

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,271
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for food stamps. The issue is whether the petitioner's nineteen-year-old son must be included in the petitioner's "household", and whether the income earned by that son must be counted in determining the petitioner's eligibility for food stamps.

FINDINGS OF FACT

The petitioner lives with his three children. The oldest child, a son 19 years old, graduated from high school this spring. For several months this son has worked at a supermarket.

The petitioner's income consists of a \$310.00 monthly V.A. disability payment (based on a "30%-rated" disability) and a bi-weekly child support payment of \$369.00. This, plus the more than \$500.00 the petitioner's son earned from his job, gave the petitioner's household gross income for May, 1992, of \$1,601.00. The food stamp maximum for a household of four persons is \$1,452.¹ Because the petitioner's household income was in excess of the gross income standard, the

Department denied his application for food stamps for May.

The petitioner argues that his son's income should not be included in determining the family's eligibility for food stamps because it is not available to the other household members.

ORDER

The Department's decision is affirmed.

REASONS

Under section 273.9(b) of the food stamp regulations (F.S.M.) household income is defined as "all income from whatever source excluding only items specified in paragraph (c) of this section."²

The regulations defining a "household", F.S.M. § 273.1(a), include the following "special definition":

- i The following individuals living with others or groups of individuals living together shall be considered as customarily purchasing food and preparing meals together, even if they do not do so:
 - A. A spouse as defined in 271.2 of a member of the household;
 - B. Children under 18 years of age under the parental control of an adult household member;
 - C. Parent(s) living with their natural, adopted or step-child(ren) and such child(ren) living with such parent(s), unless at least one parent is elderly or disabled as defined in 271.2. If at least one parent is elderly or disabled, separate household status may be granted to the otherwise eligible parent(s) or child(ren) based on the provisions of paragraph (a)(1) and subject to the

provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section.³ If the natural, adopted or stepchild is a parent of minor children and he/she and the children are living with his/her parent(s), the parent of the minor children, together with such children, may be granted separate household status based on the provisions of paragraph (a)(1) of this section and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and the certification period as required by 273.10(f)(2).

- D. Siblings (natural, adopted, half or step brothers and sister) living together, unless at least one sibling is elderly or disabled as defined in 271.2. If at least one sibling is elderly or disabled, separate household status may be granted to the otherwise eligible elderly or disabled sibling based on the provision of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section. If a sibling is the parent of minor children and he/she and the children are living with his/her sibling, the sibling who is the parent of the minor children, together with such children, may be granted separate household status based on the provisions of paragraph (a)(1) of this section and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and the certification period as required by 273.10(f)(2).

In a recent decision, Shedrick ET. AL. v. D.S.W., Vt. Supreme Ct. Docket Nos. 90-301, 90-302, and 92-070, (May 1, 1992; Mot. to Rearg. denied, June 18, 1992), the Vermont Supreme Court reversed several previous rulings by the Human Services Board that the above regulation is inconsistent with its underlying federal statute (7 U.S.C. § 2012(i)). The upshot of the Supreme Court's ruling is that the board is now bound to conclude that food stamp households containing both adult and minor children must include all of those children; and the income of any of those children,

whether or not it is actually available to the remaining household members, must be "deemed" to be available to the entire household.

Inasmuch as the board is bound by law to uphold decisions of the Department that are in accord with the applicable law, and inasmuch as the petitioner's situation is indistinguishable from those in Shedrick (see supra), the Department's decision in this case must be affirmed. 3
V.S.A. § 3091(d) and Food Stamp Fair Hearing Rule No. 17.

FOOTNOTES

¹See F.S.M. § 273.9(a) and Procedures Manual § P-2590C.

²The income of students under the age of 18 is exempt from consideration. See F.S.M. § 273.9(c)(7). The petitioner's son, being 19 years old, does not meet this provision. No other exclusion applies to the petitioner's household.

³"Disabled" is defined as receipt of Social security, SSI or other government disability benefits based on total disability. See F.S.M. § 271.2. As noted above, the petitioner receives a "30%-rated" V.A. disability benefit; and it does not appear that he claims to be 100% disabled.

#