

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,864

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare reducing her Food Stamp benefits based on a decrease in her shelter and utility allowance.

FINDINGS OF FACT

1. The petitioner is a disabled woman who lives on an SSI income of \$537.41 per month. She recently moved from a small apartment in Putney to an even smaller federally subsidized apartment in the Barre area.
2. Prior to her recent move, the petitioner had her electricity included in her rental payment of \$83 per month but was liable to pay her own heating expenses. For purposes of her Food Stamp eligibility, the Department added the \$83 rental to a \$312 standardized utility allowance for heat each month. The petitioner did not actually have to pay \$312 per month for heating but was able to provide it for an average of \$55.30 per month (\$663.60 per year). She was, however, allowed to use the higher standardized figure under Departmental rules. Her total housing expense was figured at \$395 per month.
3. Her new apartment requires her to pay a higher rental of \$93 per month but that figure now includes her heat. She is now liable for her own electric expenses (cooking, hot water and lights) which at this point are running about \$36.70 per month, but which she expects to be higher in the winter months. Based on her new shelter expenses, the Department recalculated the petitioner's Food Stamp eligibility based on the addition of the \$93 rent to a standardized utility figure for electricity expenses of \$117 per month, for a total housing expense of \$210 per month.
4. Income for Food Stamps is figured by deducting a standardized deduction of \$134 per month from the unearned \$537.41 SSI income and then deducting as a shelter allowance the portion of the total shelter expense which is in excess of fifty percent of the balance. The prior \$395 per month shelter figure resulted in an allowed deduction of \$197.71 under this formula. The current \$210 amount when compared to half of her income after the \$134 was deducted (about \$201.70) shows an excess of only

\$12.71.⁽¹⁾ That excess is then deducted from income to show a countable amount, in this case \$390.70.

5. The Department concluded that the \$390.70 amount entitled the petitioner to \$10 in Food Stamps. She was notified on August 25, 1995 that her Food Stamps would be reduced to \$10 per month based on the decrease in her shelter and utility costs from \$197.71 to \$12.71 per month.

At her prior apartment, her countable income had resulted in her eligibility for \$53 in Food Stamps.

6. The petitioner does not dispute the figures used by the Department or the correctness of the calculations or even that the Department followed its policies. Rather she disputes the rationale behind a policy which reduces her Food Stamps by \$43 when her expenses have not changed. She points out that her actual expenses in her former residence were about \$138 per month (\$83 for rent and electric and \$55 for heat) and that her current actual expenses are about \$130 per month (\$93 for rent and heat and \$37 for electricity) and are likely to go higher in the winter, perhaps surpassing her prior monthly amount. She also points out that when she lived in her prior apartment, she also got LIHEAP assistance with the heating expense which she cannot get now because she has no direct heating liability and lives in subsidized housing. She thinks it only fair that the Department look at her actual expenses when making a decision that she should get fewer Food Stamps. She has enough difficulty making ends meet even with the higher Food Stamp amount and feels that the Department's formulas have denied her "equal protection".

7. The petitioner also wished to go on record to protest the fact that she was unable to obtain the services of a free lawyer for her appeal. She approached but was turned down for assistance by Vermont Legal Aid due to budget cutbacks. She has obtained advice from other lawyers but could get no one to attend the hearing with her.

8. Finally, the petitioner wishes to inform the Board that although she timely appealed the reduction (within ten days), she was originally informed by her worker that she had not been granted continuing benefits because she did not specifically request them when she appealed. However, when she protested, the Commissioner agreed that she should have gotten the continuing benefits and restored all of her benefits to her. The petitioner wishes to bring the Department's failure to follow its own rules to the Board's attention because she believes it is a common practice. She presented no evidence, however, that this had occurred with anyone but herself.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner's Social Security and Supplemental Security Income benefits must be considered and counted as unearned income when eligibility for Food Stamps is determined. F.S.M. 273.9(b)(2)(ii). However, that income is subject to further deductions before a countable income figure is obtained. F.S.M. 273.9(d).

Net countable income is determined by allowing certain deductions from gross income pursuant to the regulations at F.S.M. 273.9(d)(1-8). Deductions potentially applicable here can be summarized as

follows:

(1) A \$134 standardized deduction available to everyone. See P-2590A (1).

(2) A deduction for medical expenses (including medical and dental care, prescriptions, hospitalization and health insurance policies) in excess of \$35 per month.

(3) A deduction for shelter expenses which are in excess of 50 percent of the household's income after (1) and (2) above are deducted. Shelter expenses include the cost of mortgage or rent payments (including lot rent), property taxes, insurance payments on the dwelling, heating and cooking fuel, cooling, electricity, sewerage, garbage and trash collection, and basic telephone service.

The petitioner was given the standard deduction in this case at both residences. The second deduction for excess medical expenses was not given to the petitioner because she presented no evidence that she has such expenses.

The regulations allow a deduction for household shelter expense as follows:

ii. Household Shelter Deduction

Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1),(2), (3) and (4) of this section have been allowed. The shelter deduction shall not exceed the maximum limit established for the area. This is applicable unless the household contains a member who is elderly or disabled as defined in 271.2. Such household shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions . . . (2)

The petitioner agrees that she currently has about \$130 in monthly shelter expenses. That amount when compared with half of her income after the standard deduction, or \$201.70, shows that her actual expenses are less than half of her income. That was also true when she lived in her prior apartment and incurred actual monthly expenses of \$138. If her actual expenses were used, she would not be entitled to any excess shelter deduction and would have gotten less Food Stamps all along than she actually has.

The petitioner has been able to establish an excess shelter expense, however, through the use of standardized utility allowances established by the Department. F.S.M. 273.9(d)(6)(iii) and (iv). Those standards are developed by the state through methodologies reflecting average costs for those utilities in the state and are approved by the federal agency administering the program. F.S.M. 273.9(d)(6)(iv). Vermont has adopted \$312 as a standard utility allowance for utility payments which include heat and \$117 for payments made for all other utilities excluding heat.

P-2590(A)(5).⁽³⁾ The Department's regulations, which are taken verbatim from the federal Food Stamp regulations, provide that a standard utility allowance for heating "shall be made available only to households which incur heating

. . . costs separately and apart from their rent . . ." F.S.M. 273.9(d)(6)(ii). In this matter, the petitioner was given the larger utility allowance which included heat when she lived at her prior residence because she was responsible for paying for heat separately. When she moved, the regulations prohibited her

getting the larger allowance because she did not incur any heating costs separate and apart from her rent. Therefore, she was properly allotted \$117.

The petitioner claims that this system is discriminatory because she has roughly the same expenses at both houses. However, the petitioner's claim ignores the fact that she did not use actual expenses at either home but rather the more advantageous standardized allowances. The fact that those standards are set at different amounts is not per se discriminatory. It stands to reason that persons who must pay heat as part of their utility payments have larger bills than those who do not have to pay heat. It cannot be said that it was unreasonable to provide a larger allowance to her when she was liable for heat than when she is not.

The real disparity in payments for the petitioner came about because the larger allowance she used to get contained a windfall for her in that she did not have to pay her electricity (which is figured in along with heat in the larger allotment) and was able to cut her heating expenses through frugality and the LIHEAP program. In effect, she was able to get along on much less than the utility allowance projected she would need. Now, using the standard non-heating allowance she still gets somewhat of an advantage from the standard (about \$80 worth, as she is allowed \$117 but actually uses only about \$37 for utilities) but nothing approaching the more than \$250 per month advantage she gained from use of the larger heating allowance. While it may not seem fair that she should get less food stamps when her overall costs have not changed, that "unfairness" arose from an attribution of expenses to her which she really did not have. Those expenses can no longer be attributed to her under the regulations because of her lack of a heating liability and not because her expenses have changed.

The Department's decision that the petitioner is eligible for no more than \$10 in Food Stamps in this matter is based upon the tables in its procedures manual,

P-2590D(4). The petitioner has not shown the regulations or procedures to be illegal or invalid and so they must be upheld by the Board. See. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17. With regard to her claim on the initial refusal of continuing benefits, there is little the Board can do at this point since the Department corrected its error and restored all the benefits. There was no evidence offered that this is, indeed, a recurring problem within the Department. Certainly if it is a recurring problem with this worker, she should be reminded that it is not necessary to specifically request continuing benefits if an appeal is filed within ten days---the filing of the appeal itself stops the adverse action unless a "waiver of benefits" is signed until the fair hearing decision is rendered. W.A.M. 2130.3.

Finally, the petitioner's ability to obtain legal counsel is indeed lamentable but the Board is not in a position to remedy that situation. Under the Board's rules, a party has a right to be represented by counsel if she so desires. See Fair Hearing Rule No. 2. However, the Board is not under a statutory or constitutional obligation to provide or pay for such counsel in these purely civil matters. The Board's role with regard to pro se petitioners is to insure that they understand the process and the principles involved in their appeal and to assist petitioners by soliciting relevant evidence. That obligation is taken seriously by the Board in order to insure a meaningful and fair process. While it is certainly no substitute for having an advocate of her own, the Board is not empowered to either provide one or to declare the process null because of the lack of counsel.

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1. These calculation, when performed by the hearing officer yield an actual excess of \$8.30. However,

as the figures used by the Department are more favorable to the petitioner, they will be accepted as accurate.

2. The Vermont maximum excess shelter deduction is \$231. P-2590A(1). However, that maximum does not apply to the petitioner because she is disabled.
3. There is also a separate standard for persons who pay only telephone of \$28.41 per month. P-2590(A)(5).