

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9115
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her request for a reimbursement of food stamps allegedly underpaid her during the period August, 1986, until November, 1988. The issue is whether the department incorrectly disallowed certain "exclusions" from the petitioner's income during the period in question.

FINDINGS OF FACT

The facts are not in dispute. In lieu of an oral hearing, the department appears to stipulate to the following "statement of facts" as set forth in the petitioner's memorandum:

In August 1986 the claimant, who is disabled by chronic severe back pain and whose primary income has been Supplemental Security Income since before October 1986, became the legal guardian of three minor children pursuant to a Probate Court Order. The children were sisters whose parents were incapable of parenting and whose caretaker grandmother had died. The claimant accepted them into her home in spite of their severe behavioral problems, and her already strained budget because she did not want the children to live with "strangers". The claimant had known the children for a number of years; the children's father was a cousin of her former husband. The children have not lived with the claimant since November 1988.

The Department awarded the claimant ANFC benefits for the children as their "caretaker relative" in August 1986. Before the claimant received these

benefits, she had received food stamps as a single member food stamp household. After the claimant began receiving ANFC, the children were included in the claimant's food stamp household and the ANFC was included in her Food Stamp income, thus reducing her food stamp grant. The ANFC the claimant received for these children did not result in financial gain to the claimant; she used this ANFC for the children.

ORDER

The department's decision is affirmed.

REASONS

The petitioner alleges three bases as to why the department should have excluded the ANFC income paid to her on behalf of the minor children who were in her care during the period in question. For one, she maintains that the children were "boarders" in her household within the meaning of the pertinent food stamp regulations. To be considered boarders, however, it has to be determined that the children were entitled to "separate household status" under F.S.M. § 273.1(a)-(c).

F.S.M. § 273.1(a)(1)(iii) defines a "household" as "a group of individuals who live together and customarily purchase food and prepare meals together for home consumption." Furthermore, F.S.M. § 273.1(a)(2)(i)(B) provides that "children under 18 years of age under the parental control of an adult household member" cannot, under any circumstances, be considered a separate household from other individuals with whom they live. "Boarders" are defined by § 273.1(c)(1) as "individuals . . . residing with others and paying reasonable compensation to the others

for lodging and meals."

As an ANFC "household", the petitioner and the children were determined to be "relatives", and the petitioner was considered to be the individual who was "responsible" for their "care and supervision". See W.A.M. § 2303.12. Furthermore, the petitioner was the children's legal guardian pursuant to a probate court order. As such, it must be concluded that the children were under the "parental control" of the petitioner within the meaning of § 273.1(a)(2)(i)(B), supra. Even if they were not, however, it cannot be concluded that ANFC payments made to the petitioner as the ANFC "relative responsible" for "care and control" constituted the "payment" by the children of "reasonable compensation to (the petitioner) for lodging and meals" under § 273.1(c)(1), supra. Thus, the children cannot be considered to have been "boarders" within the meaning of § 273.1(c).

The petitioner bases much of her argument as to separate household status on the claim that the children should be considered "foster children". She cites Foster v. Celani, No. 85-320 (D.C. VT. July 12, 1987) for the proposition that foster children may be excluded from a food stamp household as boarders and their foster payments excluded from the income of any remaining household members. As the department points out, however, the Foster decision was predicated on the conclusion that foster children, as

wards of SRS, cannot be considered "under the parental control" of their foster parents within the meaning of § 273.1(a)(2)(i)(B) (see supra). In the petitioner's case, the children were not wards of SRS--they were wards of the petitioner pursuant to a probate court order. Their situation is clearly distinguished from Foster, and they cannot be considered to have been the foster children of the petitioner. Therefore, it cannot be concluded that the children were entitled to separate household status as "boarders", or otherwise, within the meaning of the above regulations.

Although the petitioner (perhaps intentionally) argued the above lastly in her memorandum, the conclusion that the petitioner and her children could not have been considered "separate households" effectively disposes of both of the petitioner's arguments that the income of the children was "exempt" under F.S.M. § 273.9(c). To qualify as either a "reimbursement" under § 273.9(c)(6) or as "money received and used for the care and maintenance of a third-party beneficiary who is not a household member" under § 273.9(c)(7), the income in question could not have been paid for the "normal household living expenses" of a household member. Id. Since it has been determined that the petitioner and her children were one household, and since the ANFC was obviously provided for the normal household expenses of the children, there is no way the ANFC payments

could have been considered "excluded income" under the above or any of the other provisions in § 273.9(c).

For these reasons, the department's decision in this matter is affirmed.

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