STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing Nos. 19,774
	)	& 19,858
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, (DCF), closing her Reach Up Financial Assistance (RUFA) grant and reducing her Food Stamps based upon her son's receipt of Social Security income.

FINDINGS OF FACT

1. The petitioner at the time of the action at issue was the single mother of two children for whom she received RUFA benefits. This Spring, the father of one of her children died and she was notified by the Social Security Administration that his child would receive a survivor's benefit of $957 per month.

2. DCF recalculated the petitioner's RUFA eligibility using her son's Social Security benefit. That amount, $957, was added to $150 per month received by the petitioner as child support on behalf of another child. The sum, $1,107, was compared to the maximum RUFA grant for a family of three,

$613. DCF determined that the petitioner and her children were no longer eligible for benefits. She was notified on May 19, 2005, that her grant would close on May 31, 2005.

3. DCF also recalculated the petitioner's Food Stamp benefits based on the new income. Because the petitioner had no deductions for excess medical costs or dependent daycare expenses, the entire $1,107 was used to calculate her Food Stamp benefits. DCF determined that the family's Food Stamps which had been $301 per month should be reduced to $25 per month based on the new income. The petitioner was notified on June 23, 2005 that her Food Stamps would be reduced on July 1, 2005.

4. The petitioner appealed these decisions and has continued to receive benefits at the prior levels. On May 12, 2005, the petitioner gave birth to a third child. DCF will recalculate the petitioner's benefits based on the birth of the third child.

5. The petitioner understands that she will get a new determination based on her third child. However, she believes, based on information she received from the Social Security Administration, that she cannot use her son's survivor's benefit to support his half-siblings, but must use it solely for his benefit. She argues therefore that this

income should be excluded from any new calculations made by DCF for her family's eligibility for Food Stamps and RUFA.

ORDER

DCF's decision to include the petitioner's son's Social Security benefits in its calculation of her Food Stamp and RUFA benefits is affirmed.

REASONS

Both the Food Stamp and RUFA regulations adopted by DCF require the inclusion of all household income except that specifically excluded under the regulations. F.S.M. § 273.9(b); W.A.M. § 2250. Far from being excluded, Social Security benefits received by any members of the household are specifically included as countable income in both the Food Stamp (F.S.M. 273.9(b)(2)(ii)) and RUFA (W.A.M. 2252(A)) regulations.

The petitioner expressed concern that she would run afoul of Social Security regulations if she used money provided to one child to meet the needs of his two half-siblings. This same concern was raised by other welfare recipients in a series of "DEFRA" lawsuits regarding the federal "sibling-deeming" rule that ended up before the U.S. Supreme Court in 1987. In its decision, the Court approved

of the counting and use of both child support and Social Security benefits earmarked for a specific child for other siblings and half-siblings residing in the same household. Bowen v. Gilliard 107 S.Ct. 3008 (1987). Undoubtedly, the Supreme Court was aware of the Social Security rules about the use of income for the benefit of designated beneficiaries when it made its decision.

DCF's current adopted regulations reflect the Court's decision in Bowen and were correctly applied to the petitioner's situation. Because DCF's decision to count the Social Security income as available to all of the children in the family is consistent with its regulation, the Board is bound to uphold the decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

It should be noted that the July 23, 2005 notice sent to the petitioner terminating her Food Stamp benefits was not sent ten days in advance of the action (to take place on July 31, 2005) as is required under DCF's own regulations. F.S.M. § 273.13(a)(1). The earliest her Food Stamps could have been reduced based on that notice was August 1, 2005, unless the Stamps were issued twice monthly. DCF should keep this in mind as it recalculates the petitioner's eligibility for Food Stamps based upon the addition of a child to her household

and assesses any overpayment that may have occurred based on the pending appeal.

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