

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,239
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Children and Families Economic Services (DCF) to decrease the amount of his Reach Up benefits.

FINDINGS OF FACT

1. The petitioner, as part of his Reach Up plan, is self-employed as a realtor. He filed a tax return form for 2003 showing that he earned \$2,040 in this start-up business.

2. DCF used last year's tax return to estimate the petitioner's income for this year. Based upon that tax statement, DCF attributed \$170 per month in income from this enterprise to the petitioner.

3. The petitioner disagrees with that methodology because he says that he was advised by his accountant not to claim any business expenses on his tax form for last year. If he had included the expenses, his income would have been much less.

4. DCF advised the petitioner that it would not use an altered tax return for last year but would allow him to present evidence of his current income if he did not feel last year's tax return was representative of his current situation.

5. The petitioner presented information showing that he had netted \$3,152.66 during the first eight months of 2004 or about \$394 per month. As his work is seasonal, he does not think he will continue to make that same amount for the coming months.

ORDER

The decision of DCF is affirmed.

REASONS

DFC's regulations in the Reach Up program state that "self-employment income will be determined by the client's most recent tax return unless the tax return is not indicative of the current situation . . ." in which case "the department will use the client's records and other available sources to determine the self-employment income." W.A.M. 2253. This regulation requires that the most recent tax return, in this case the return for 2003, be used to determine the petitioner's income unless it does not indicate the current situation. In that case the petitioner's more current records

can be used. The regulation does not allow the modification of a prior tax return showing profit and loss as a method of determining income. In this matter, DCF gave the petitioner the option of using the prior tax return or the records to date for this year. Therefore, it has followed its regulations and its decision must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

It must be obvious to the petitioner at this point that it is to his advantage to use his tax form from last year even if he feels it does not accurately reflect last year's profit because his current records show a trend toward even more income than last year. The petitioner should be aware when he files next year's tax return that it will be used during 2005 to project his income and should make sure that it reflects his income as accurately as possible.

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