

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,024
)
Appeal of)

INTRODUCTION

The petitioner appeals the decisions by the Department of Social Welfare terminating her family's ANFC benefits and finding her husband ineligible for food stamps. The issue is whether her husband's enrollment as a full-time college student disqualifies the household for ANFC benefits and him from receiving food stamps.

FINDINGS OF FACT

The petitioner was receiving ANFC on the basis of her husband's "unemployment". The family is also income-eligible for food stamps. In January, 1992, the petitioner's husband enrolled as a full-time college student (twelve credits per semester). His courses are late afternoon and evenings and he is continuing to look for work at other times of the day.

By notice dated January 29, 1992, the Department notified the petitioner that because of her husband's status as a full-time college student the family was no longer eligible for ANFC and the petitioner's husband was no longer eligible for food stamps.¹

ORDER

The Department's decision is affirmed.

REASONS

The ANFC definitions of an "unemployed parent" under W.A.M. § 2333.1 include the following:

An "unemployed parent" is one whose minor children are in need because a parent is out of work or is working part-time, provided the parent meets all of the following criteria:

. . .

6. If a full-time student, as defined by the school, meets the following criteria:
 - a. Is under the age of twenty-five (25); and
 - b. Does not have a high school diploma or its equivalent; and
 - c. Is not in postsecondary education; and
 - d. Is scheduled to attend classroom training at least twenty (20) hours per week and actually attends an average of at least sixteen (16) hours per week each month.

The petitioner does not dispute that her husband's school considers him to be a full-time student. There is also no dispute that he is over twenty-five, has a high school diploma, is taking college-level (i.e. postsecondary) courses, and does not attend class at least sixteen hours per week. Thus, the petitioner's husband meets none of the criteria for eligibility under W.A.M. § 2333.1(6), above. Unfortunately, there is no other "categorical" basis for ANFC eligibility for the petitioner and her family. See W.A.M. §§ 2330 - 2339.²

As for food stamps, section 273.5(b)(1) of the food stamp regulations provides:

In order to be eligible to participate in the Food Stamp Program, any student (as defined in paragraph a. above) shall meet at least one of the following criteria:

- i Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receive weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
- ii Participate in a federally financed work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965 as amended) during the regular school year;
- iii Be responsible for the care of a dependent household member under the age of six;
- iv Be responsible for the care of a dependent household member who has reached the age of six but is under age twelve where the State agency has determined that adequate child care is not available;
- v Receiving benefits from the Aid to Families with Dependent Children Program (ANFC).
- vi Be assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act.

Again, there is no dispute that the petitioner's husband meets none of the above criteria for participation in the food stamp program given his status as a full-time student.³

Inasmuch as the Department's decisions are clearly in accord with the pertinent regulations, they must be affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 19; Food Stamp Fair Hearing Rule No. 17.

FOOTNOTES

¹Unlike ANFC, the petitioner and her children remained eligible for food stamps without her husband's "participation" in that program.

²At the hearing (held on March 9, 1992, the petitioner and her husband appearing pro se) it was explained (apparently for the first time) to the petitioner and her husband that under the above regulations if the petitioner's husband dropped one or more of his courses, so that his school considered him a less-than-full-time student, the family would no longer be ineligible for ANFC, and he would no longer be ineligible for food stamps. The petitioner's husband indicated he would consider doing this. The petitioner was advised to notify the Department as soon as her husband changed his status in this manner.

Shortly after the fair hearing, the hearing officer sent the petitioner a memorandum continuing the matter until April 6, 1992, and advising the petitioner that if her husband dropped the courses by that date the matter would be considered only in the context of a possible "overpayment" of ANFC. (On March 9, 1992, the hearing officer had indicated to the parties that if the petitioner's husband promptly dropped one or more courses, it was questionable whether the petitioner would be liable for any overpayment.)

On April 6, 1992, the petitioner and her husband indicated that even though the college had informed them that it considers eleven credits or less per semester to constitute less-than-full-time status, the petitioner's husband had decided that he did not want to risk forfeiting fees already paid for his courses, and that he had elected to stay enrolled this semester with twelve credits. The petitioner was thus advised to notify the Department as soon as her husband's semester ends.

³See footnote 1, supra.

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