

of the food stamp maximum for a three person household, which is \$1,090.00. On February 26, 1990, the petitioner was notified of that fact,¹ and told that her food stamp allotment of \$73.00 would be closed as of March 31, 1990.

5. The petitioner does not contest the fact that her child's father should be included in her household. Rather, she believes that the department should have deducted child support payments made by her child's father to his three children born of a prior relationship and the couple's current shelter expenses from their income. The petitioner claims that these two expenses deplete most of their available income.

ORDER

The department's decision is affirmed.

REASONS

The Food Stamp program determines eligibility for benefits based on "household" income. See generally F.S.M. § 273.1. The regulations define household in considerable detail and set out certain "special" definitions which includes as a household the following:

Parent(s) living with their natural, adopted or step-child(ren) and such child(ren) living with such parent(s), unless at least one parent is elderly or disabled as defined in 271.2. If at least one parent is elderly or disabled, separate household status may be granted to the otherwise eligible parent(s) or child(ren) based on the provisions of paragraph (a)(1) and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section. If the natural, adopted or stepchild is a parent of minor children and he/she and the children are living with his/her parent(s), the parent of the minor children, together with such children, may be granted separate

household status based on the provisions of paragraph (a)(1) of this section and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and the certification period as required by 273.10(f)(2).

F.S.M. § 273.1(a)(2)(c).

Based on that regulation, the petitioner and her child's father, as parents of a natural child, all of whom live together, must be considered as a single household of three. The gross earned income from wages of all members of the household must be included in determining the household's eligibility. F.S.M. § 273.9(b)(1). That total gross income must then be subjected to income eligibility standards as follows:

Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in 273.2(j)(2) do not have to meet either the gross or net income eligibility standards.² The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

1. The gross income eligibility standards for the Food Stamp Program shall be as follows:
 - i. The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam, and the Virgin Islands shall be 130 per cent of the Federal income poverty levels for the 48 contiguous states and the District of Columbia.

VERMONT - Refer to P-2590C of the Welfare Procedures

Manual which lists the standard for each household size.

The net income eligibility standards for the Food Stamp Program shall be as follows:

2. i The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam, and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

. . .

VERMONT - Here is a summary explanation of the gross income test and the net income test.

Households with an aged or disabled member undergo the net income test only. They can have any amount of gross income as long as income after deductions is within the net income limit. The limit is 100% of the Federal poverty level for each household size. If the household's net income is over that limit, they are not eligible for benefits.

All other households undergo the gross income test and the net income test. The gross income (countable income before deductions) limit is 130% of the Federal poverty level for each household size. Once a household passes the gross income test they are then subject to the net income test as described above.

The income tests are applied at application, recertification and whenever there is a change which causes the case to go through eligibility.

F.S.M. § 273.9(a) (emphasis added).

The Welfare Procedures Manual lists \$1,090.00 as the figure for a household of three which is 130% of the federal income poverty level and sets that figure as the maximum gross monthly income for a household of that size. P-2590C.

The "gross income test" set out in the regulation establishes a maximum figure which cannot be exceeded for food stamp eligibility in spite of a household's actual expenses. If that hurdle cannot be cleared, the household never moves on to consideration of any deductions it might be entitled to under the regulations. The gross income maximum sets a ceiling above which no household (excepting those with elderly or disabled members), in spite of its circumstances, would be considered eligible for any benefits, period. That rule doubtless creates hardships for households who are close to the maximum because they may have unavoidable expenses (such as child support payments) well in excess of those households which fall just under the maximum. For the petitioner, it must seem particularly harsh and ironic that at a time when she has one more mouth to feed, she has no more food stamps. However, the rule itself is clear and there has been no suggestion that the department is without authority to establish a cut-off level for the payment of benefits. As the department's actions are in accord with its regulations, its decision must be upheld. 3 V.S.A. § 3091(a).

FOOTNOTES

¹The monthly gross income figure used in the notice was actually \$1,376.00, apparently due to a computer error wherein prior monthly income reported by the petitioner, which was \$24.00 per month greater than that actually reported, was used. However, the department represented that the same action would have been taken and the calculations would have been the same for \$1,352.00.

²These include persons on ANFC and SSI/AABD, a situation which does not exist here.

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