

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,047
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare that he is over the income limits for Food Stamp eligibility. The issue is whether dependent care benefits he receives from the Department should be counted as income.

FINDINGS OF FACT

The parties have agreed to the following facts:

1. [Petitioner] is 62 years old.
2. [Petitioner] lives in [town], Vermont with his wife.
3. [Petitioner] suffers from dementia. He first showed symptoms of this disease when he was 55 years old.
4. As a result of this disease [petitioner] is incontinent. He has no short term memory and little long term memory. He communicates only by saying yes or no. He is not oriented to time, place or person. He appears to recognize his wife, but she suspects that it is because she is his caregiver, not because she is his wife. He can no longer read or write. He spends most of his days pacing or sleeping. He cannot be left unattended.
5. [Petitioner] requires care 24 hours a day.

6. [Petitioner] spends about 10 hours a week at the New Home Adult Day Care Center. His wife cares for him the rest of the time.

7. [Petitioner's] wife dresses, washes and bathes her husband. He wears diapers because of his incontinence. She changes his diapers and helps him use the toilet.

[Petitioner] cannot use a fork or spoon, so his wife must feed him any foods that he cannot pick up with his fingers.

Because her husband is disoriented, his wife must watch him constantly so that he does not harm himself. He cannot be left alone for even brief periods of time.

8. [Petitioner] currently receives benefits from the Department of Veterans Affairs in the amount of \$1177.00 per month. A portion of this, \$370.00, is his Aid and Attendance Benefits.

9. [Petitioner] applied for Food Stamps from the Department of Social Welfare on October 1, 1991.

10. [Petitioner] applied for Food Stamps benefits for himself and his wife. He was denied benefits on November 26, 1991 because his income exceeded the limit for two people.

ORDER

The decision of the Department is affirmed.

REASONS

The issue at hand is whether the Department of Social Welfare should have excluded the \$370.00 portion of the petitioner's V.A. check which is designated "Aid and

Attendance Benefits" from his income in determining his eligibility for Food Stamps. The parties have agreed that if the amount is excluded, the petitioner and his wife are financially eligible for Food Stamps. Its inclusion means they are not eligible.

Under the federal regulations, a disabled veteran who is determined to be in actual need of regular aid and attendance and who meets certain other requirements is entitled to receive special aid and attendance benefits. See 38 C.F.R. § 3.350(h), 3.52. The regulations do tie the benefits to actual need but do not require expenditure of the benefits on attendant care as a condition of their receipt. In fact, the regulations specifically allow payment of the benefits even if the necessary aid and attendance is performed by a relative of the beneficiary or other members of his household. 38 C.F.R. § 3.352(c).

In this case, the petitioner had been found eligible to receive \$370.00 in special benefits because he has an actual need for regular aid and attendance. Because he has the good fortune to have a spouse who is able and willing to care for him, however, he has not had to actually purchase attendant services. Nevertheless, under V.A. regulations, he is still entitled to receive the benefits even if he does not need to expend them.

The Food Stamp regulations require that all income from whatever source unless specifically excluded, by regulation must be counted in determining eligibility. F.S.M. §

273.9(a). Veteran's benefits are specifically named in the definition of included unearned income F.S.M. 3

273.9(b)(20(ii)). Special V.A. benefits for aid and attendance are not per se specifically listed as an exclusion from income in the regulations at F.S.M. 3

273.9(c). However, the petitioner argues that his attendant benefits should be excluded because they are a reimbursement for expenses which do not represent a gain or benefit to the household and as such are excludable under F.S.M. 3

2763.9(c). That section provides in pertinent part as follows:

Income Exclusions

Only the following items shall be excluded from household income and no other income shall be excluded:

. . .

5. Reimbursement for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive.

- i. Examples of excludable reimbursements

which are not considered to be a gain or benefit to the household are:

- A Reimbursements or flat allowances for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.
 - B Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.
 - C Medical or dependent care reimbursements.
 - D Non-Federal reimbursements or allowances to students for specific education expenses, such as travel or books, but not allowances for normal living expenses, such as food, rent, or clothing. Portions of a general grant or scholarship must be specifically earmarked by the grantor for education expenses rather than for living expenses to be excludable as a reimbursement.
 - E. Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.
- ii The following shall not be considered a reimbursement excludable under this provision.
- A. No portion of benefits provided under Title IV-A of the Social Security Act, to the extent such benefit is attributed to an adjustment for work-related or child care expenses, shall be considered under this provision.
 - B. No portion of any Federal educational grant, scholarship, fellowship, veterans' educational benefit and the like to the extent it provides income assistance beyond that used for tuition

and mandatory school fees as set forth in paragraph (c)(3) of this section shall be considered excludable under this provision. This provision does not apply to educational assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act, except as otherwise specified under paragraph (c)910((xi) of this section.

- C. No portion of any non-Federal (State, local or private) educational grant, scholarship, fellowship, veterans' educational benefit, and the like that is provided for living expenses shall be considered excludable under this provision. Thus, to be excluded such assistance must be specifically earmarked by the grantor for education expenses, such as travel or books, but not for living expenses, such as food, rent or clothing.

For any payment received by a potential Food Stamp recipient to be excluded as a reimbursement then, it must be determined both that, 1) the payment was made and used for a particular purpose; and, 2) the payment did not represent a gain or benefit to the household in terms of its ability to meet its normal household living expenses.

In this case there is no question that the \$370.00 payment was made to the petitioner for the purpose of obtaining attendant care. However, the facts presented by the petitioner indicate that at present he does not need to and, in fact does not, use that \$370.00 to purchase attendant care.¹ It, therefore, cannot be concluded that he meets even the first criterion under the definition of reimbursement.

Neither do his facts fit the second criterion. The

\$370.00 he receives in special benefits are surely intended to cover attendant care but the regulations also make it clear that the benefit is his to keep--and presumably to spend as he wishes--if he is able to get the services he needs from family volunteers. Since there are no statutory restrictions on how this money is spent, it is reasonable to conclude that any money which is not actually spent on attendant care is available to meet normal family living expenses. Therefore, by virtue of this payment, the petitioner's household has more money it could spend on food and it is thus not unreasonable for the Department to include that payment as income to him.

Had the petitioner actually spent some or all of the \$370.00 purchasing care, the amounts spent would undoubtedly meet the definition of and be excluded as a reimbursement under F.S.M. § 273.9(c)(5)(i)(c). The petitioner argues that the money he received should be likened to amounts received by P.A.S.S. program participants and considered excludible reimbursements as in Fair Hearing No. 8989. However, those P.A.S.S. monies are easily distinguishable from these benefits because they were restricted to use for a specific purpose and could not be used for regular household expenses. The P.A.S.S. money did not represent a gain or benefit to the family in terms of increased purchasing power for food or other daily living expenses.

The petitioner also argues that the gain the \$370.00 represented to the household was offset by the petitioner's

wife's loss of income due to her need to care for her husband. Although the petitioner put forth no evidence of what her lost wages might be, there is no provision in any Food Stamp regulations which allows for a case by case adjustment of "loss" or "gain" based upon the individual earning capacities of caretakers. The \$370.00 in income, though perhaps not as much of a gain as the household might have had if the petitioner's wife had other employment, is nevertheless a "gain" over the base V.A. payment the petitioner was entitled to without the special benefit.

For the above reasons, it must be concluded that the petitioner's V.A. dependent care payment is not an excludible reimbursement and was rightfully used to calculate his countable income for Food Stamp purposes. If it becomes necessary for the petitioner to actually expend his allowance on dependent care, the petitioner should reapply for benefits and ask to have his eligibility recalculated.

FOOTNOTES

¹These regulations are identical to those in the federal regulations at 7 C.F.R. § 273.9(c)(5)(i)(c).

²The petitioner argues that it is improper for the Department to examine whether or not his allowance is excessive because it has already been determined to be getting the necessary amount by the agency involved. However, the Department's determination does not attempt to assess the propriety of the grant amount. Its decision is based strictly on information provided by the petitioner himself that he does not use the attendant care benefit because he is voluntarily cared for by his spouse. A determination of failure to use is quite different from a determination of excessive allowance.