

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,204
)
Appeal of)

INTRODUCTION

The petitioner appeals the Department of Social Welfare's decision to reduce her ANFC grant due to her failure to verify her self-employment earnings.

FINDINGS OF FACT

1. The petitioner receives ANFC on behalf of herself and a minor niece for whom she cares and acts as a legal guardian.

The petitioner began operating a day care business in August of 1990 and informed the Department of that fact on September 26, 1990.

2. The Department initially requested verification of her income from the business on October 9, 1990. Over the next few weeks the petitioner provided the Department with information of a type which the Department did not consider adequate and in late December notified the petitioner that her ANFC benefits would be reduced based upon her failure to verify her income. The petitioner appealed that determination and during the course of the appeals process the parties attempted to resolve the matter, which was prolonged and complicated by the petitioner's inability to provide meaningful figures, due both to an apparent lack of

familiarity with business accounting procedures and a lack of time or inclination to learn them. The parties finally agreed to continue the matter until the petitioner's income tax return could be prepared and to adjust the grant retroactively and cover any amounts that might be paid.

3. In April of 1991, the petitioner did provide her income tax return which was accepted by the Department as adequate verification of her income for the time at issue. The Department did not propose to sanction the petitioner in any way for the delay but rather only to calculate the benefits she should have received and to recover the amount of overpayment, if any where found.

4. The Department calculated the petitioner's income for ANFC purposes by using the gross income and business expense deductions reported on her IRS "Business and Profit Loss Schedule" (Schedule C), with the exception of the "depreciation" amount which the Department does not consider a deductible business expense under its regulations. Although the petitioner had some gross income for each month at issue, her statutory work expense deduction and standard deduction reduced her countable income for ANFC purposes to "0", even if depreciation is not considered. Therefore, the petitioner was found to have been properly paid throughout the period and it was determined that no overpayment exists.

ORDER

The petitioner's appeal is dismissed as moot.

REASONS

The Department's proposal to reduce the petitioner's ANFC grant has been withdrawn both because satisfactory verification of the self-employment income has been received and the amounts verified, after a statutorily mandated deduction, do not affect the amount of her ANFC grant. There is, therefore, no current grievance with regard to this matter which the Board can resolve. There being no controversy, this particular appeal should be dismissed as moot.

The petitioner has been apprised that she may have a grievance in the future if the Department's failure to include depreciation as a business expense should affect the amount of her grant. She should be aware that both the state regulation at W.A.M. § 2253.2 and the federal regulation at 45 C.F.R. § 233.20(a)(6)(v)(B) covering the ANFC program specifically exclude "depreciation" from consideration as an expense. However, the federal statute authorizing the ANFC program is itself silent on how self-employment income is to be calculated. See 42 U.S.C. § 602(a)(7)(A) and (a)(8). If the petitioner is to prevail on such a claim, she must persuade the Board that the federal regulation is in conflict with the federal statute. If it should become necessary to make such an argument, the petitioner is strongly advised to obtain the services of legal aid or another law firm.

The petitioner has also been informed that should her Food Stamps be reduced based on the Department's failure to include depreciation as a business expense, she should file a separate appeal. See Fair Hearings No. 9292 and 9776.

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