

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,615

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare terminating her ANFC and Food Stamp benefits.

The issue is whether the Department correctly included the petitioner's disability insurance payment in its calculations.

FINDINGS OF FACT

1. The petitioner is a single mother who lives with her fifteen-year-old son. On February 8, 1995, she had to leave her job of seventeen years as a delicatessen manager at a supermarket because of a degenerative disease in her back. On March 1, 1995 she applied for ANFC and Food Stamps. She also applied for Social Security benefits.
2. She was granted ANFC and Food Stamps on March 13, because at the time of her application, she had no income. She was randomly placed in "Group 2" for ANFC purposes.
3. Shortly after she started receiving ANFC benefits, the petitioner started receiving disability insurance benefits from her employer's self-insured fund. Those payments will continue for twelve weeks and for April of 1994 amounted to \$1,371.70 per month.
4. For purposes of calculating her continued ANFC benefits, the Department treated the disability insurance benefits as earned income and allowed an earned income disregard of \$455.42. It was treated as such because her employer deducted health, dental, and life insurance benefits as well as FICA taxes and a 401(k) contribution from her check as was done from her regular paycheck. Her countable income of \$916.28 (\$1,371.70-\$455.52) was compared with the amount payable for a family of two, \$513.70, and found to be far in excess.

5. For purposes of calculating her Food Stamp benefits, the Department determined that the petitioner's income should be treated as unearned income and determined that the \$1,371.70 caused her to fail the "gross income test" for a household of two which is \$1,066.

6. On April 17, 1995, the petitioner was notified that effective May 1, 1995 she would no longer be eligible for \$513 in ANFC benefits and would no longer be eligible for \$167 in Food Stamps due to her disability income.

7. The petitioner appealed the Department's decision because she is unable to live on her disability payments alone. She has rent of \$400 per month and payments to make on a new compact car which she bought before she knew she would be unable to work. She has yet to receive a decision from the Social Security Administration.

### ORDER

The decision of the Department is affirmed.

### REASONS

ANFC regulations require that income from benefit programs be treated as unearned income for purposes of calculating eligibility W.A.M. 2252(A). However, in this case, the Department used the more favorable treatment afforded to earned income for the petitioner's disability payments because her employer continued to take deductions from her income as he would have from her paycheck. W.A.M. § 2253. For that reason, the Department gave her an employment expense deduction which for Group 2 amounts to \$150 plus 25% of that balance(\$1221.70), amounting to another \$305.42 deduction. See W.A.M. 2240.1. Even with that deduction, the petitioner's \$916.28 in net income was considerably in excess of the \$513.70 payment standard for two persons. P-2210(c).

The Food Stamp regulations specifically require that "disability benefits" be counted as unearned income. F.S.M. § 273.9(b)(2)(ii). However, even if her income had been considered as earned income, it would still be subject to the same "gross income test" as unearned income. F.S.M. 273.9(a)(1). That gross income test provides that a household with two persons (in which neither is elderly or disabled<sup>(1)</sup>) cannot have more than \$1,066 in monthly income (130% of the Poverty Level). P-2590(C) The petitioner's income is some three hundred dollars above that amount. Therefore, she was correctly determined to be ineligible for Food Stamps as well.

The petitioner was advised that her eligibility could change if she stops receiving disability benefits and was encouraged to reapply. She was also encouraged to speak with an attorney should her Social Security claim be denied.

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1. The term "disability" is one of art in the regulations and is defined at F.S.M. 271.2. The definition does not include a person in the petitioner's situation.