

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,712
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for food stamps. The issue is whether the petitioner can be considered a separate "household" under the pertinent statute and regulations.

DISCUSSION

The facts are not in dispute. The petitioner is eighteen years old. She lives with her mother, stepfather, and two minor brothers. The petitioner purchases and prepares her meals separate from the other family members. Nobody in the family except the petitioner is applying for or receiving food stamps. Nobody in the household is "elderly" or "disabled".¹

The parties agree that (with one exception²) the petitioner's family's circumstances are identical to those of the petitioner in Fair Hearing No. 9423, decided by the board on May 3, 1990.³ (The Department has appealed this decision to the Vermont Supreme Court, where the case is still pending.)

ORDER

For the reasons expressed in Fair Hearing No. 9423, the Department's decision in this matter is reversed.

FOOTNOTES

¹"Elderly" means sixty years old or older. "Disabled" means the recipient of S.S.I. or other certain government disability benefits. F.S.M. § 271.2.

²The only distinction between the instant matter and Fair Hearing No. 9423 is that the petitioner herein, but not her parents and minor siblings, is applying for food stamps. In Fair Hearing No. 9423, the parents and the minor children, but not the adult child (the counterpart of the petitioner, herein), were applying for benefits. However, in Fair Hearing No. 9423 (see p.p. 3 - 4) the board anticipated this distinction and found it to be of no impact. Also, the petitioner has submitted a federal policy interpretation (Region S.W.R.O., Index No. 88 - 3) that, in what the board, in Fair Hearing No. 9423, held to be an analogous situation, determined that either or both "households" are separately eligible for food stamps if the deeming provisions are held not to apply to either one of them.

³It appears that in Fair Hearing No. 9423 the board and the parties were referring to outdated regulations. F.S.M. § 273.1(a) was substantially amended effective June 1, 1988. Under the amended regulations parents and siblings of a parent with minor children were specifically exempted from the deeming provisions. See Id. §§ 273.1(a)(2)(C) and (D).

This brought the regulation more into compliance with the federal statute, although the Department in Fair Hearing No. 9423 (apparently unaware of the amendments) argued that only "three generation households" were exempt from deeming (see discussion in Fair Hearing No. 9423, p.p. 4 - 6).

However, the amendments did not go far enough. As the board pointed out in Fair Hearing No. 9423 (p. 4), the parenthetical "notwithstanding. . ." clause of 7 U.S.C. § 2012 is clearly exemplary, not exclusive. There is simply no basis in the language of the statute not to also exempt from the deeming provisions individuals like the petitioner herein (and the adult child of the petitioner in Fair Hearing No. 9423) who are the adult child of "a parent with minor children". Clearly the words "any other persons" and "including", which appear parenthetically in clause (3) of § 2012, mean that clause (3) households are not limited to the given examples. By limiting the deeming exceptions to

parents and siblings of a "parents with minor children", the regulation still conflicts with this part of the statute. Thus, the board's analysis in Fair Hearing No. 9423 remains apt.

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