followed through in supplying this additional evidence, and he recommended that the Department's decision be reversed. At the board meeting of October 30, 1990, the Department requested additional time in which to submit this evidence. The board remanded the matter to the hearing officer, allowing the Department a limited time in which to submit additional

evidence.

On November 1, 1990, the hearing officer sent the Department (with a copy to the petitioner) the following memorandum:

The Board has instructed me to consider further evidence from the Department. The Department shall have until November 21, 1990 to submit any and all further written evidence it wishes considered in this matter.

Having heard nothing from the Department, the hearing officer on November 20, 1990, inquired by phone of Department's counsel whether any further evidence would be forthcoming. Department's counsel indicated it would not. To date, the hearing officer has heard nothing further from the Department.<sup>1</sup>

At the May, 1990, hearing the petitioner presented evidence that fair market value of the land in question is at most between \$800.00 and \$1,200.00.<sup>2</sup> The Department's only evidence was that the assessed value of the land was between \$1,100.00 and \$4,000.00.

ORDER

The Department's decision is reversed.

REASONS

In an action to terminate or reduce benefits, the burden of proof is on the Department. Fair Hearing Rule No. 12; Food Stamp Fair Hearing Rule No. 10. The Department presented no direct evidence or legal argument rebutting the

petitioner's evidence that the fair market value of land in question is an amount that would not place the petitioner over the resource limit for any Department program<sup>3</sup>.

Inasmuch as seven months have now elapsed since the hearing, with no further submission of evidence from the Department, justice dictates that the Department's decision be reversed.

FOOTNOTES

<sup>1</sup>The Department at no time indicated to the hearing officer that it considered the November 21, 1990 deadline unreasonable or that it was having any trouble obtaining the evidence in question.

<sup>2</sup>The petitioner maintains that because of a "clouded" title (because the land was "illegally" subdivided), the land is worth even less--provided he could sell it at all.

<sup>3</sup>The resource maximums for the programs in question are: Food Stamps, \$2,000.00 (Food Stamp Manual § 273.8(b)); ANFC and Medicaid, \$1,000.00 (Welfare Assistance Manual § 2261 and Medicaid Manual § M340).

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