

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,929

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her Food Stamp benefits because she is over income. The issue is how many persons should be considered members of the petitioner's household.

FINDINGS OF FACT

1. In February of 1997, the petitioner, who is a single mother, worked thirty hours per week as a cook and had a gross earned income of \$1,182.84 monthly. At that time, the petitioner reported that she had a household of three, herself and her two daughters, ages 13 and 4.
2. Because her February 1997 income represented an increase, the petitioner's benefits were reviewed. At the time of the review, it came to the Department's attention that the petitioner's older daughter only lived with her every other weekend. The petitioner's ex-husband has physical custody of the child and she goes to school in Massachusetts near his home. In addition to the every other weekend visits, the child spends school holidays, Christmas, spring and winter vacation and the entire month of August with her mother. The petitioner estimated that her older daughter spends about 118 days per year in her home.
3. The Department determined based on that information that the child was not a member of the petitioner's household for Food Stamp purposes and recalculated her eligibility as a two person household. The Department applied a gross income test for a two person household which has a maximum of \$1,123 and found that she failed it by about \$60. On March 3, 1997, the Department sent the petitioner a notice that her Food Stamp benefits of \$208 per month would be closed effective April 1, 1997.
4. The petitioner appealed that decision and received continuing benefits. She was laid off work in April and reapplied for benefits and was found eligible for Food Stamps beginning in May. What is at stake here is whether the petitioner must repay her April benefits and whether she will be able to get benefits when she starts working again, which she expects to do soon.
5. The petitioner believes the Department is wrong to not count her older daughter in her Food Stamp household because she must feed her for about one-third of each year. She is financially strapped

because she cannot get child support for her younger child (child support for the older child is not an issue). She says that her younger child's father owes over \$9,000 in back support and that he has stopped paying completely. She has appealed a January, 1997, decision reducing his support to nothing based on his mental and physical condition.

### ORDER

The decision of the Department is affirmed.

### REASONS

The Food Stamp regulations require the Department to make payments to "households" which are generally defined as follows:

A household is composed of one of the following individuals or groups of individuals;

iii A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

F.S.M. § 273.1(a)(1)

The regulations do not further define the term "individuals who live together." However that phrase has been interpreted by the Board to mean a person who primarily resides in the home applying for Food Stamps, if the person lives in two homes. See Fair Hearing No. 6,345. In that decision, the Board was presented with very similar facts: a father who had joint custody of his minor children who lived in their mother's house except every other weekend, some holidays, school vacations and part of the summer when they were with him, applied for Food Stamps. The Board concluded that the children were clearly residing primarily with the petitioner's wife and that as such they could not be included in the father's household.

There is no reason to distinguish the facts in this case from the prior one. The child cannot be a member of both households because both households could apply for Food Stamps and, if financially eligible, receive benefits to feed the same child. There is no mechanism for pro-rating the benefits. The regulations prohibit any person from participating in the program as a member of more than one household. F.S.M. 273.3. In addition, the child in question here lives primarily with a parent who lives in another state where she attends school. That particular fact pattern also raises questions about whether the child can be considered a "resident" of the state of Vermont, another essential element in finding that she is an individual who is eligible for Food Stamps. See F.S.M. 273.3. For these reasons, the decision of the Department to remove the older child from the household unit for Food Stamp eligibility purposes should be upheld. With the remaining two persons in the household, the petitioner's income is in excess of the gross income test for a household of that size. F.S.M. 273.9(a)(1)(i) P 2590C.

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