

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,433

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his Food Stamp benefits based on his possession of excess resources in the form of an automobile.

FINDINGS OF FACT

1. The petitioner was employed as a carpet-layer in 1994 and was earning over \$1,000 per month. His wife worked as a nursing assistant at a nursing home. In April of 1994, the couple bought a new Ford Aerostar van which they financed over a five year period and for which they paid \$479.07 per month. The van was used by the husband to get to his employment and to transport the wife to her job at a nursing home. In addition, the car was used for the needs of their family, which includes four children.
2. In November of 1994, the petitioner was laid off due to a back injury and began to receive disability benefits. He applied for Food Stamps for his family and was granted \$323 worth of Food Stamps per month.
3. On December 6, 1994, the petitioner was mailed a notice informing him that an error had been made in granting him the Food Stamps because the Department had neglected to count the value of his automobile. His automobile was valued at \$13,200 (through the use of a NADA "blue book"), although its countable value was reduced to \$8,650 after a \$4550 automobile allowance was deducted. When added to \$203 in cash resources on hand, the petitioner was determined to have \$8,853 in total countable resources, far in excess of the \$2,000 maximum limit imposed by the Food Stamp regulations.
4. The petitioner does not dispute the current fair market value determined for the vehicle but asks the Department to completely exclude the value of the automobile since it has a \$25,000 encumbrance on it (as of March 1995) and it continues to be essential to his wife in her job as a nursing aide.

5. The evidence shows that the petitioner's wife stopped working in September of 1994 due to a medical condition affecting her knees and her ability to ambulate. In January of 1995, after she was denied Social Security disability benefits, the wife began working as a private duty nursing assistant averaging about sixteen hours per week and making \$10 per hour. She works sixteen miles away from her home and is required to transport her patient to appointments as part of her duties (the patient has no car). The car also continued to be used by the family for shopping, medical appointments and the other needs of their four children.

6. The petitioner's wife says that she is working against medical advice but had to do so or they would lose the van. She was invited to provide further documentation of her disability but did not do so. Repossession of the car would have cost them \$5,000. The petitioner returned to work in May of 1995, and agrees that he is no longer eligible for benefits. Because of his appeal the family continued to receive Food Stamps throughout his period of disability.

ORDER

The decision of the Department is reversed.

REASONS

The Food Stamp program provides that "the maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed \$2,000 for the household . . ." F.S.M. 273.8(b). Licensed and unlicensed vehicles are both included in the definition of nonliquid resources found at F.S.M. 273.8(c)(2). Ordinarily, nonliquid resources are valued by their "equity value" (fair market value minus encumbrances) but licensed vehicles are treated differently:

All licensed vehicles not excluded under paragraph (h)(1) of this section shall individually be evaluated for fair market value and that portion of the value which exceeds \$4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value of \$5,500 shall have \$1,000 applied toward its resource level. Any value in excess of \$4,500 shall be attributed to the household's resource level. Any value in excess of \$4,500 shall be attributed to the household's resource level, regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market values of two or more vehicles shall not be added together to reach a total fair market value in excess of \$4,500.⁽¹⁾

F.S.M. 273.8(h)(3)

Under the above regulations, the Department is required to ignore all encumbrances on vehicles owned by the household and to determine a fair market value in excess of \$4,550, which amount must be counted as a household resource. A calculation in accordance with that regulation

was undertaken by the Department in this case and controls the eligibility decision unless the vehicle can be excluded as a resource under paragraph (h)(1) of the vehicle regulation. That regulation provides:

h. Handling of Licensed Vehicles

The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. The entire value of any licensed vehicle shall be excluded if the vehicle is:

i used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat. Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;

ii annually producing income consistent with its fair market value, even if used only on a seasonal basis;

iii necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or of a migrant farmworker following the work stream;

iv used as the household home and, therefore, excluded under paragraph (e)(1) of this section; or

v necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

2. The exclusion in parts H.1.i through iv will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

F.S.M. 273.8

The petitioner's wife unquestionably uses her van to produce income because she is required to provide a car for the transportation of her patient. However, the Department determined that the petitioner's vehicle could not be excluded as a resource because she had a less than half-time job. That determination is a misreading of the regulations which provide that one circumstance in which a vehicle shall be excluded is when the vehicle itself is used over 50 percent of the time for income producing purposes. The evidence is not clear that the petitioner's vehicle was so used by the family before or during the time the family received Food Stamps. However, failure to meet that regulation does not bar exclusion of the vehicle's value because the regulations also exclude the vehicle in the circumstance where it is producing income commensurate with its value.

It is clear that the car is used by the petitioner's wife in the performance of her duty to transport her patient and that her job produces a significant amount of income (\$160 per week). Under the regulations at F.S.M. 273.8 (h)(1)(ii), cited above, a licensed vehicle shall be excluded as a resource if it produces "income consistent with its fair market value." That term is nowhere defined but presumably means that income must be produced that would justify the expense of the vehicle used to perform the job. The petitioner's take-home income is now at an all time low due to her illness but that income at least covers the monthly cost of the vehicle. In a year's time, even the income she now earns is equal to about two-thirds of the value of the vehicle. Presumably, the vehicle has a life of many years duration and theoretically she could quickly earn enough to recover the fair market value of her vehicle from her employment, especially if she can work more hours.⁽²⁾ It must be concluded that her vehicle produces income commensurate with its value so as to trigger exclusion under the above regulations.

Finally, although the petitioner's wife was not working from September through December due to her illness, the regulation cited above at F.S.M. 273.8 (h)(2) allows vehicles used to produce income to be excluded during periods of temporary unemployment. Therefore, her vehicle was properly excluded during November and December of 1994 as well.

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1. Although the regulations do not reflect the change, 42 U.S.C. § 2014(9)(2) now requires the use of a \$4,550 fair market exclusion. The Department did use the appropriate figure in its calculations.
2. Obviously, with the encumbrances on the vehicle that probably will not happen any time soon, but the regulation does not talk about cost of paying for and maintaining the vehicle but rather requires comparison of income with fair market value.