

income is \$1,462 per month. However, in most months the petitioner has some overtime. When the petitioner has more than nine hours of overtime in a month (in addition to forty hours of regular time), he cannot pass the gross income test for Food Stamps.

3. The petitioner undergoes a review of his eligibility every six months. During his last review on October 26, 2001, the petitioner provided pay stubs for September of 2001 showing his gross income was \$1,629.87. That income included over twenty-four hours in overtime. He also indicated on a change form that he was receiving at least some overtime on a regular basis. He was advised at the review, as he is at every review, that he must report any change in his income that is greater than \$25 per month and that he can report a decrease in income at any time if he wishes to have his income recalculated.

4. Based on the information provided at his review, PATH determined that the petitioner was over-income and sent him a Food Stamp closure letter dated November 12, 2001 to take effect on December 1, 2001. At that time he was receiving \$147 per month in Food Stamps.

5. The petitioner appealed that decision on November 26, 2001 and his benefits were continued at the prior level.

In early December, following his appeal, the petitioner advised the Department that his income had not been as great in October. He was informed that he needed to report his income for that month at once.

6. The petitioner did provide information regarding his October income which showed that although he worked three hours of overtime, he earned only \$1,343.04 because he had not worked all of his regular hours. As that amount is below the gross income test amount, PATH found the petitioner eligible for Food Stamps and he was reinstated for the month of December at a level of \$179. He was notified of this change on December 5, 2001.

7. Later in December, 2001, the petitioner notified the Department that he had earned \$1,612.75 in November. This paycheck included twenty-two hours of overtime. Because that amount is above the gross income level, the petitioner was notified that he would not receive any food stamps effective January 1, 2002. He also appealed that decision and the two appeals have been consolidated.

8. At the fair hearing held on January 8, 2002, the petitioner presented evidence that his pay for December of 2001 had been \$1,643.58, including at least fourteen hours of overtime. Based upon that information, PATH declined to

reinstate him for Food Stamps in January 2002 because he exceeded the gross income test.

9. The petitioner protests this action saying that he should not have his fluctuating overtime used to cut his Food Stamps.

ORDER

The decision of the Department is affirmed.

REASONS

The Food Stamp regulations calculate eligibility by using all income from "whatever source" including wages earned from overtime. F.S.M. 273.9. Eligibility is calculated prospectively by predicting the income for the future month based on the income earned in the last month. F.S.M. 273.10(c). For example, the Department would take the reported income from the month of October and use it to calculate eligibility for the upcoming month of December. Rather than make these calculations on a monthly basis, the Food Stamp regulations require that the Department anticipate circumstances for a longer period, usually six months when there is earned income, at the time a recipient undergoes a review. F.S.M. 273.10(a)(2). The circumstances are generally

anticipated using income information from the month which came directly before the month of review unless there is some reason to believe that it will not be an accurate predictor of the future. F.S.M. 273.10(c)(1)(ii). The income predicted for households without an elderly or disabled person must pass a gross income test for eligibility. F.S.M. 273.9(a). The gross income test for a family of three is \$1,585 per month.

When the petitioner's situation was reviewed in October of 2001, he was asked to present income information from September of 2001. He showed a pay history for September of 2001 that indicated that he was earning considerable overtime. He verified for the Department that he was getting overtime in every month although he could not predict in what amount he would get it for the future months. There is no evidence that the petitioner reported that his overtime in September was so unusual as to make it unfair to use it to predict the future. The Department correctly used the month of September 2001 to anticipate the petitioner's income for the next six months. That gross income was in excess of Departmental maximums for a family of three. Based on that information, the Department correctly notified the petitioner that his Food Stamp benefits would cease.

As it turned out, the petitioner did have overtime in each of the following three months although he never reached the level of earnings that he had in September of 2001. In all but one of those months, the petitioner had an overtime amount which placed him over the gross income amount to receive Food Stamps.

In order to mitigate the potential unfairness of predicting future months with past income, the regulations also allow a recipient to report a decrease in income and be reinstated for Food Stamp benefits within ten days of the report if the income decreases by \$50 or more and the overall new income warrants such a change. F.S.M. 273.12(c). In this case, the petitioner's report of his lower earnings in October resulted in a finding that he would be eligible for December.¹ The Department thus correctly reversed its prior finding of ineligibility for that month. His December report of higher earnings in November 2002, however, caused his Food Stamp case

¹ Because the Department did not learn until very late in the month of October that the petitioner's income for September was so high, it could not decrease his benefits until December. This is because benefits are paid near the first of each month and every recipient has the right to at least ten days advance notice before benefits are cut or terminated. Ideally, the petitioner would have reported early in November that his October income had been far less which would have prompted a reinstatement for the month of November. As the late discovery of the September income had not caused a November closing, however, October's income was used to reverse the finding of ineligibility for December. The Department apparently decided to treat the October income as having been timely

to close in January of 2002. His January report of December earnings which were even higher than November's could not prompt a change in the petitioner's ineligibility for January 2002. In fact, those earnings will likely prompt a notice that he is ineligible in February of 2002.

Although the Department has abandoned "monthly reporting" of income for Food Stamps in favor of certification periods, the petitioner as a person with fluctuating income should be aware that he may be greatly disadvantaged if he fails to report his income to the Department on a monthly basis. He is required by regulation to report all increases of more than \$25 in income to the Department within ten days. He may, but is not required, to report decreases in income. However, if he fails to report monthly decreases as soon as he knows they have occurred, he may lose his opportunity to have his Food Stamps timely readjusted if his income level drops below eligibility maximums. Because of his action in turning in his low October 2001 paycheck, he was able to reverse the ineligibility determination for December. (And thereby, arguably, mooting out his own appeal for that month.) However, his subsequent paychecks made him ineligible again

reported in November (although it was actually reported in December so as to predict eligibility for December).

for January of 2002. If the petitioner's total pay for January is lower than that for December, he should report it immediately to the Department to see if his Food Stamps could be adjusted for February.

It cannot be concluded that the Department acted improperly in this matter or that the petitioner has not received Food Stamps to which he was entitled. Therefore, the decision of the Department finding the petitioner eligible for Food Stamps for December 2001 but ineligible for January 2002 must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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