

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,579

)

Appeal of)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC and food stamp benefits. The issue is whether bingo winnings the petitioner won for her mother constituted lump sum "income" (ANFC) or acquired "resources" (food stamps) to the petitioner within the meanings of the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner is a recipient of ANFC and food stamps. On March 16, 1995, the petitioner's mother asked her to go to bingo with her aunt. The aunt has poor eyesight and the petitioner's mother usually accompanies her to bingo, where they both play, but where the petitioner's mother helps the aunt with her cards. On the night in question the petitioner's mother was unable to attend but was unable to contact the aunt before the aunt had left for the bingo parlor. The petitioner's mother asked the petitioner to go in her place, and gave the petitioner money to play with. The petitioner agreed that if she won it would be her mother's money.

That night the petitioner won \$2,500.00. Before she could get the money the petitioner was required to sign an IRS reporting form provided by the bingo operators. She then called her mother, who came down to the parlor and took the money.

The petitioner's mother gave the petitioner \$200.00 out of her winnings, and she later loaned the petitioner another \$105.00. The petitioner spent the money on an air conditioner and some bills.⁽¹⁾

The Department does not dispute the veracity of either the petitioner's description of the arrangement she had with her mother or the written statement the petitioner's mother submitted that described the arrangement exactly as how the petitioner had reported it.

ORDER

The Department's decisions is reversed.

REASONS

Welfare Assistance Manual § 2250 defines "income" as "any cash payment or equivalent . . . which is actually available to the . . . recipient" (emphasis added). The Board has consistently interpreted the food stamp regulations defining resources (Food Stamp Manual § 273.8) as also requiring a showing that the assets in question are "accessible" to the household.⁽²⁾ See Fair Hearings No. 12,049 and 8,501. In this case the Department does not dispute that the petitioner had agreed with her mother that any bingo winnings were to be her mother's, and that the petitioner followed through on that agreement by giving her mother all but \$200.00 of these winnings. The Department makes no claim that the money is, or ever was, "actually available" to the petitioner, and it makes no legal argument that it should be deemed so.⁽³⁾ Therefore, the Department's decisions terminating the petitioner's ANFC and food stamps are reversed.

#

1. The petitioner does not dispute that this \$200.00 constituted income to her.
2. F.S.M. § 273.8(e)(8) provides that assets "not accessible" to the household (e.g., certain trusts) are to be considered as "exclusions from resources".
3. The Department does not dispute the petitioner's claim that her signing the IRS reporting form was required by the bingo operators before they would turn the money over to her. The Department does not argue that this created a legal presumption of ownership by the petitioner of the prize money. Even if it did, however, it must be concluded that the undisputed evidence submitted by the petitioner amply rebuts any such presumption.