

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. 18,797
) & 18,876
Appeal of)
)

INTRODUCTION

The petitioner appeals the decisions of the Department of Prevention, Assistance, Transition, and Health Access (PATH) reducing his Food Stamps to \$10 a month and imposing a Vermont Health Access Program (VHAP) fee of \$45 a month. The issue is whether the regulations under each program allow the Department to deduct from countable income the portion of the petitioner's unemployment compensation benefits that are withheld each week for federal income tax. The facts are not in dispute.

FINDINGS OF FACT

1. The petitioner receives Food Stamps and VHAP for himself and other members of his household.
2. Based on information provided by the petitioner in January 2004 the Department determined the household's income included \$851.40 a month that the petitioner was receiving in unemployment benefits. The Department arrived at this figure by multiplying the petitioner's gross weekly unemployment

benefit of \$198 by 4.3 (the average number of weeks in a month).

3. It appears, however, that \$25 a week is deducted from the petitioner's weekly unemployment check to cover federal income tax withholding. Thus, the petitioner only receives a check for \$173 a week. The Department does not deduct or exclude this tax withholding in determining the petitioner's eligibility for Food Stamps and VHAP.

4. By a notice dated January 23, 2004 the petitioner was found eligible for \$10 a month in Food Stamps. He has also been notified that based on his income (which includes his gross unemployment benefits) he must pay a \$45 a month program fee to remain eligible for VHAP.

ORDER

The Department's decisions is affirmed.

REASONS

For Food Stamps, the regulations specifically include "unemployment compensation" under the definition of "unearned income". F.S.M. § 273.9(b)(2)(ii). The regulations further specify: "Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section." F.S.M. § 273.9(b). Federal (or state) tax

withholdings are not mentioned as excluded items in F.S.M. § 273.9(c).

Allowable deductions from gross income are set forth in F.S.M. § 273.9(d) as only those specified in that section. Allowable deductions include twenty percent of gross earned income. However, there are no deductions from unearned income related to taxes or any other withholding.

For VHAP the regulations provide: "Countable income is all earned and unearned income, as defined in this section, less all allowed deductions." W.A.M. § 4001.81. Again, "unemployment compensation" is specifically included under "unearned income". Id. § 4001.81(b). A "standard employment expense deduction" of \$90 is allowed as a deduction from gross earned income. Id § 4001.81(e). Again, however, there are no deductions or exclusions mentioned in the regulations relating to taxes withheld from unearned income.

Based on the above, it appears that the Department's decisions in this matter were in accord with the regulations governing both programs at issue. Therefore, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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