

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,235

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Appeal of )

)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying his son's eligibility for Food Stamps based on excess household income. The issue is whether his twenty-year-old disabled adult son should be considered a separate Food Stamp household from his parents.

FINDINGS OF FACT

1. The petitioner lives in a trailer with his four year old daughter and his ex-wife. In January of 1994, the petitioner's (now) twenty-year-old son moved into the trailer with him. His son is disabled and receives SSI income of \$500.87 per month.
2. The petitioner has assisted his son with applications for Food Stamps and fuel assistance. At one point, the whole household was on Food Stamps but was terminated because the family made too much money. That decision was not appealed. The petitioner asked that his son be considered alone for Food Stamps but was told that he could not be found eligible unless his son had a separate living unit.
3. With that advice in mind, the petitioner attached a second trailer to his own trailer for his son. That trailer has two bedrooms, a living room and a bath, but no kitchen. The petitioner says that he was prevented from adding a kitchen because of the requirements of Act 250. The trailer has its own entrance but has an entryway into the petitioner's trailer so his son can use the kitchen.
4. Following the completion of the above addition, the petitioner reapplied for Food Stamps for his son. On November 9, 1993, the son was denied Food Stamps because he did "not fit any of the exceptions to the rule that requires parents and children, or brothers and sisters, to apply as one household." A copy of that notice which contains further explanations of the exceptions, is attached hereto as Exhibit No. One and is incorporated herein by reference. The Department does not consider the petitioner and his son to be living separately because their premises are joined and they share a common kitchen.

5. The petitioner buys food for his son who in turn prepares his own food but does so under the supervision of the petitioner or his ex-wife as they do not believe it is safe for him to operate the stove alone. His son occasionally shares meals with the three persons who live in the petitioner's trailer.

6. Based on the above facts, it cannot be found that the petitioner and his son are living in separate housing units.

### ORDER

The decision of the Department is affirmed.

### REASONS

Under the Food Stamp regulations, eligibility is determined in terms of the entire household which, by definition consists of:

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i An individual living alone;

ii An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

iii A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

F.S.M. 273.1(a)(1)

The regulations further adopt a special definition which considers certain individuals as customarily purchasing food and preparing meals together, even if they do not do so, including:

...

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. 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).

F.S.M. 273.1(a)(2)(i)

This regulation does allow disabled parents to form a separate household from children with whom they live but makes no such exception for disabled children living in a parent's household. Therefore, the

petitioner's son, as a child living in his parents' household, must be included in the same household whether or not he and his parents purchase food and prepare meals together.

The petitioner urges that this rule is not applicable to his son because he is not living with his parents. The facts, however, indicate otherwise. The petitioner's son has sleeping and living quarters with a separate entry attached to and accessible from the interior of the petitioner's trailer. He regularly shares the kitchen area with the petitioner and his other family members and they assist him there in preparing meals. Although this situation may give him more privacy, he still is dependent upon, has free access to and regularly uses portions of his parent's home. His parents do not deny that he sometimes even eats meals they have purchased and prepared with them and that his food shopping is done for him as part of their regular shopping. These facts do not support a finding that he is living separately from his parents.

The Department has advised the Board and the petitioner that Congress has recently passed the "Mickey Leland Childhood Hunger Relief Act". P.L.103-66, which, according to a bulletin from the U.S. Department of Agriculture, Operations, Regional Policy Section, dated August 1994:

Simplifies the household definition by providing that children 21 years old and under living with their parents cannot be separate households from their parents unless they are married and living with their spouses and or children; children other than foster children who are under 18 years old and live under the parental control of an adult household member cannot be separate households; adult siblings who live together and adult children who live with their parent can be separate households if they purchase and prepare food separately.

The Department promulgated a PP & D Memo on October 27, 1994, indicating that the above referenced Act allowed:

1. Adult siblings over 18 who live together can be separate households if they purchase and prepare food separately.
2. Adult children 22 or older who live with their parents can be separate households if they purchase and prepare food separately.
3. Adult children 18-21 who live with their parents can be separate households if one of the parents is disabled or elderly per policy at WAM 273.1(a)(2)(i)(C). Children 21 years old or younger living with their parents may be separate households from their parents if they are married and living with their spouses and/or living with their children and they purchase and prepare food separately.
4. Household members who are elderly and so disabled that they cannot purchase and prepare food separately continue to have separate household status.

The bulletin advises workers that the policy manual will be changed in an upcoming bulletin and that the changes would be applied immediately for applicants after 9/1/94 and for current recipients upon their first review after 9/1 or at their request.

Although this change does not appear to affect the petitioner at the present time as he is still under twenty-one, he should be aware that eligibility requirements change frequently and that he should reapply in the future, particularly as his twenty-first birthday approaches for an assessment of his situation at that time. For now, the decision of the Department must be affirmed as it is in accord with its

current regulations.

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