

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,657

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to allow as shelter expenses for food stamps only the taxes, insurance, and utilities that he is now paying on his home. The issue is whether the fact that the petitioner's home is presently in the process of foreclosure precludes the consideration of his monthly mortgage obligation and other expenses as part of his ongoing shelter expenses pursuant to the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner recently became eligible for Social Security disability benefits; and currently these comprise his entire gross income of \$754 a month.

The petitioner lives in a home for which he and his wife paid \$967 a month in mortgage payments. After the petitioner's wife died, the petitioner fell behind on the mortgage. He was recently notified by the mortgage holder that he is in default on his mortgage and needs to pay over \$111,000 to avoid foreclosure. The petitioner has ceased making any payments on the mortgage because the mortgage holder has notified him that resumption of payments will not avoid foreclosure.

The petitioner applied for food stamps in May, 1995. In calculating his benefits the Department allowed the petitioner a full standard "fuel and utilities deduction" from his income as well as the monthly payments the petitioner actually makes to maintain insurance, for garbage collection, and for property taxes on the house. The petitioner argues that the Department should also count as a deduction from his income any or all of the following: the monthly mortgage payment he would be making were he not in default, the costs of maintaining the property (including the costs of repairing items such as lawnmowers), and the attorneys fees he will incur to fight the foreclosure.

RECOMMENDATION

The Department's decision should be affirmed.

REASONS

Food Stamp Manual § 273.9(d)(5)(ii) provides:

Shelter costs shall include only the following:

A. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

B. Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

Vermont: Taxes, assessments and insurance are averaged over the full period of which they are incurred. Clients may request that they be averaged over the certification period in which the non-delinquent payment is due, or computed against the individual month in which the non-delinquent payment is due, providing such option does not result in any duplication of deductions. No deduction shall be allowed for delinquent payments; i.e., payment of taxes, assessments, etc., which were initially due prior to the current certification period.

C. The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

D. The shelter costs for the home if temporarily not occupied by the household because of employment or training away from the home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for Food Stamp purposes, and the home must not be leased or rented during the absence of the household.

E. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include changes for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

The above regulations are clear that the Department has allowed the petitioner all the shelter expenses to which he is entitled. Because his mortgage is no longer a "continuing charge" for his house that the petitioner is currently paying, it cannot be included as a deduction. Similarly, maintenance and attorneys fees are not included. The Department's decision is, therefore, affirmed.

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