

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,881

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying his Food Stamps based on excess income. The issue is whether certain government farm payments should be considered income under the Food Stamp program.

FINDINGS OF FACT

1. The petitioner is a self-employed farmer who lives with his wife who is disabled. They own a dairy and beef farm in northwestern Vermont. In February of 1997, the petitioner applied for Food Stamps and offered his 1995 income tax return as evidence of his family's earnings.
2. The income tax form provided showed that the petitioner reported a total gross income of \$72,388 for 1995 which included \$53,189 from the sale of milk and beef, \$3,583 from cooperative distributions, \$40 in a fuel tax credit and \$10,511 in agricultural program payments. The Department allowed the deduction of certain farm expenses<sup>(1)</sup> from the total income which brought the total countable income to \$8,345 per year, or \$695.42 on a monthly basis.
3. The Department calculated the petitioner's eligibility by considering the \$695.42 to be the household's "earned" income which was subject to a 20% earned income disregard. That amount was added to the petitioner's wife's unearned SSI income of \$538.91 per month and the total was subjected to a standardized \$134 deduction for a total countable food stamp income of \$961.25 per month. That amount was determined to be in excess of the maximum allowed for eligibility for a household of two. The petitioner was notified in writing of that fact and those calculations on February 12, 1997.
4. The petitioner disagrees with the Department's decision because he believes that \$9,783 of the \$10,511 he received in agricultural program payments should not have been counted as income to him because they were reimbursements for money he spent on farm projects and do not represent his "normal" income. He does not disagree with any of the other calculations.
5. The evidence shows that in 1995 the petitioner received "cost sharing" payments under two programs authorized by the Agricultural Credit Act of 1978 (92 Stat. 420-434) as amended by the Disaster

Assistance Act of 1989, Section 502 which is administered by the Consolidated Farm Service Agency of the United States Department of Agriculture. In September of 1995, he received \$6,750 in cost sharing payments under the Agricultural Conservation Program which paid 75% of the cost of a manure pit. In October of 1995, the petitioner received \$3,033 in cost sharing payments under the Emergency Conservation Program which paid 75% of the cost of a pond for watering his livestock due to a drought in 1995. The purposes of these programs are, respectively, to give an incentive to carry out conservation practices which will assure the food supply and enhance the environment and to provide emergency assistance to farmers.

6. There is no dispute that the petitioner was required to submit an application to the farm service agency for these cost sharing funds before he built the projects; that once the projects were approved the petitioner had to actually build them by a specific date to receive cost sharing funds; and that he was required to turn in receipts from the work in order for the funds to be disbursed. Neither is there a dispute that the actual costs of these projects exceeded the cost sharing money which was granted to the petitioner.

7. Based on the petitioner's own statement, the projects which were completed with the cost-sharing money were capital improvements to the petitioner's farm which he plans to depreciate over a period of ten years.

#### RECOMMENDATION

The decision of the Department should be affirmed.

#### REASONS

In general, persons who are involved in farming operations are required to annualize their income over a 12-month period because both their income and expenses tend to be unevenly spaced over a year but the net income is intended to support the household for a twelve month period. See F.S.M. 273.11(a)(1)(i). The petitioner offered his 1995 IRS individual income tax return to show what his income and expenses had been during that year as a basis for determining his current eligibility. This was done, presumably, because the petitioner had no better or more recent information to offer showing his actual monthly income at the time of application.

On the IRS form used to report farm income, the petitioner reported his earnings from the sale of his products but also included agricultural program payments he received as taxable earnings. The Department's regulations define countable income for the Food Stamp program as "all income from whatever source" except those items particularly exempted in the regulations. F.S.M. 273.9(b). The regulations specifically include the gross income from a self-employment enterprise excluding the costs of earning that income as countable "earned" income (F.S.M. 273.9(b)(1)(ii)) and payments from "government-sponsored programs" which can be construed as a gain or benefit as countable "unearned income".

The Food Stamp regulations contain an exhaustive specific listing of income which is not to be included in computing Food Stamp eligibility. See F.S.M. 273.9(c). Among those regulations is a listing of eleven federal payment programs which are not includable as Food Stamp income. Payments from USDA farm programs are not on that list. Given the fact that these exclusions were drawn up by another USDA agency (the Food and Nutrition Service) it is hardly likely that failure to list farm payments was an

oversight.

The petitioner argues that the farm program payments made to him should be excluded under a general exclusion found in the above cited regulation for payments which are actually reimbursements for actual expenses:

Only the following items shall be excluded from household income and no other income shall be excluded:

...

5. Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider of the household indicates the amount is excessive.

i Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

A. Reimbursements or flat allowances, including reimbursements made to the household under 273.7 (d) (1)(ii), for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

Note: 273.7(d)(1)(ii) refers to participant reimbursements for E[ducation] & T[raining].

B. Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

C. Medical or dependent care reimbursements.

D. Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

E. Any allowance a State agency provides no more frequently than annually for children's clothes when the children enter or return to school or daycare, provided the State agency does not reduce the monthly AFDC payment for the month in which the school clothes allowance is provided. State agencies are not required to verify attendance at school or daycare.

F. Reimbursement made to the household under 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T program.

ii The following shall not be considered a reimbursement excludable under this provision.

A. No portion of benefits provided under Title IV-A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

B. No portion of any education grant, scholarship, fellowship, veterans' education benefit, and the like, that is provided for living expenses shall be considered a reimbursement excludable under this provision. Reimbursements or allowances provided for other educational expenses shall be excluded pursuant to the provisions of 273.9(c)(3)(ii) or (c)(10)(xi), as appropriate.

F.S.M. 273.9(c)

There is no question that the cost-sharing payment made to the petitioner by the USDA was a partial replacement of funds he had expended to make capital improvements to his property, to wit, a manure pit and a pond. These payments were an inducement to the petitioner to make improvements on his farm which would conserve resources, enhance the environment and aid in his productivity as a farmer. See 7 C.F.R. § 701.3 *et seq.* The payments made to him did not exceed his actual expenses and to that extent the payments meet the first part of the definition found above for excludable reimbursements. However, it cannot be said that these payments do not represent a gain or benefit to the household, the second part of the test. Those payments went toward the purchase of facilities which the petitioner felt would be of some advantage to him in the operation of his business and resulted in a capital improvement to the petitioner's farm. If the petitioner had paid the entire expense out of his own pocket, he would not have been able to deduct it as an allowable cost of producing self-employment income because it was the cost of purchasing a capital asset. See F.S.M. 273.11(a)(4)(ii)(A). If he is allowed to exclude the cost-sharing payments he received, he would in effect be taking that amount which was used to purchase a capital asset as a deduction from his yearly income in contravention of the regulations.

The petitioner argues in addition that all reimbursements that are not for household living expenses must be deducted. However, the clear language of the regulations expresses a different meaning, namely that reimbursements for normal household living expenses are never excluded, not that these are the only kinds of reimbursements which are not excluded. To read the language in this section otherwise is to ignore the two-part test set up by the first sentence of the regulation.

Finally, the petitioner argues that expenses to build the manure pit and pond are employment related expenses just like transportation and uniforms and should be treated the same. While these expenses may all be employment related, there is a vast difference between the need to pay for transportation and uniforms, which has no value outside of the employment itself, and the need to make improvements to a piece of property, which becomes a capital asset to the petitioner. There is clearly a gain or benefit from the latter.

The Department was correct in its determination that these agricultural program payments must be included as income for purposes of the Food Stamp program just as they are for taxation purposes.<sup>(2)</sup> Therefore, the Department's decision that the petitioner is ineligible based upon the 1995 income information is correct. However, the petitioner should be aware that if his 1996 tax return is now

available, he could certainly request that the Department consider the information in that return as a more accurate reflection of his income at the present if he thinks it would be to his advantage.

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1. The Department allowed the same expense deductions as the IRS with the exception of depreciation which is not an allowable cost of producing self-employment income under F.S.M. § 273.11(a)(4)(D.)
2. It should be noted that the agricultural payments were mistakenly given more favorable treatment as "earned" income and subjected to a twenty per cent disregard when they actually should have been treated as "unearned" income under the regulations cited at the beginning of this rationale. If they had been properly treated, the petitioner would have been even more over income than he was found to be.