STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,977

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC and Food Stamp benefits due to excess income.

FINDINGS OF FACT

1. The petitioner is the single mother of a small child and an ANFC and Food Stamp recipient. In March of 1995, she began working but the Department of Social Welfare was unaware of that fact.

2. On October 10, 1995, the petitioner's eligibility worker received a computer mail message from the Department's fraud unit that the Department of Employment and Training records showed that the petitioner had been working since March 20, 1995. The information in the Department's possession indicated that the petitioner had gross income for the month of September as follows:

Date paid	Amount
9/7	$388.68
9/14	361.69
9/21	397.29
9/28	373.45
10/5	407.26

3. Based on this information, the Department calculated an average monthly gross income of $1,635.16.

[(1)] For purposes of the ANFC program, the Department disregarded $521.29 for work expenses which represents $150 of the gross income and one-quarter of the remainder because the petitioner is in Welfare Restructuring Group 3. No child care expenses were allowed, because the petitioner had never reported any such expenses. The remainder, $1,113.87, was compared with the maximum amount the Department pays out for a family of two, $512.40[(2)]. The petitioner was determined to be $601.47 per month over income for the ANFC program.

4. For purposes of the Food Stamp program, the petitioner's gross income was compared with the maximum gross income of $1,087 for a family of two and found to be significantly in excess.

5. The petitioner was notified of the above calculations and the decision to terminate her ANFC benefits of $512 per month and Food Stamp benefits of $167 per month on October 10, 1995.

6. The petitioner appealed the decision on a number of grounds, including the use of gross income instead of net income figures in calculations, the inaccuracy of the wage figures used, the failure of the Department to deduct child care expenses of $60 per week from her income, and the failure of the Department to consider her considerable car expenses necessary to maintain employment.

7. The record was kept open following the hearing to allow the petitioner to provide documentation of her wages and her child care expenses. She did provide documentation that her gross wages were exactly the amounts the Department used. However, she pointed out that over $400 of her gross wages for September consisted of overtime. She argued that use of that month's wages to determine eligibility was unfair because it was not representative of her monthly gross wage which, without overtime, is $1,204 per month. She did not verify the $60 per week in child care expenses.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Department of Social welfare at W.A.M. § 2253 define earned income to be used in eligibility calculations as "income prior to any deductions for taxes, FICA, insurance or any other deductions voluntary or involuntary." Net income for Group 3 recipients is then calculated by using a $150 plus 25 percent of the remainder disregard and any allowable dependent care deduction. W.A.M. § 2253.1 and 2253.12.

The facts show that the Department used the required formula for computing the petitioner's income. If she had verified the $60 per week child care expense, that too could have been deducted. However, had that amount been verified and deducted on a monthly basis, the petitioner's net income would have been $855.57, which is still in excess of $512.40 maximum for a family of two.

The regulations do not require the Department to disregard income in the form of overtime for a given month. Clearly that overtime was money received by and available to the petitioner to meet her expenses. If she no longer has such overtime, she can reapply for ANFC and provide verification of her new income and child care expenses at any time. It cannot be found on the evidence, however, that the Department's calculations for the month at issue are in error.

The Food Stamp program employs a gross income test which must be passed before any deductions can be considered. F.S.M. 273.10, Procedures Manual 2510(E)(1)(a). The maximum for a family of two, before October 1, 1995 was $1,066. Effective October 1, 1995, the gross income maximum is $1,087. P-2590(C). Even that new gross amount is considerably below the gross income the petitioner was earning at the time in issue. As the Department's decision is in accord with its regulations, it must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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1. Adding these figures together, dividing them by the five weeks and multiplying by 4.3 (the number of weeks in a month) actually yields a gross monthly figure of $1658.39, some $23 greater than the figure used by the Department. As the Department's figure is more favorable to the petitioner, it will be used in this case.

2. This figure represents a $565 basic need standard for two plus a $350 shelter expense (the maximum available), whose sum $915 is reduced by 44% to represent the percentage of need actually covered by the ANFC grant.