

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,512

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare (DSW) reducing her Food Stamp benefits due to increased income.

FINDINGS OF FACT

1. The petitioner receives ANFC (Group 3) and Food Stamp benefits on behalf of her two children who are both disabled. The petitioner also works as a waitress part-time and has a support order from her ex-husband which has not always been paid but which payments resumed over the summer due to an enforcement action. The petitioner and her children live in subsidized housing and have relatively inexpensive housing costs.
2. On July 26, 1996, the petitioner reported to DSW that her younger child had been awarded SSI benefits through the Social Security Administration (SSA) but she did not know the exact amount or the exact date payment would start. On August 7, 1996, DSW contacted SSA and learned that he was to receive \$524.91 per month beginning September 1, 1996. Based on that information, the Department recalculated the petitioner's benefits.
3. On August 8, 1996, the petitioner was mailed a notice informing her that the child receiving SSI benefits would be removed from her current ANFC grant of \$362 per month and that the remaining two family members would receive a two person grant of \$261 per month beginning in September. The petitioner is not appealing that decision. The petitioner was also notified that the \$524.91 benefit received by her child would be added to her household income for Food Stamps which would result in a reduction in benefits from \$151 to \$24 per month. The petitioner disputes the Food Stamp reduction.
4. Worksheets provided by the Department show that the income counted to the petitioner for September, 1996 was: (1) \$325 earned income from her waitress job which was projected based on her reported earnings in August, 1996; (2) \$261 in ANFC income; (3) \$524.91 in unearned income from her child's SSI check; and (4) \$50 passed along to her as part of the child support paid to DSW by the petitioner's ex-husband, based on the fact that she had received a check in August and was expected to

receive one in September. The earned income under number (1) was reduced by a \$65 work expense deduction and added to the other figures which total was reduced by a standard deduction of \$134. The final figure arrived at as countable Food Stamp income was \$961.91.

5. The petitioner disputes the calculations because as of the date of the hearing on September 19, 1996, she had not yet received her \$50 pass along for that month and because she had actually earned only \$138 per month as a waitress that month because an exacerbation in her child's illness made her unavailable for work. She also indicated that she had considerable medical expenses not covered by Medicaid in relation to her child for which she wished to receive credit. Prior to the hearing she had not given this information to anyone at DSW.

6. DSW responded at the hearing that the petitioner's Food Stamp benefits for the month would be recalculated retroactively if she verified the information in paragraph 5 and the petitioner indicated that she intended to do so (she had no verification with her at the hearing). However, the petitioner wished to continue with the appeal because she does not like a system which requires her to predict what will happen the next month (i.e. what amount she would earn and whether she would actually get a \$50 pass along) and then leaves her with little money if the prediction is not accurate. Although by the end of the hearing she indicated that she understood her benefits could be retroactively recalculated if her predictions did not work out, she still felt that such a system was inadequate because she would have to wait until after her predictions failed to work out to get the corrected benefits.

ORDER

The decision of the Department is affirmed.

REASONS

The Food Stamp program requires that the income of all household members from whatever source, except those specifically excluded shall be countable when determining financial eligibility. F.S.M. § 273.9(b). Supplemental security income is specifically included as unearned income under the regulations (F.S.M. § 273.9(b)(2)(i)), as are child support payments (F.S.M. § 273.9(b)(2)(iii)), and earned income such as wages (F.S.M. § 273.9(b)(1)(i)). Those amounts are subject to deductions of twenty percent for earned income, a standard deduction from all income, and special deductions for child care expenses and excessive shelter and medical expenses. See generally F.S.M. § 273.9(d).

All of the petitioner's household income was properly counted under the above regulations. There is no provision for removing her child from the household grant as there is in the ANFC program. The Food Stamp regulations specifically require that parents and children who are living together be considered one household unit for purposes of Food Stamp eligibility. F.S.M. § 273.1(a)(2). The petitioner also appears to have received all the deductions for which she has to date provided verification, including the twenty percent (\$65) from her earned income and the standard deduction.

The sole remaining issue is whether the Department acted properly in anticipating her income for September based on her August income. The Food Stamp regulations specifically provide for the anticipation of income based on that received in the prior 30-day period as a method of determining income:

1. Anticipating Income

i. For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by §273.12.

ii Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

The question then is whether the Department was reasonably certain that the petitioner would receive the income it anticipated for the month of September. The amount of ANFC and SSI and the dates of receipt were known with a high degree of certainty for September and thus were correctly anticipated. The petitioner did not report that she would be unemployed during the month of September or offer some specific lesser amount of money she expected to earn. Given these facts, it cannot be said that the Department acted unreasonably in anticipating that she would again make an amount of money equal to the prior month. With regard to the support payments, given her recent history of their receipt, it cannot be said that the Department was wrong to feel reasonably certain that the petitioner would receive another support check in September.

The facts as presented at the hearing indicate that the Department had a reasonable basis upon which to anticipate receipt of earned income and child support payments for September. To the extent that the anticipation was incorrect, the petitioner can receive an adjustment in her Food Stamps retroactively for the lack of earned income. (It was not known at the time of the hearing whether she would in fact get a child support payment for September.) If the petitioner wishes to avoid the anticipation of this kind of income, she can present information showing the Department that money she earned in the prior thirty days cannot reasonably be used to predict the next thirty days. For example, she could show a recent history of failure to pay child support on a regular basis or that she is less likely to earn as much in the

coming month due to a change in her work schedule or some other circumstance. Upon a showing that her income fluctuates, she could also ask that her income be averaged based on fluctuations over the last few months. F.S.M. § 273.10(c)(3)(i).

The petitioner has a prospective remedy for faulty anticipation of income which requires her to keep the Department informed on a regular basis with regard to the details of her actual receipt of income. Since she will receive retroactive relief from the Department for the month of September, that month is essentially moot. The Department has shown it had an ample basis for anticipating income for September and the petitioner has presented no evidence which would show that the Department has information even now which would make it unreasonable to anticipate child support in the future. (The Department is aware that the petitioner is no longer working at her job.) The petitioner is encouraged to bring such information to the Department's attention immediately and also to present verification of any excessive medical expenses which she feels should entitle her to a further deduction from income.

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