

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,562
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social and Rehabilitation Services (SRS) that her husband's Social Security income must be included in calculating the level of day care subsidy which she will receive.

FINDINGS OF FACT

1. The petitioner lives with her husband, who is totally disabled, and their two young children. She works twenty-eight hours per week and takes college courses three nights per week for a total of ten hours per week in order to get a better job.

2. The petitioner needs day care during the hours she works and goes to school because her husband, who has a serious and likely terminal illness, is too weak to care for the children. She has received assistance from the Child Care Services Division of SRS in the past with both her employment and education day care needs and in August of 1992 she again applied for subsidized services. Her children are in two different day care homes, one in the daytime and one in the evening.

3. On October 8, 1992, the petitioner was notified by

SRS that she was "eligible for financial assistance for child care services" and informed that her three year old child was approved for four half-days of services (five hours each) at the rate of \$1.81 per day and for one full-day (six hours each) at the rate of \$3.13 per day. She was also informed that her five year old child was approved for four quarter days (two hours each) at the rate of \$2.90 per day and one half day (three hours each) at the rate of \$4.57 per day.

4. The petitioner was surprised when she got the award notice because she had been found eligible for a higher level of services last year and had virtually the same family income. She is also puzzled by the different hourly amounts awarded for each child and by the apparent lack of award for her evening courses. Although she did not offer many specifics about her college courses, based on her testimony that her courses were covered as a bona fide training program last year by the Department, it is found that they meet the Department's definition of a covered training course. The petitioner does not dispute the number of daytime hours to cover her employment needs for which she was found eligible.

5. In response to her concerns, her worker sent her a letter explaining that her family's income had gone up since last year because her husband used to receive SSI benefits which was excludible income, but now he and the children receive Social Security benefits which are includible. The

family income used included the petitioner's earnings of \$722.00 per month, her husband's income in the form of a \$376.00 per month VA pension and \$568.00 in Social Security income, and her children's Social Security dependents' income of \$284.00 per month for a total of \$1,950.00 per month.

6. The petitioner does not dispute the amounts or sources of her income as used by SRS. However, she does not think her family can make it with \$26.00 worth of day care help each week. She also does not think her husband's income should be included at all because he is not a "caretaker" of the children. In fact, she says she has been told not to leave her children alone with her husband because he has been abusive to them in the past.

7. Although SRS was duly notified by notice mailed on October 26, 1992 of the time and date of the hearing (which was rescheduled to a later date on November 5, 1992), no one represented the Department at the hearing. The petitioner testified that her worker called her to remind her of the time and date of the hearing and she was under the impression that someone would attend. As the petitioner is seeking a higher level of benefits than those offered by SRS and currently only receives the lower level, she would be prejudiced by continuing her hearing. The Department did not request a continuance in this matter and provided no evidence other than a Commissioner's Review dated November 13, 1992, three days after the hearing was held as to why it

took its position.

8. The Commissioner's Review stated that the day care subsidy payment was based on the family income of \$1,950.00 which under Regulation 4031 made them eligible for only a twenty-five percent subsidy of the maximum amount set at Regulations 4035 and 4036.

ORDER

SRS's amount of award is reversed and the petitioner should be awarded \$27.66 per week in day care benefits. SRS is required to provide the petitioner with a detailed explanation of how her benefits were calculated so she may ascertain if she has a further ground for appeal.

REASONS

At the outset, it must be remarked that SRS' persistent failure to send a representative of any kind to day care subsidy hearings makes it very difficult to gather all the facts necessary to determine if its decision is correct. Due to the almost total lack of information as to how the amount of the subsidy was calculated, the Board must rely on the testimony of the petitioner and the regulations to, in essence, make a totally new decision from scratch. If the notices sent to the petitioner were detailed enough to show how the final figures were reached, perhaps submission of those notices would be enough. However, not only were the notices not submitted by the Department in this case (they were submitted by the petitioner who fortunately had them on hand), but they contained virtually no detail as to how any

calculations were made. These notices alone raise serious due process questions.

The regulations make it clear that "the total monthly income received by a child and her/his primary caretakers which is derived from any source" except certain specified exceptions must be counted as gross income in determining eligibility. Child care Services (CCS) Regulation 4031. "Primary caretaker" is further defined in that same regulation in a broader way than the petitioner suggests as "[t]he biological, adoptive or foster parent(s) of a child or child's legal guardian or other person legally responsible for the child's welfare." The regulations also specifically state that:

In determining the eligibility of a family in which a child(ren) is residing with both of his/her unmarried or married primary caretakers, eligibility is established based on the income of both of those primary caretakers." CCS Reg. 4034(3)

It must be concluded from the above that all the family's income including the Social Security of the husband and children must be included in determining eligibility. Although the regulations do specifically exclude SSI income, there is no similar exclusion for Social Security benefits either for disability or dependents. Neither is there an exclusion of VA benefits. See CSS Reg. 4031, Definition of Gross Income. Therefore, SRS's inclusion of all this income to determine eligibility was correct and the operable figure for this family is \$1,950.00 per month.

Under CCS Reg. 4035, families with four persons who receive \$1,950.00 monthly income are only eligible for a twenty-five percent subsidy. Thus it appears that SRS' determination that the family is eligible for twenty-five percent of their need is accurate. What is not so clear, however, is the number of hours for which the petitioner was approved and the amounts to be paid. It appears from the petitioner's testimony and other that she actually needs seven half days (three to six hours) and one full day (six hours or more) for her three year old, and four half days and four quarter days (less than three hours) for her five year old. These figures include her courses at night.

Under SRS' regulations, registered day care home payment rates are \$12.50 per full day, \$7.25 per half day and \$4.60 for a quarter day. CCS Reg. 4036. Under this scenarios, the petitioner would be eligible for twenty-five percent of \$110.65 per week or \$27.66 per week in benefits.

As this amount is slightly higher than the amount apparently being currently offered, it would appear that the Department's decision is incorrect. Even so, due process requires that SRS provide the petitioner immediately with a coherent explanation of how her benefits were calculated, including the days awarded and the hours awarded for each day with reference to the regulation involved in order that she may see if she has a further ground for appeal.

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